

[4] On 7 May 2008, there was a breakdown at the factory that Ms Leask worked at in Bluff. A machine called a blancher ceased to operate. One of the consequences of the breakdown was that a section of conveyer belt which conveyed mussels through the blancher machine needed to be replaced. The blancher machine is part of the pathogen reduction programme at the factory and product transits the blancher machine immediately before the finished mussel product is frozen and then packed for human consumption.

[5] There is a hygiene protocol that is required to be followed if there is a breakdown of this sort and it is common ground that Ms Leask's role was partly responsible for the enacting of that protocol. In essence, the machine has to be sanitised as part of the process of getting the breakdown fixed.

[6] There is dispute about whether Ms Leask adequately fulfilled her obligations as a consequence of this breakdown, and that matter was the subject of further inquiry by Sanford.

[7] In the meantime, Ms Leask was scheduled for surgery (a hysterectomy) and she was advised on 16 May 2008 that the surgery was to take place on 23 May 2008. A leave application was filed and after some internal discussion within Sanford, approved.

[8] The surgery proceeded and on 2 June 2008 Ms Leask left the hospital to recover at home. On 23 June 2008, Ms Leask received a letter from Sanford seeking explanations in respect of the blancher breakdown on 7 May 2008.

[9] Ms Leask returned to work on 30 June 2008 and by letter dated 7 July 2008 she responded to Sanford's letter of 23 June 2008.

[10] Sanford wrote again to Ms Leask by letter dated 14 July 2008 summoning her to a meeting on 17 July 2008 to discuss *inconsistencies* in the *different versions of event* concerning the 7 May breakdown.

[11] On 15 July 2008 (that is the day that Ms Leask received Sanford's letter dated the preceding day), Ms Leask tendered her resignation from Sanford, giving one month's notice in accordance with her employment agreement.

[12] The disciplinary meeting proceeded on 17 July 2008, notwithstanding the resignation. Ms Leask's evidence was that she was stressed and agitated by the meeting and immediately thereafter she attended at her doctor's practice where her blood pressure was measured and identified as *extremely high*. Her doctor gave her a medical certificate to be absent from work for the balance of the day.

[13] The following day, Ms Leask returned to the workplace and, by letter of the same date (18 July 2008), she received a letter from Sanford acknowledging her resignation but giving her until 5pm on 22 July to reconsider whether in fact she wished to resign. The letter proceeded on the footing that if Sanford had not heard from her by that time and date, then she could take it that her resignation had been formally accepted.

[14] There is dispute about what happened next. Ms Leask's evidence is that she told her immediate report (Mr Smith) that she *loved her job and didn't want to leave*. Ms Leask's evidence, in essence, is that she signalled that this proved her wish to rethink her resignation and was encouraged to do so by Sanford.

[15] However, Sanford absolutely and unequivocally denies that any such message was ever received by any of its senior officers, and accordingly it is Sanford's position that at no stage was it ever told that Ms Leask was contemplating withdrawing her resignation.

[16] Both parties agree there was a meeting between Mr Smith and Ms Leask on 25 July 2008 with Ms Leask contending that at that meeting, she reiterated her earlier advice that she regretted *handing in my notice*, felt that she could continue to do the job if she got a bit more support and apologised for the content of the resignation letter. Ms Leask's evidence is that Mr Smith told her that he did not wish to lose her services and would get back to her.

[17] Mr Smith's evidence, while agreeing that the 25 July meeting did take place, is absolutely unequivocal that at no stage was there any reiteration of Ms Leask's intimation that she regretted resigning, nor any response from him to the effect that he would welcome her remaining in employment or any words to that effect.

[18] There was a further meeting between Mr Smith and Ms Leask on 1 August 2008 at which Ms Leask was provided with a letter dated 25 July 2008 which confirmed acceptance of her resignation.

[19] By letter dated 10 September 2008, a personal grievance was raised by Ms Leask alleging unjustified dismissal on the basis that her resignation had been accepted after she had formally withdrawn it.

