



New Zealand Employment Relations Authority Decisions

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Lunt v Firth and Stevenson Limited [2011] NZERA 48; [2011] NZERA Wellington 5 (25 January 2011)

Last Updated: 21 February 2011

**IN THE EMPLOYMENT WELLINGTON
RELATIONS
AUTHORITY**

[2011] NZERA Wellington 5 5281260

BETWEEN IRVINA LUNT

Applicant

AND FIRTH AND STEPHENSON

LTD

Respondent

Member of Authority: Representatives:

Investigation Meeting: Determination:

P R Stapp

Mike Smith for the Applicant

Gary Tayler for the Respondent

10 November 2010, Palmerston North

25 January 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The employment relationship problem between Ms Lunt and Firth and Stephenson Ltd commenced on 17 May 1999. The relationship from then until the beginning of 2009 was personal and familial. However, in 2009 this relationship changed when the owner of the business Mr Trevor Stephenson, director, decided to bring consultants, (MCI) (not Mr Tayler), in to help him with some interpersonal problems between him and his employees, particularly Ms Lunt.

[2] This relationship came to a head when another employee complained about Ms Lunt. Following advice from an MCI representative, Mr Stephenson wrote to Ms Lunt with a number of allegations about her performance. The letter invoked a formal disciplinary process that put Ms Lunt on notice that her employment was at risk and/or there was the possibility of being given a first or last final warning and/or for no action to be taken.

[3] The letter was followed up with two meetings that went badly. Finally Mr Stephenson decided not to take any disciplinary action but to try and move on. This resulted in Ms Lunt expressing her feelings of discontent, which she did in writing. She went on sick leave, returned to work for a short period, and then resigned on 10 September 2009.

[4] Ms Lunt claimed that the chain of events based on the unfounded allegations led to a constructive dismissal because her

employer had breached its obligations to act fairly and breached the obligation to act in good faith. She did not return to work.

[5] Ms Lunt claimed that Mr Stephenson and his MCI consultant at the time wanted her out.

[6] Mr Stephenson denied the allegations and claimed that Ms Lunt resigned, worked out her notice, and left of her own accord.

The Issues

1. *What were the grounds relied on by Ms Lunt for resigning, and was the resignation foreseeable to the employer?*
2. *Did Ms Lunt look for alternative work and arrange it before she resigned (24 August 2009) or afterwards (11 September 2009).*
3. *If there is a personal grievance what remedies apply?*

The facts

[7] Ms Lunt and Firth and Stephenson Ltd ("Firth and Stephenson") had an individual employment agreement. Ms Lunt says she never had a job description and nor was a job description ever provided. A copy of a job description has been produced by the respondent. It is common ground that Ms Lunt's role was as the office manager/administrator.

[8] There was a meeting held in mid-2009 with MCI where the employees, including Ms Lunt, were taken through a proposed employment agreement and a commitment was given to prepare a job description and develop office procedures.

[9] Allegations were put to Ms Lunt in a letter dated 24 July 2009 and these were:

- That there had been an unsatisfactory amount of personal telephone calls and personal business conducted during work hours;
- That her workplace was not being kept clean and tidy in the standards that were required;
- That another staff member had complained of harassment. The complaint was that Ms Lunt's body language and manner of communicating with that staff member was causing the person workplace stress. It is alleged that this had been discussed with Ms Lunt on a couple of occasions. It was alleged that there had been no improvement;
- That her communication skills were of a low standard causing anxiety and stress in the workplace.
- That there had been a relationship breakdown between Ms Lunt and another staff member creating a difficult work environment;
- That specific tasks requiring checking were being carried out without the required authorisation, for example Payroll;
- That the float was not being monitored in an accurate manner and reconciliations were not being undertaken;
- That the safe was being left insecure and unlocked;
 - That unaccounted invoices were not being pursued as required to maintain accurate and efficient records;
 - That simple problems arising through the day had not been constructively resolved;
 - That an alleged pursuit of a vehicle by Ms Lunt around the town on 24 July 2009 involved an inappropriate use of a work vehicle.

[10] The above matters had not been raised previously with Ms Lunt in any direct way. Firth and Stephenson did not include all the details in regard to the allegations that reasonably should have been provided.

