

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Meegan Murray (Applicant)
AND BP Oil New Zealand Limited (Respondent)
REPRESENTATIVES John Dean, for the Applicant
Andrew Blair, for the Respondent
MEMBER OF AUTHORITY P R Stapp
INVESTIGATION MEETING 17 March & 7 April 2003, Wellington
DATE OF DETERMINATION 10 April 2003

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

1. This is an employment relationship problem involving leave to proceed with a personal grievance.
2. Ms Murray has applied for leave to raise a personal grievance out of time under s.114 and s.115 (b) of the Employment Relations Act.
3. BP Oil New Zealand Limited has not consented to the personal grievance being raised after the expiry of 90 days under s.114 (1) of the Act.

The Facts

4. Meegan Murray commenced employment with BP Oil New Zealand Limited as an administrator at BP Express Adelaide Road on or about 13 December 2000.
5. On 14 May 2002 Bonnie Hurunui, site manager met with Ms Murray in regard to a disciplinary matter. Ms Murray apparently then resigned.
6. Further meetings took place between Ms Murray, Paul Hatchard a manager, Ms Hurunui and Zee Ali a friend of Ms Murray's on 15 and 17 May 2002. Ms. Murray produced a written resignation where she referred to no longer feeling comfortable working for BP and personal

conflict with certain staff members that she related in her evidence as a personal reason for leaving. Also she had the feeling it was time to move on and try something new (dated 14 May 2002). Much later she claimed that she was constructively dismissed. Ms Murray did not return to work.

7. On 2 August 2002 Ms Murray telephoned 0800 SACKED. She telephoned because she learnt of rumours about her leaving her employment from her father who worked at another petrol station. Upon contacting 0800SACKED she was given the telephone number for Employment Dispute Services (EDS). She then contacted EDS and outlined her problem to Parvez Akbar a contractor for EDS, who asked her to send him information. She says that she sent information to EDS in Auckland a few days later. In the meantime Parvez Akbar referred the matter to David Feist of EDS in Auckland. Mr. Feist drafted a letter dated 6 August 2002 and asked Peter Young, a contractor for EDS in Wellington, to send the letter on Mr. Young's letterhead and contact Ms. Murray. Mr. Feist sent the papers to Mr. Young who put the papers into his own pink folder. The papers included a client interview record. The interview record includes the words "URGENT-15/8-Last day" but Mr. Akbar, Mr. Feist nor Mr. Young could remember the words being on the form at the time. Mr. Akbar says that he did not put the words there. In the meantime, Ms Murray telephoned EDS because she had not heard anything from them. She could not reach anyone and so she left a voicemail message. Over the next two weeks she left more messages for someone to telephone her.
8. She says that four weeks later, she received a telephone call from Peter Young in Wellington who advised her that he would represent her. He told her he had written a letter to the respondent, BP Oil New Zealand Limited (letter dated 20 August 2002). He says he prepared the letter from the draft that he found in the documents he says were sent to him from David Feist EDS in Auckland. The letter Mr Young wrote to BP dated 20 August 2002 reads as follows:

"Meegan Murray/Personal Grievance"

*I write on behalf of Ms Murray to formally notify you of her personal grievance for constructive dismissal pursuant to the Employment Relations Act 2002, and herein set out the facts and remedies sought. Please note, **I consider that enough was said by Ms Murray at the meetings mentioned below to notify you of her personal grievance within '90 day limit'** (underlined my emphasis).*

Ms Murray commenced employment with you as an administrator at BP Express Adelaide Road, on or about 13 December 2000. At termination she was being paid \$10.62 per hour for a fulltime position.

I understand that one “Bonnie” commenced as manager at that location in April 2002. From that moment onwards, and for the next few weeks until Ms Murray’s employment terminated, Ms Murray believes that Bonnie targeted her with false allegations and harassed her by calling her into her (Bonnie’s) office for discussions about her friend “Zee”.

On 14 May 2002, Bonnie called her into her office and said that she was going to conduct a formal investigation as some money was missing from over the weekend and that she had seen “something” while looking at a video. At the end of the meeting, Ms Murray’s friend Zee arrived at the premises and after a heated discussion with Bonnie, Bonnie said that she was going to call the police. Ms Murray then resigned.