Issues

[20] The only issue for determination in this matter is whether in fact Ms Leask did withdraw her resignation before it was accepted by Sanford. There is, as Sanford observed in its closing submissions, no suggestion by Ms Leask that she was constructively dismissed from her employment, so that issue does not need to be traversed at all.

Was the resignation withdrawn?

[21] There is no issue about Ms Leask having resigned her employment, nor any issue about that resignation being accepted by Sanford. The only matter for investigation is the bit in between. Ms Leask is adamant that she met with her immediate superior, Mr Smith, on 21 July 2008 at which meeting she is adamant that she said something to the effect that she loved her job and did not want to leave and that Mr Smith told her to take a few more days to decide. This, of course, was in the context of the employer having written to Ms Leask on 18 July (three days before) giving her until 5pm on 22 July to effectively withdraw her resignation.

[22] Ms Leask's evidence is that this discussion on 21 July effectively gave her the opportunity to indicate to Sanford that she was thinking about withdrawing her resignation and that Mr Smith told her to *take a few more days to decide*.

[23] The problem with this evidence is that it is hotly contested by Mr Smith who not only denies giving any such extension, but denies that the meeting even took place. Indeed, Mr Smith's evidence is even more unequivocal. In answer to a question from me, he said: *Right throughout this process there was nothing said to me to indicate she [Ms Leask] was going to withdraw her resignation*.

[24] Before turning to consider the quality of the competing evidence of the two principal protagonists (Ms Leask and Mr Smith), it is useful to refer to other relevant evidence before the Authority.

[25] First, the evidence of the Sanford management team was heard by the Authority. None of the other members of Sanford's management gave any evidence to suggest that they were aware that Ms Leask had, at any stage, withdrawn her resignation. Mr Foggo, the branch manager, said in answer to a question from me: *If there had been a withdrawal of the resignation I would have been told and I wasn't.*

[26] Ms McDonald, the quality assurance manager, told me that she had heard nothing about Ms Leask withdrawing her resignation.

[27] Furthermore, Ms Leask herself confirmed that when she was told by Mr Smith that her resignation had finally been accepted (the discussion on 1 August when Mr Smith handed Ms Leask the letter confirming the resignation dated 25 July), Ms Leask took no steps whatever to quarrel with the decision. Mr Smith reports that Ms Leask was tearful but there was no action by her to contest the decision. In answer to a question from Mr Soper, Ms Leask accepted that perhaps she should have gone to see one of the more senior managers to protest Sanford's decision. The point about this lack of action from Ms Leask at this point is simple; if she had, in truth, withdrawn her resignation as she claimed, why would she not have immediately protested its acceptance by referring to the withdrawal of the resignation?

[28] It is clear from the evidence of Mr Foggo and the other Sanford managers that they did not hear any complaint from Ms Leask at the time the resignation was accepted. Mr Foggo's evidence on the point is illustrative of the general stance of the Sanford witnesses other than Mr Smith who of course was directly involved. Mr Foggo said in answer to a question from me: *If she [Ms Leask] had been dissatisfied with the acceptance of her resignation, I would have expected to have had Estelle [Ms Leask] see me.*

[29] This observation needs to be put in the context of the relative accessibility of Mr Foggo and the rest of his management team. Each of them gave evidence that they were accessible and had a *open door* policy. Mr Foggo and Mr Crighton, together with Ms McDonald, all said as much. All had worked closely with Ms Leask over the period she had been employed, and all seemed genuinely saddened in their evidence before the Authority that Ms Leask claimed that she did not feel able to talk to them.

[30] From the Authority's perspective, looking at those three witnesses who all gave clear and unequivocal evidence at the investigation meeting, none of them appeared unapproachable or indifferent to the needs of staff, and it seems at best unlikely that Ms Leask could not have talked to one or other of those more senior managers, given the apparent seriousness of the situation.

[31] However, even on Ms Leask's own evidence, she had a good straightforward relationship with Mr Smith and Mr Smith's evidence is equally unequivocal, not only that she did not raise the alleged withdrawal of her resignation with him on any occasion, but also that she did not protest the failure to acknowledge the withdrawal of the resignation when she was presented with the acceptance of the resignation at the meeting between the two of them on 1 August.