[11] The parties met on 29 July 2009 and it is more likely that Ms Lunt's support person (who considered she was Ms Lunt's representative) was requested not to ask questions and/or participate directly in that meeting. This finding is supported by Mr Stephenson's evidence about what he considered the role of a support person was and his confusion about that person's role as a support person/representative. That contributed to the deteriorating conduct of the meeting.

[12] At that meeting Ms Lunt was presented with a letter of complainant that Mr Stephenson had received from the other employee about a dysfunctional relationship with Ms Lunt, and that person was threatening to quit. The letter provided the complaints, being the first time Ms Lunt says the matters were raised with her. The meeting was adjourned. The next meeting occurred on 5 August 2009 and Ms Lunt was not informed until she arrived that it would be chaired by the company's lawyer (not the MCI consultant and not Mr Tayler). Ms Lunt and her support person/representative agreed to continue, but the meeting resolved nothing. One problem was that some of the issues were not proceeded with and it seems that Ms Lunt and her representative were not properly informed as to the reasons why.

[13] After the meeting Ms Lunt wrote to Firth and Stephenson expressing her discontent and the impact of the meeting on her. At the same time (and with the letters possibly crossing in the mail) the respondent wrote in a letter dated 7 August 2009 its findings and the conclusion that there would be no disciplinary outcome. Mr Stephenson did not reply to Ms Lunt's letter. Ms Lunt went on sick leave for 2 weeks. She returned to work earlier than the date given for her return to work (31 August) and found that a small part of her job in regard to payroll had been taken over by Mr Stephenson. Ms Lunt decided on 10 September to resign and gave a week's notice because:

- a. She says Mr Stephenson avoided her at work,
- b. Mr Stephenson did not mention the removal of the payroll function,
- c. She was not provided with reasons for the payroll change, and
- d. Mr Stephenson did nothing more about the other employee's complaint after Mr Stephenson had indicated that he would.

[14] She decided to work out her notice, but in meantime was able to get another job.

Determination

[15] This claim is predicated on a thread of actions over some time before Ms Lunt decided to resign, work out her notice and leave. In the notice period she arranged a new job and commenced with her new employer on 28 September as an office administrator with the same pay, but working fewer hours.

[16] The events preceding Ms Lunt's decision to leave her employment occurred seven weeks before she handed in her notice to leave. Ms Lunt has taken umbrage at the list of complaints levelled against her without any prior knowledge, any prior appropriate feed back and no performance appraisals of her work. It is common ground that the meetings did not go well. Both parties have formed their own opinions about the reasons for that happening.

[17] The nature of the events and the extent of the issue where there was a deteriorating employment relationship meant that the employment relationship problem should have been able to be resolved by alternative ways to ensure the best communications and responsiveness, I hold. This could have involved mediation and earlier feedback. Fortunately Firth and Stephenson seem to have become aware that there was not enough substance and details associated with the issues to pursue disciplinary action given it involved its lawyer at the last meeting, and this finding is supported by the 7 August letter. Thus the employer drew back and wrote the letter of 7 August in a manner to try and move on. Ms Lunt has been critical that the employer has tried to put in place some damage control over its actions. I agree with her that the employer has done that, albeit done it clumsily, but there has been no disadvantage to her, I hold. This is supported by the involvement of Firth and Stephenson's lawyer chairing the last meeting, Firth and Stephenson deciding not to take any disciplinary action and writing a letter attempting to move on.

[18] Maybe the reasons for the outcomes were not clear, and that Ms Lunt has taken umbrage at the issues raised with her, but I hold those issues are the sorts of matters an employer is entitled to raise with an employee for discussion, improvement and consideration. They would not be grounds to lead to a resignation, I hold.

[19] However, I hold that Ms Lunt had reason to be concerned about the lack of detail and specifics with Mr Stephenson's allegations. However, I accept that he had some genuine concerns because to everyone's knowledge MIC had been engaged to help. Also, I hold that Mr Stephenson was not being malicious given he had engaged MIC to help previously, and had received a complaint from another employee that he had a responsibility to reply to.