A meeting then took place on 15 May between Ms Murray, Mr Paul Hatchard (a previous manager), Bonnie and Ms Murray’s friend Zee. At this meeting, Ms Murray said she had been uncomfortable as she felt “targeted” and Bonnie informed her that she (Bonnie) had not asked anyone else about the money that was missing.

On 16 May, there was another meeting, this time between Ms Murray, Zee and yourself. Prior to the meeting, Bonnie had said she would not accept Ms Murray’s resignation. Ms Murray confirmed her resignation as she felt she had been unfairly treated by Bonnie. Ms Murray believes she had been unjustifiably, constructively dismissed as Bonnie breached the implied term of fairness in her employment agreement by unfairly targeting her and making false allegations without evidence (without questioning anyone else) and it was foreseeable at the time that Ms Murray may resign as a result.

Ms Murray found her treatment distressing and remains unemployed. It may be difficult to find further work as rumours have been circulating the area regarding this matter.

Ms Murray believes, however, that a meeting at the Mediation Service, a branch of the Labour Department may assist in resolving this matter and I respectfully request you to agree to such a meeting. In the event that you do not notify me of such agreement within 14 days, Ms Murray reserves the right to take this matter further.”

9. The draft letter from Mr. Feist dated 6 August 2002 included much of the same detail as Mr. Young’s letter, though significantly there was no mention of the above underlined sentence.
10. Mr. Young contacted BP and delivered his letter after 20 August 2002.
11. Sometime later Mr Young telephoned Ms Murray and informed her of the stand BP was taking (provided in a letter dated 4 September 2002 from BP). BP had put Mr Young on clear notice that the personal grievance had not been raised within the required 90-day period under s.114 of the Act. It was BP’s opinion that Meegan Murray terminated her employment on 17 May 2002 and the first that it had heard of a personal grievance being raised was on 23 August 2002 being the date that it received Mr Young’s letter. BP also noted that Mr

Young's letter did not provide any exceptional circumstances for Meegan Murray to raise her grievance out of time. BP did not consent to the personal grievance being raised out of time. BP disputes that Ms Murray said enough at any of the meetings on 14, 15 and 17 May to notify BP that she was raising a grievance.

12. On or about 4 September Mr Young informed Ms Murray he was no longer acting and had sent her file back to Auckland. EDS referred Ms Murray to another representative located in Palmerston North. Ms Murray again sent information to that person. The person also attended mediation on 29 November 2002 with Ms Murray and BP. Ms Murray complains about the competence of her representative. She has now obtained a further representative, John Dean. The matter remains unresolved.

The Proceedings

13. Sushi Angampally, the contractor from EDS in Palmerston North lodged a Statement of Problem in the Authority on 24 October 2002 on Ms Murray's behalf. There was no mention of the grievance being submitted in the required timeframe except for the attachment of Mr Young's letter 20 August 2002. The parties attended mediation on 29 November 2002 by consent and without prejudice to the 90-day rule. The matter did not settle. The Authority's file notes that after the mediation Sushi Angampally was waiting to hear from Ms Murray about her intentions. The Authority was advised of a change of representative on 17 December 2002.
14. The Authority tried to arrange a telephone conference for investigation arrangements to be put into place but Mr Dean initially had no instructions. The Authority requested details regarding the parties' availability for dates. The Authority also requested information on the names of witnesses and asked the parties to provide any further documents. A telephone conference was finally arranged for 24 January 2003 when Mr. Dean was available. During the telephone conference call the Authority sought clarification whether Ms. Murray was seeking leave to raise a personal grievance out of time and if so on what grounds.
15. An amended Statement of Problem was lodged in the Authority by John Dean on 14 February 2003 seeking leave from the Authority for the personal grievance to be raised out of time and relying on the ground of section 115 (b) of the Act.
16. BP provided copies of notes taken at the meetings on 14, 15 and 17 May 2002. BP provided a letter dated 19 May 2002 detailing its version of events on 14, 15 and 17 May.