[32] Whatever happened on 21 July (and it will be recalled that there is dispute about whether there was a meeting at all between Mr Smith and Ms Leask on that date), there was certainly a meeting between the two of them on 25 July. Ms Leask says this was the second occasion on which she discussed with Mr Smith her *regret* at handing in her notice and she claimed that Mr Smith told her something to the effect that he did not want to lose her services. Mr Smith absolutely denies receiving any such intelligence at that meeting, or making the remarks attributed to him, but he does not deny that the meeting took place. He says that the meeting was to discuss the terms of Ms Leask's resignation and the fact that in her resignation letter she raised matters concerning her unhappiness with management. Mr Smith's evidence, which was unshakeable, was that the purpose of the 25 July meeting was to discuss those concerns.

[33] Furthermore, Mr Smith says that after that meeting (and on the same day), he reported to Mr Crighton and, together with Ms McDonald, there was a discussion about Ms Leask's concerns about management. On Mr Smith's recollection of this meeting that he had with Ms Leask, it sounds a bit like an exit interview.

[34] However, what is important about the way in which this matter was treated after the meeting with Ms Leask is that Mr Crighton remembers the meeting with Ms McDonald and Mr Smith, thinks it was in fact on the same day (that is, 25 July 2008) and was clear there was no reference to Ms Leask's withdrawal of her resignation in the meeting that he had with Mr Smith and Ms McDonald.

[35] Mr Crighton said: *Neale [Mr Smith] met with me and Marie [Ms McDonald] to advise about Estelle's [Ms Leask's] complaint about the management and training issues. Why would he not have mentioned the withdrawal of her resignation then if it had happened?* The same point is made by Ms McDonald in her evidence where she also remembers that three-way meeting and also notes that there was no reference by Mr Smith to Ms Leask having withdrawn her resignation.

[36] On balance then I must decide whether Ms Leask's evidence on having at least talked about withdrawing her resignation is to be preferred over Sanford's evidence that no such withdrawal was ever communicated to it. The principal witnesses, of course, are Mr Smith and Ms Leask herself. Both of the principal witnesses impressed me as credible and straightforward. Mr Smith seemed to me to be very careful about his answers to questions and he acknowledged in evidence that he was being very cautious in the way that he dealt with the matter, but I do not think that his evidence is to be disbelieved. Equally, Ms Leask impressed me as honest and straightforward.

[37] In the result, though, I must conclude that the sheer weight of evidence supports Sanford's view that, whatever Ms Leask may have thought she communicated, there was no explicit withdrawal of the resignation. I reach that conclusion because not only did I find Mr Smith's evidence credible, but the various items of support for his position by his colleagues in Sanford management, seemed to me to produce a weight of evidence entitling the Authority to conclude that no notice of a withdrawal of the resignation was ever provided.

[38] Even on Ms Leask's own evidence, I do not think her evidence is ever capable of being taken as explicitly withdrawing the resignation that she clearly tendered. All I think her evidence can do is suggest that she talked about the **possibility** of withdrawing her evidence and, as I say, I am not satisfied that whatever she intended to convey, she actually succeeded in transmitting it to Sanford.

Determination

[39] I am satisfied on the balance of probabilities that Sanford's evidence is to be preferred and that Ms Leask has therefore not satisfied me that she has suffered a personal grievance by way of having been unjustifiably dismissed. I am satisfied that the evidence discloses that she resigned her employment and that that resignation was

accepted by Sanford without her having formally notified Sanford that the resignation had been withdrawn. Ms Leask may have intended to withdraw her resignation, and she may even have thought that she had conveyed that message adequately, but I am satisfied that no such message was ever received by Sanford. The weight of evidence from Sanford simply precludes any other conclusion.

[40] That being the position, Ms Leask's claim fails in its entirety.

Costs

[41] Costs are reserved.

James Crichton
Member of the Employment Relations Authority