[20] Regardless of how Ms Lunt felt about the allegations the employer took no disciplinary action over them as a result of the last meeting and the involvement of the company's lawyer. Ms Lunt returned to work 6 days before she was due to return from sick leave. The only new reason that she has given for resigning is that she says that she resigned due to the payroll being removed after returning to work. She never complained about that during her last days and before resigning. It was a small task in the scheme of her duties. If there is any criticism of the employer it relates to its failure of being communicative and responsive over the payroll matter, not replying to Ms Lunt's letter and not properly closing off the other employee's complaint. I accept that Mr Stephenson picked up the computer payroll work because Ms Lunt was sick and changes were made around the computer operation involving him taking the work home. The employer was entitled to do that, but it should have been clearer to avoid the criticism now being levelled. Because the nature of the work was only a small component of Ms Lunt's duties, the change, given the reasons provided, would not be sufficient and foreseeable to the employer that Ms Lunt would resign over it especially when she was on sick leave when it happened. I accept that the letter of 7 August crossed over with Ms Lunt's letter in the mail, but I hold it was reasonable for the Firth and Stephenson to rely on that letter to move on and reasonably expect Ms Lunt to understand the position. Indeed she returned to work.

[21] Another part of the reason Ms Lunt has given for resigning was that Mr Stephenson avoided her after she returned to work and that Mr Stephenson did nothing more about the other employee's complaint when he had indicated that he would do something. There is no doubt that after Ms Lunt returned to work the relationship became strained. However in the letter dated 7 August 2009 Mr Stephenson gave an indication that there would be no disciplinary action taken and that there would be opportunities for Ms Lunt and the other employee to resolve their issues where Mr Stephenson acknowledged that there are always "two sides to every story". I accept he genuinely was attempting to move on and understood they had a continuing employment relationship. The combination of these would not have been sufficient for an employee to resign given the purpose was to move on, especially as the respondent has acknowledged the issues were not enough for any disciplinary action and there was an intention offered for the two affected employees to meet and Ms Lunt had returned to work. I am

satisfied that time prevented the opportunity for the arrangements to be put in place for the two employees to meet before Ms Lunt decided to resign.

[22] The claim for personal grievance relates only to a claim for constructive dismissal based on Ms Lunt's reasons for resigning. Those reasons, whilst they could have involved claims that there has been a breach by the employer to be communicative and responsive, were not sufficiently serious to warrant a decision to resign and for that to constitute a constructive dismissal.

[23] The parties have a factual dispute over when Ms Lunt secured and commenced her new job before she resigned. This has only arisen because of the employer's defence that the applicant's behaviour was inconsistent with a constructive dismissal. However, it is more than likely Ms Lunt sought and obtained her new employment during her notice on the basis of the deterioration of the relationship in the last days, I hold. Because of my findings above I hold that this is not, however, a determinative factor.

[24] Furthermore, any claim that Ms Lunt was disadvantaged (for not been given sufficient details of the allegations, her representative being shut down, not being informed in advance of the planned attendance of the company's lawyer at the last meeting and being given no details of the reasoning not to proceed with the allegations) was mitigated by the employer deciding not to impose any disciplinary action and withdrawing from such action. An employer is entitled to do that and to make attempts to move on in the relationship. If anything the employer's communication has been inadequate and the employer really lost sight of the best practice and process to follow, despite having access to advice at the time.

[25] Also, I was asked to consider that Ms Lunt returned to work after being cleared of the allegations and asked for her legal costs to be paid and that the employer's decision not to pay these could explain Ms Lunt's decision to leave. Ms Lunt required a quick answer and never gave any indication that she was considering to resign. The employer was entitled to make a decision not to pay her costs. There has been no linkage established between that claim being refused by the employer and Ms Lunt's decision to resign and get another job.

[26] Considering my findings above I hold that Ms Lunt's claim for a personal grievance does not involve a type of personal grievance different to that claimed. Indeed there was no claim raising a personal grievance on the background. This finding is supported by the absence of any such claim from the applicant and in the submissions provided on her behalf.

[27] The applicant's claims are dismissed.

[28] Costs are reserved.

P R Stapp
Member of the Employment Relations Authority