17. The EDS file has been produced in Mr. Young's pink folder. David Feist and Peter Young were summonsed to appear to give evidence. I questioned them both. Mr. Feist produced the draft letter dated 6 August and his instructions to Mr. Young. Parvez Akbar voluntarily attended the Authority in Auckland and by telephone gave his evidence of receiving Ms. Murray's telephone call, taking her details and filling out part of the interview form. Also Ms Murray gave evidence. An affidavit was tabled from Ms Hurunui and Susan Collard, Human Resource Manager in regard to the position being taken by BP Oil New Zealand Limited. Nothing turns on their evidence.

Determination

18. This is a problem solely to do with whether or not exceptional circumstances exist and if so whether it is just to grant leave to proceed with a personal grievance out of time.
19. There is no issue about whether or not Ms. Murray raised her grievance at any time during the meetings on 14, 15 and 17 May. Indeed Ms. Murray is not pursuing any claim that she raised a grievance on 14, 15 and 17 May.
20. It is a fact that Ms. Murray telephoned EDS on 2 August and subsequently provided EDS in Auckland with information in regard to her employment relationship problem. What happened to her 1 August 2002 notes is not clear. However I am satisfied that she must have given some sufficient information for Mr. Feist to write his draft letter dated 6 August and Mr. Young to write his letter dated 20 August. I hold that her problem related to the rumours she heard from her father about her leaving BP and what she considered was a breach of confidentiality and not being able to get a job.
21. The evidence was that Ms. Murray resigned and as she says this was for personal reasons relating to matters raised with her by Ms Hurunui that might involve a conflict and deciding it was time to move on. Ms. Murray gave the resignation on 14 May 2002 but it was not accepted until BP was satisfied that that was what she wanted to do. She wrote a note of resignation to take affect from 14 May 2002, which she handed in on 17 May 2002. The note was produced in the documents. Therefore the 90 days expired at least on 12 August 2002 or at the latest on 15 August 2002. In any event Mr. Young raised a grievance outside the 90-day timeframe with his letter dated 20 August 2002.
22. Ms. Murray is relying on s. 115 (b) of the Act that the exceptional circumstances are:

“where an employee made reasonable arrangements to have the grievance raised on his or her behalf by an agent of the employee, and the agent unreasonably failed to ensure that the grievance was raised within the required time”

23. First I am satisfied that Ms. Murray made reasonable arrangements to have the grievance raised. She telephoned EDS for assistance in regard to an employment relationship problem. She sent EDS in Auckland information relating to the problem and her leaving her employment. EDS considered the information to involve a personal grievance irrespective of getting any specific instructions from Ms. Murray. Ms. Murray has not been able to indicate exactly what she wanted EDS to do (her affidavit and answers to questions from the Authority). However, Mr. Feist drafted a letter for Mr. Young who was requested to look after the problem. Mr. Feist’s draft letter certainly referred to a personal grievance for unjustified dismissal. I note that EDS involves itself in assisting in employment relationship problems in arrangements to get to mediation (the EDS client agreement) for personal grievances. The aim is to get a settlement by way of a financial offer (the EDS client agreement). In this respect I am satisfied that Ms. Murray left it to EDS to represent her probably without much knowledge of what needed to be done and thus raise a grievance for her in the required time remaining. In this regard EDS was left by Ms. Murray to act accordingly and I am not concerned about what her instructions might have been or not, considering the role of EDS. The fact is that she made reasonable arrangements by contacting EDS to have the grievance raised on her behalf by an agent, albeit she left it close to the timeframe. She outlined her problem in sufficient detail for Mr. Feist to draft a letter for Mr. Young that certainly involved raising a personal grievance. Information was provided by Ms. Murray to assist EDS such as her contract and details associated with the problem (letters dated 6 and 20 August). Had Mr. Feist posted his letter soon after it was written the personal grievance probably would have been raised before 12/15 August and within time.
24. Secondly the fact is there was a delay. The grievance was not raised in the time remaining. Mr. Young wrote a letter to BP and delivered it outside the 90-day timeframe. I hold that he knew it was outside the time because he referred in that letter to *enough was said by Ms Murray at the meetings mentioned below to notify you of her personal grievance within '90 day limit'*. This was fundamentally wrong. It was not an issue relating to Ms. Murray’s actions and could only have been raised to mask the delay caused by him in raising the grievance I hold. Indeed Mr. Young confirmed receiving the papers from Auckland and referring to Mr. Feist’s draft that was clearly provided to Mr. Young in the timeframe. Furthermore the EDS client interview sheet has on it the words *“URGENT-15/8-Last day”* that nobody seems able to explain. In the circumstances Ms. Murray could have reasonably

