

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Serene Poh Choo Lee (Applicant)
AND Abigroup Asset Services New Zealand Limited (Respondent)
REPRESENTATIVES Mrs C Wright, Counsel for Applicant
Ms N Scott, Counsel for Respondent
MEMBER OF AUTHORITY Dzintra King
INVESTIGATION MEETING 28 November 2005
SUBMISSIONS RECEIVED 4 and 18 January 2006 from Applicant
6 January 2006 from Respondent
DATE OF DETERMINATION 24 February 2006

DETERMINATION OF THE AUTHORITY

The applicant, Ms Serene Poh Choo Lee, claims that she was bullied and that the respondent, Abigroup Asset Services NZ Ltd, did not provide a safe workplace. Although not expressly stated in the Statement of Problem, Ms Lee was also claiming that she had been unjustifiably dismissed. The respondent denies all the claims.

Ms Lee was employed on 16 August 2004 as a Financial Administrator. She reported to the Contracts Manager, Mr. Terry Coe, and had one reportee, Mr. Sriram Bhardwaj. In January 2005 Mr. Ian Hodgson took over the role of Contracts Manager. This change was discussed with Ms Lee.

Performance Review

Mr. Coe's last action as Ms Lee's manager was to carry out a performance review on 18 January. At the performance review Ms Lee's difficulties with communication and staff relationships were discussed as was an incident prior to Christmas when she had reduced Mr. Bhardwaj to tears. Mr. Coe's notes state:

You need to learn how to approach others, listening to their side and how to influence them to do what you need or to support you.

In January 2005 an external consultant, Ms Bar-Hava Monteith, was engaged in an attempt to improve Ms Lee's relationship with Mr. Bhardwaj and as a mentor. This was on the initiative of the new manager, Mr. Hodgson and with Mr. Coe's agreement. The consultant interviewed a number of staff and was due to meet with Ms Lee on 10 February 2005 to discuss her draft report.

Also in January 2005 Ms Lee took part in a team building exercise run by the Keenan Consulting Group. Her participation skills were the subject of adverse comment by Keenan.

Variation of Duties

It was agreed in January 2005 that for a temporary period Ms Lee and Mr. Bhardwaj would swap duties so that Mr. Bhardwaj could learn aspects of Ms Lee's job and she could better understand Mr. Bhardwaj's duties as she had been very critical about his skills and ability to do his job.

Meeting 28 January 2005

This matter was due to be finalized at a meeting on the afternoon of 28 January but Ms Lee pre-empted this by sending out an email notifying staff of the change although the changeover date and length of the change had yet to be agreed. The meeting was also attended by Mr. Jason Clarke, who is the respondent's Operations Manager. The unauthorized sending of the email was discussed. Mr. Clarke said that Ms Lee constantly interrupted Mr. Hodgson and accused him of lying about the start date for the duty changes, saying they had already agreed.

Mr. Clarke said that Ms Lee challenged Mr. Hodgson's authority, saying that her contract said she reported to Mr. Coe. Mr. Hodgson explained that he was the contract manager and that she reported directly to him. Ms Lee kept interrupting and saying that she reported to Australia. Mr. Clarke repeated the reporting structure to her and Ms Lee then said she had nothing to say and refused to answer any questions.

Mr. Clarke then left to get Mr. Bhardwaj, who was also to attend the meeting. Ms Lee and Mr. Bhardwaj had been requested to prepare a list of duties with instructions for their performance so that the other person would have a clear idea of what was to be done. Mr. Bhardwaj did this but Ms Lee refused. She stated that she did not want to be Mr. Bhardwaj's supervisor because he did not do as he was asked and that she had already explained the job to him three times over and that he didn't have the brains to understand it. Mr. Hodgson talked about the need for teamwork but Ms Lee did not respond. In her brief Ms Lee said:

As I needed to go away during the Christmas holiday, I did train Sriram to do my work. But he is very unwilling to learn it properly as he is very concerned that he might have to do it continuously even after I come back from my holiday. Sriram knew very clearly that the company would want to use me to do other high level job; that is why we need him to help me to do some of my job. That is why he is resistant to learn.

I do not think the problem lay with Mr. Bhardwaj's unwillingness to learn.

Events of 10 February

Mr. Hodgson went to the finance office to discuss a letter of demand from a collection agency regarding a disputed account. The matter was one which needed to be dealt with urgently. Mr. Hodgson and Ms Lee had both previously been dealing with it. Ms Lee had told Mr. Hodgson that she had made arrangements for further time to pay the account and Mr. Hodgson wanted to confirm what was happening and to ask Ms Lee to telephone the collection agency.

