

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Deborah Law-Carruthers (Applicant)

**AND** Fieldforce Limited and Another (First Respondent)  
**AND** Anne Judith Barrowclough (Second Respondent)

**REPRESENTATIVES** Chris Patterson, Counsel for Applicant  
C H Toogood QC, Counsel for Respondents

**MEMBER OF AUTHORITY** Y S Oldfield

**INVESTIGATION MEETING** 30 November 2004

**SUBMISSIONS** 10 December 2004, 15 December 2004, 24 January 2005

**DATE OF DETERMINATION** 5 July 2005

DETERMINATION OF THE AUTHORITY

**Employment Relationship Problem**

- [1] I hesitate to call any employment relationship problem trivial. Matters that seem minor to those on the outside can assume enormous significance to those involved. However, this case concerns issues which I consider have been elevated out of all proportion to their material impact. It concerns a disagreement over the departure date for an employee, Ms Law-Carruthers, who had tendered one month's notice of resignation on 22 October 2003. She already had an offer of a new job to start on 10 November and wished to shorten her period of notice. Her Managing Director, Ms Barrowclough, was not opposed to this in principle but the two could not agree a mutually convenient date.
- [2] Ms Law-Carruthers says she proposed 7 November but at Ms Barrowclough's insistence left on 23 October. She was however paid up until 31 October. This included two days holiday pay for 23 and 24 October, Ms Law-Carruthers having previously applied for annual leave on those days. Ms Law-Carruthers says that being forced to leave early, and losing the opportunity to earn another week's pay, gives rise to grievances of disadvantage and unjustified dismissal
- [3] Ms Barrowclough says that Ms Law-Carruthers never suggested 7 November as a departure date. She says that this date was not mentioned to her at all until well after the employment had been terminated. She says that it would in fact have been a suitable time from her point of view. She says that in discussion on 22 October Ms Law-Carruthers told her she wanted to go on 31 October. This date was not convenient to Ms Barrowclough as she was to be out of the country then. She confirmed her position to Ms Law-Carruthers in an email sent late on the afternoon of 22 October: It read:

*“Deborah, If you wish to work your full month of notice out I am very happy to accommodate that. You gave me a date of departure this morning of next Friday, and I responded that did not suit and I would prefer you worked until this Friday. If you wish to work until the 22 November that would be great. Regards. Anne.”*

- [4] Ms Barrowclough told me that she was essentially putting two options to Ms Law-Carruthers. The first was to leave before she went away (which effectively meant immediately) so that there could be a handover. The second was to work out the notice, so that the handover could happen after Ms Barrowclough got back.
- [5] Ms Law-Carruthers was unhappy with both alternatives. She wanted to be free to start her new job on 10 November but on the other hand she wanted time to say goodbye to clients and did not want to lose pay. On the morning of 23 October she went to talk to Ms Barrowclough to reopen discussions regarding leaving earlier. She told me that she wanted to have another attempt to negotiate a finish date that suited her better than 22 November.
- [6] Ms Barrowclough offered a compromise which was for Ms Law-Carruthers to go on 23 October but be paid up until 31 October. Ms Barrowclough told me Ms Law-Carruthers agreed to this, but Ms Law-Carruthers says she was forced into it because Ms Barrowclough removed the option of her staying on until 22 November.
- [7] I consider Ms Barraclough was well within her rights to put just two choices to Ms Law-Carruthers as she says she did. The respondent was not obliged to shorten the notice period. The only issue is whether Ms Law-Carruthers did still have two choices and retained the alternative of working through until the end of her notice period, as she was entitled to do. The case therefore turns on credibility. I must decide whose version of events I believe.

### **Determination**

- [8] I prefer what Ms Barraclough has told me. She was more consistent and so more credible in her evidence. I also place reliance on the email of 22 October, which confirmed that Ms Barrowclough was happy for Ms Law-Carruthers to work out her notice period. I am satisfied that the initiative for an early finish came from Ms Law-Carruthers and that she agreed to go on 23 October because she wanted to be able to start her new job on 10 November (as she duly did.)
- [9] There has been no unjustified dismissal and no unjustified action to Ms Law-Carruthers disadvantage. I can do nothing more to assist Ms Law-Carruthers with her employment relationship problem.

### **Costs**

- [10] I leave it to the parties to determine this issue between themselves. If they cannot do so they may lodge submissions as to costs however this process must be commenced within 28 days of the date of this determination.