expected EDS to raise her grievance and to do so in the timeframe because she raised a problem with EDS in regard to her employment at BP. This is especially so given that EDS purports to be an employment dispute service with a focus on grievances and financial settlements (the client agreement).

25. Thirdly I hold that EDS failed reasonably to raise Ms. Murray's grievance. This is because there was a delay involving Mr. Young a contractor for EDS. Mr. Young has not been able to adequately explain the delay in sending the letter given the details he had been given, the existence of Mr. Feist's draft letter and the client interview sheet. I am satisfied Ms. Murray tried to get information about what was happening. EDS transferred her papers to Mr. Young in Wellington. Mr. Young raised the 90-day requirement on the basis of a comment in his letter above that was never ever an issue and he had no reason to raise it unless the matter was outside the timeframe when he acted on it. Notwithstanding the reasons why Ms. Murray decided to take up an employment relationship problem and her timing in doing so, EDS had time to raise her grievance. I have had regard to Ms. Murray telephoning EDS on 2 August and providing details, Mr. Feist's draft letter of 6 August and the timing of it being sent to Mr. Young and the instructions Mr. Feist says that he gave to Mr. Young. EDS obviously contributed to the delay by its own organisation involving Mr. Young who unreasonably failed to ensure that the grievance was raised within the required time.
26. Therefore, I hold that there are exceptional circumstances under s. 115 (b) of the Act.
27. Finally I need to determine whether it is just to grant the extension of time. I hold it would be just because there would be no prejudice to BP. Witnesses seem to be available. Documents are available. However the information that relates to the reasons why Ms. Murray left her employment may be risky for her in terms of any grievance being successful. However that should not prevent the real problem being capable of being resolved in terms of any dealings between the parties and their futures, in mediation.
28. I grant the leave sought and in accordance with s.114 (5) of the Act I direct the parties to use mediation services to seek to mutually resolve the grievance. If there are any difficulties the parties can apply for this direction to be formalised in regard to the mediation services required.
29. Costs are reserved. I note that the applicant has applied for legal aid. However this could be affected by the chances of her being successful in a claim of constructive dismissal. Although I cannot determine the outcome here I note from the information available that her position is

risky in that she resigned for personal reasons. She voluntarily wrote an amicable resignation letter with reasons that on the face of it would not amount to a constructive dismissal. BP would not accept her resignation until it was sure about what she wanted to do and that she was resigning for the right reasons while it carried out an investigation into matters that was within its rights to raise and deal with. There is some evidence that she went back to the workplace afterwards and showed no distress and upset that would reflect the alleged breaches to cause her to resign. Also there is the evidence of her own delay in raising any grievance in regard to resigning and then only raising an employment relationship problem in regard to the rumour of a breach of confidentiality after she had left and not being able to get a job. She has the risk of being seen to have changed her mind on the circumstances for resigning at the time for reasons arising outside her employment with BP after she had left. Therefore the parties may wish to consider any resolution of the problem in terms of Ms. Murray trying to fix the problem with BP that meets the parties' own needs and the risks of proceeding further.

30. As an aside I make the comment that this is a matter about relationships that the parties had a responsibility to fix and perhaps may have done so had they focussed on the actual issues between the parties. The problem might not have escalated if the focus had been kept to Ms. Murray's upset about rumours and her not getting another job, and that if these were true, attention given to them much earlier instead of focussing on causes of action.

P R Stapp
Member of Employment Relations Authority