



- A statement from the applicant claiming she was forced to resign.
- A letter dated 18 April 2008 written by the respondent's lawyers.
- A statement from the applicant replying to the respondent's version of events in the letter dated 18 April 2008.

[4] Evidence was given on oath before me by Julia Hausermann, executive housekeeper.

### **The Authority's investigation**

[5] The applicant's involvement in this matter was detailed in an Authority Member's minute dated 20 February 2009, and a direction was given on the next step to be followed.

[6] The difficulty has been that the applicant does not reside in New Zealand any more. There have difficulties in making any contact and getting any responses from the applicant. However, the support officer has used an email address supplied by the applicant to contact her. This email address has been regularly used by the applicant even during her employment.

[7] I directed the parties to mediation. It was for the Department of Labour to provide appropriate mediation services involving the parties. I requested the Authority's support officer to arrange a telephone conference, if it was needed, after the mediation. I required the applicant to provide a telephone number to enable the telephone conference to take place with her involvement.

[8] There was no mediation. This was despite attempts by the Department of Labour to organise it and the availability of the respondent. The applicant has not provided a telephone number. No telephone conference could be held with the applicant because there was no telephone number provided by her to enable her to be contacted.

[9] Since there had been no return calls from the applicant, I set the matter down for an investigation meeting. The respondent accepted the date. The applicant was served with the notice of investigation meeting and all relevant correspondence by email with scanned copies of the documents.

[10] The support officer provided the applicant with the notice of my direction to hold an investigation meeting on 27 August 2009 in Napier and she was informed of the timetable for any affidavits to be filed.

[11] There has been no contact from the applicant.

[12] Without any details as to how long the applicant intends to be out of New Zealand, what the applicant is doing overseas and how she envisages her claim being dealt with, I have concluded there is no good cause for her failure to attend the Authority's investigation meeting. I have also borne in mind the following:

- The applicant has not provided up-to-date contact details.
- The applicant did not assist in the organisation of mediation that she was directed to be involved in.
- The applicant did not provide a telephone number.
- The applicant and Authority's support officer have corresponded by email, which included the applicant being provided with explanations about the process, and it being stressed to her the need for her to attend the investigation meeting in person because of conflicts in evidence and a number of other issues that needed to be resolved. An alternative of video conferencing was also suggested but not taken up. This matter would not have been assisted by the applicant giving her evidence by telephone.
- The applicant signalled, in an earlier email that she wanted a ruling on the papers and documents. She was advised that the parties' positions meant that formal evidence was required and that the evidence would need to be tested because of the parties' differences over various matters.
- The applicant was served by email with the notice of the investigation meeting and details were conveyed to her by the use of that email address. That address being the only address overseas that the applicant has provided.
- The applicant was contacted by email prior to the commencement of the investigation meeting, but had not replied at the time of the investigation meeting.

[13] The applicant was deemed to have elected to proceed with her claim when she was asked by the Authority's Support Officer what she wanted to do and whether she wanted to withdraw the application.

[14] The respondent is entitled to have closure on this matter. There has been sufficient time for the applicant to be available.

[15] The Employment Relations Authority Regulations make provision for the Authority to deliver speedy, informal and practical justice.

[16] I have decided to proceed where the applicant failed to attend the investigation meeting and was not represented and I have acted fully in the matter as if the applicant had duly attended or been represented under clause 12 of Schedule 2 of the Employment Relations Act.

### **The facts**

[17] The respondent owns and operates a luxury lodge called The Farm at Cape Kidnappers.

[18] The applicant was employed by the respondent as a housekeeper. She commenced her work on 6 March 2008. Her duties included ensuring that guests' rooms were properly serviced.

[19] There had been complaints from guests about the quality of the room servicing. Other employees had complained about the applicant not working while they were working. These complaints were raised with the applicant.

[20] On 13 March 2008 the applicant left work 4 hours early. She was rostered to work on 14, 15 and 16 March 2008, but did not attend work. An attempt was made to contact her.

[21] The applicant was contacted on 17 March and she was requested to attend a disciplinary meeting to check out why she had not attended work. She advised her supervisor that she would not be attending any such meeting.

[22] Correspondence was then entered into between the parties, involving the respondent's lawyers and their views about the applicant's employment.

[23] The applicant did not return to work. The matter was not mediated.

**Findings**

[24] Ms Hausermann, the executive housekeeper, denied that the applicant was forced to resign. Ms Hausermann says that the applicant was requested to attend a disciplinary meeting in regard to checking out why she had not attended work. Ms Hausermann confirmed that the applicant was informed of the matters involved, being complaints from a guest and other employees.

[25] Despite the applicant's claim that she was forced to resign, the employer, through Ms Hausermann, advanced evidence that there were other reasons associated with the applicant's employment that could have been the reason for her deciding not to return to work.

[26] Thus, the applicant's claim for a constructive dismissal has not been established.

[27] The applicant has not advanced sufficient evidence to establish that she is owed any more wages. The respondent has said that she was paid money owing. Ms Hausermann confirmed this. I accept her evidence.

**Additional comment on parties' availability**

[28] Workers going overseas or leaving New Zealand permanently or on vacation or for overseas experience need to know that any application filed in this Authority is not going to be left in abeyance forever or indefinitely and or delayed. Applicants should expect that their applications will be dealt with in a timely manner, and that it may be necessary for them to produce affidavits and or appear in person or give their evidence by video. Applicants need to make sure they maintain contact with the Authority and provide up-to-date contact details and provide details of what they are doing and their availability to be involved in dealing with their application. The Authority will be flexible in how the proceedings can be conducted, but applicants have to understand that at some point their claims are going to be heard in an investigation meeting. Applicants are not going to be indulged with delays unless there is good cause. Going overseas is not a good cause for failing to attend an Authority investigation meeting. Their opportunity to be involved in the investigation process will not be unreasonably denied and at the same time the rights of employers to have closure on these matters have to be balanced with the objective under the

Authority's regulations for the Authority to deliver speedy informal and practical justice to the parties on the matters before the Authority.

**Conclusion**

[29] The applicant's claims are dismissed.

[30] Costs are reserved at the request of the respondent.

P R Stapp  
Member of the Authority