What happened is the subject of some disagreement. I am satisfied that Mr. Hodgson interrupted Ms Lee while she was speaking on the phone. I took evidence from the woman to whom Ms Lee was speaking and I accept her evidence. She said she was shocked by the tone of the man's voice and

that Ms Lee had told her that she had to hang up. The woman did not hear the content of any conversation between Ms Lee and Ms Hodgson.

Ms Lee indicated to Mr. Hodgson that Mr. Bhardwaj was to deal with the matter. Mr. Hodgson insisted that she was the appropriate person and asked her to meet him in his office to discuss the matter. Mr. Hodgson went back to his office and when Ms Lee did not appear he went to get her. Ms Lee said she would not meet with him unless another person, Mr. Mick Millar, was present. Mr. Hodgson said Mr. Millar was at a meeting and that she was to come to his office. Ms Lee went past Mr. Hodgson and returned to the finance office. She was followed by Mr. Hodgson who still wanted to discuss the matter. Ms Lee told him she was frightened and shivering and having a nervous breakdown. She said that Mr. Hodgson had barred her way in the hall. She picked up her handbag and said she was going to see her doctor.

Mr. Hodgson later telephoned her and left a message to check that she had got home safely. Ms Lee did not return the call.

Subsequent Events

On 11 February Ms Lee told another staff member that she was ill and would be off work for two weeks. She also emailed the company's Australian office but did not advise Mr. Hodgson that she was ill and would not be at work.

Also on 11 February the respondent sent a letter to Ms Lee advising that her failure to obey a lawful instruction was a matter of concern and asked her to attend a meeting on either 17 February or another date if that date was unsuitable to discuss the matter.

By 15 February there had been no contact. Mr. Hodgson sent her an email asking for a medical certificate and offered Ms Lee Ms Bar-Hava Monteith's services if she so desired. A further request for a medical certificate was sent on 21 February.

On 22 February, Mrs. Wright, acting for Ms Lee, faxed a medical certificate for the period 10-24 February. On 23 February Mrs. Wright advised by letter that Ms Lee was unable to see her doctor and would be unable to return to work until 2 March. No further medical certificate was produced and the company's lawyer, Ms Scott, sought confirmation of the applicant's medical condition on 14 March. Medical certificates dated 1 March and 22 March were provided at a without prejudice meeting on 23 March. These certificates referred to stress but as no definitive diagnosis or cause was cited the respondent asked for clarification on 26 March; and also asked whether Ms Lee intended to resign and whether she wanted to mediate. Ms Lee had obtained employment elsewhere from 15 March but did not convey this information to the respondent. There was confusion on the respondent's part as to whether or not Ms Lee had resigned.

On 1 April Mrs. Wright advised the respondent that the without prejudice meeting of 23 March should be treated as formal notification of a personal grievance. On 3 May Ms Lee sent a personal grievance letter which was replied to on 17 May. Ms Lee was advised that her job remained open and was asked for clarification about whether she intended to resign. While no formal resignation was given Mrs. Wright advised that Ms Lee would not be returning to work.

Constructive dismissal

The allegation is that Ms Lee's resignation was caused by a breach of duty on the part of the employer. The breach appears to be the events of 10 February. I have found that Mr. Hodgson did interrupt Ms Lee while she was on the phone and that the other party to the call thought Mr.

Hodgson's tone was loud and aggressive. While that would have been unpleasant for Ms Lee in itself it does not constitute either bullying or the existence of an unsafe workplace.

I also accept that Ms Lee was upset by Mr. Hodgson's continued requests that she meet with him to discuss the letter. However, Mr. Hodgson was entitled to ask Ms Lee to meet with him to discuss the letter and she was not entitled to refuse to do so and pass the matter on to Mr. Bhardwaj. This was a matter about which she had intimate knowledge and it could have been clarified very easily.

It is apparent that Ms Lee had problems with accepting Mr. Hodgson's authority and that she had difficulty with staff relations. The employer endeavoured to resolve the difficulties by providing a mentor and coaching.

Mr. Hodgson did not bully Ms Lee. There was no breach of duty on the part of the employer. Ms Lee does not have a personal grievance.

Costs

Costs were reserved. If the parties are unable to resolve the issue of costs the respondent should file a memorandum within 28 days of the date of this determination. The applicant should then file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King
Member of Employment Relations Authority