

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 69/09
5140775

BETWEEN ANNA MCGHIE (NEE
FREDRICKSEN)
Applicant

AND AUSTRALASIAN VINTNERS
LIMITED
Respondent

Member of Authority: P R Stapp

Representatives: No appearance for Applicant
Paul Bryant, Manager for Respondent

Investigation Meeting: 26 May 2009 at Napier

Determination: 27 May 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms McGhie was employed to undertake general duties as a vineyard worker for Australasian Vintners Limited in November 2005. The parties signed off an employment agreement.

[2] On 15 July 2008 Ms McGhie was informed that redundancies would have to occur and that she would most likely be affected. Redundancy had been raised a year earlier but was delayed.

[3] On 31 July Ms McGhie was made redundant. On 14 August Ms McGhie's lawyer raised a personal grievance complaining that there was no consultation and questioned whether the redundancy was for genuine commercial reasons.

[4] Ms McGhie was given a reference dated 11 August 2008 and was given some paid leave to look for work elsewhere.

[5] The respondent denied Ms McGhie's claims and contended that Ms McGhie's employment ended for redundancy and that the redundancy was for genuine commercial reasons. The parties attended mediation services provided by the Department of Labour.

Failure of the applicant to appear

[6] Ms McGhie did not attend the Authority's investigation meeting and was not represented.

[7] On 1 May a written statement of evidence from the respondent was sent to Ms McGhie's lawyer. On 8 May the support officer sent an email to Ms McGhie's lawyer pointing out that the timetable for written statements had expired and asked to be informed when the Authority would receive them. The support officer left messages with the lawyer on 21 and 22 May. On 22 May 2009 Ms McGhie's lawyer advised the support officer that they had no instructions.

[8] On 25 May 2009, the day before the investigation meeting, Ms McGhie's lawyer's receptionist advised the support officer by telephone that Ms McGhie wanted to withdraw the application. The support officer indicated that the Authority required Ms McGhie to put her intentions in writing because Ms McGhie's lawyers had informed the Authority there were no instructions.

[9] Attempts were made by the support officer to contact Ms McGhie and messages were left for her to return the calls. Ms McGhie made contact with the support officer on the morning of the investigation meeting. She undertook to provide her intention not to proceed in writing, but after I waited for an hour nothing was received. I decided that there was no good cause for her failure to appear or be represented at the investigation meeting and to keep the respondent waiting any longer than necessary. Therefore, I decided under clause 12 of Schedule 2 of the Employment Relations Act to proceed as if she had duly attended or been represented.

[10] After the investigation meeting I was advised that a written intention not to proceed was received in the Authority's office in Wellington. Ms McGhie informed the Authority that she had informed her lawyer's office that she did not want to proceed 6 weeks ago, and she understands that her message had not been passed on to her lawyer. Furthermore she says she understood the matter would be dealt with by her lawyer and she did not need to contact the Authority. Ms McGhie says her decision to withdraw is for financial reasons because she cannot afford any more legal costs.

[11] This matter is wholly unsatisfactory. The timetable for receiving statements was 5 May 2009 and any replies by 19 May 2009. If the lawyers had no instructions they should have informed the Authority on or about 5 May, and returned the support officer's telephone messages. The first the Authority was told that Ms McGhie's lawyers had no instructions was on 22 May 2009, but there is some conflict between that and Ms McGhie's written information that she informed her lawyer that she did not want to proceed 6 weeks ago. Ms McGhie had an obligation to withdraw at the earliest possible time, and it would appear she tried to do so and may have been let down by her lawyer. Unfortunately her lawyers failed to assist the Authority professionally if Ms McGhie's instructions were not to proceed 6 weeks ago.

Issues

[12] If this matter had not been withdrawn the issue would have been does the applicant have a personal grievance?

Determination

[13] I was satisfied that Ms McGhie's employment ended for redundancy. This is a dismissal and the respondent has been able to justify it. My reasons are:

- Ms McGhie failed to attend the Authority's investigation meeting and be interviewed.
- Her statement of problem provided only selected documents and did not include the redundancy notice dated 31 July 2008.

- Paul Bryant, manager, gave evidence at the Authority's investigation meeting. I accepted his evidence because he was present to give it and there was no evidence to contradict and challenge him.

[12] Mr Bryant accepted that Ms McGhie's employment ended, which I find was a dismissal. He told me the reason that her employment ended was due to redundancy. In June 2008 there was a review of the operations and costs of running the vineyard were evaluated, which involved the owner. In July there were several meetings held with the vineyard's owner. It became apparent to the owner and Mr Bryant that due to the seasonal nature of the work in the vineyard 22 .8 hectares could not support three employees. Mr Bryant says he informed the employees of the situation that there would need to be budget cuts and adjustments. Also, during this time, there had been discussions about contracting out. On 15 July 2008 Ms McGhie was informed that there would be a restructure, and she would most likely be affected by redundancy because of her lower level of experience. There would be a reduction of one employee to be replaced by contractors as required.

[12] I am satisfied that there was consultation before the decision was made. Ms McGhie was provided with an opportunity for input and comment before a decision was made and she had knowledge of the circumstances the vineyard business faced and that contracting was an option being considered. I was satisfied that the employer has provided reasons that justify a genuine commercial decision. This was based on the grounds of redundancy to save costs, involving the reduction in hectares available to farm the vineyard and evidence of redundancy a year earlier but which was delayed.

[13] In such circumstances, where there was a redundancy for genuine commercial reasons and consultation, Ms McGhie would not have a personal grievance.

Summary on the outcome

[14] Ms McGhie's claims would have been dismissed, but for her belated decision to withdraw from the application.

[15] There is no issue for costs. Ms McGhie will have to deal with her own costs and filing fee. The respondent has no costs to claim having dealt with the matter internally. Costs are to lie where they fall.

P R Stapp
Member of the Employment Relations Authority