

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
OFFICE**

BETWEEN Catherine O'Donnell
AND Christian Healthcare Trust
REPRESENTATIVES Graeme Norton for Applicant
Chris Patterson for Respondent
MEMBER OF AUTHORITY Y S Oldfield
INVESTIGATION MEETING 25 August 2006
SUBMISSIONS 3 September, 6 September, 11 September 2006
DATE OF DETERMINATION 31 October 2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The respondent, Christian Healthcare Trust, purchased the Lansdowne Hospital and Retirement Home in July 2005. From that time on Ms O'Donnell, the Manager of the Home, reported to the Chief Executive of the Trust, Max Robins. In December 2005 he issued her with an employment warning. Ms O'Donnell found this very distressing as in over 40 years in nursing she had never before had an employment warning. Ms O'Donnell believes that the warning was substantively and procedurally unfair and amounted to an unjustified action to her disadvantage. She now seeks a finding that the warning against her was unjustified as well as \$4,000.00 compensation for hurt and humiliation.

[2] The Trust denies that the warning was unjustified and also says that there is insufficient evidence that Ms O'Donnell was disadvantaged, given that she resigned soon after receiving the warning. The issues for determination are therefore:

- i. whether Mr Robins followed a fair process before deciding to issue a formal warning;
- ii. whether there were in fact grounds for a warning, and
- iii. if not, whether Ms O'Donnell was disadvantaged as a result of the warning.

Was the process fair and were there grounds for a warning?

[3] On the morning of 8 December Mr Robins arrived at the Home to find Ms O'Donnell and the wife of a prospective resident talking in the reception area. Although he caught only the end of the exchange he was not pleased by what he saw of Ms O'Donnell's manner towards this person. When the woman had left he followed Ms O'Donnell into the office and asked her what it had been about.

[4] Ms O'Donnell was aware that Mr Robins had witnessed at least part of the exchange. She commented "I think I've lost a client" before telling him that the woman wanted to look around the home by herself and that she had told her this was not possible. His reaction

was to say that Ms O'Donnell should have let the woman look around alone, and that it was her role to win clients. Ms O'Donnell was annoyed to hear that Ms Robins held this view, and told him that she disagreed. She took great care to protect the safety and privacy of residents by ensuring that strangers were not on the premises unaccompanied. Because Mr Robins was new to his role, this policy had not previously been discussed between them.

[5] This conversation lasted only a couple of minutes as the Home's doctor was waiting to see Ms O'Donnell. On 12 or 13 December Mr Robins telephoned Ms O'Donnell and asked her to a meeting with him, which he said would be about the matters discussed on 8 December. He did not give specifics or say that the meeting was disciplinary in nature. Ms O'Donnell told me she thought it would be about arrangements for prospective clients to view the facilities and perhaps also about losing a prospective client. She prepared some information on occupancy rates just in case.

[6] Mr Robins told me that by now he had accepted that it might not be appropriate for a visitor to look around the home unaccompanied, but he remained concerned about Ms O'Donnell's manner and tone towards the person involved. Mr Robins began the meeting by telling Ms O'Donnell that he thought she had been rude to the prospective client. Ms O'Donnell was taken by surprise. She told me that if she had been aware that this was to be a disciplinary meeting she would have approached it differently and would have made sure she was better prepared for it.

[7] She denied that she had been rude, explaining that she had already spent some time with the woman and that she was difficult to deal with. However, Mr Robins felt from what he had heard that Ms O'Donnell had behaved inappropriately. He told her that he was shocked by her behaviour and that he now found her defensive. After a few minutes he told her that he was giving her a formal warning. After this he moved on to discuss other operational issues. Ms O'Donnell told me she found this "quite extraordinary."

Determination

[8] I am satisfied that the process which led to the issuing of the warning was fundamentally flawed by the respondent's failure to inform Ms O'Donnell that the meeting of 16 December was disciplinary in nature. As a result of this failure, Ms O'Donnell went in to that meeting unprepared and without representation, and so was impeded in her ability to respond to the charges against her.

[9] This also means that doubt is cast on the grounds put forward to justify the warning. In the absence of a fair and thorough process I am not satisfied that the warning was substantively justified.

(ii) Was Ms O'Donnell disadvantaged as a result of the warning?

[10] Ms O'Donnell told me that she felt very upset and uncomfortable about what had happened. She said that as a manager herself she could have understood the situation better if she had been put through a fair process. Ms O'Donnell also expected some sort of follow up after the meeting. By late December she had heard nothing further. At that point she asked Mr Robins if she could meet with him to discuss what he had said on 16 December. He advised that this was not possible before Christmas. By 16 January, when there had still been no response, Ms O'Donnell wrote two letters to Mr Robins. The first tendered her resignation. She told me that the experience of the meeting of 16 December was a factor in her decision to resign. The second letter asked him for a meeting to follow up on the issue discussed on 16 December.

[11] On or shortly before 24 January, in light of Ms O'Donnell's resignation, the human resources manager asked her if everything was going well for her. Ms O'Donnell explained that she was concerned that there had been no follow up from the meeting of 16 December. Because of Ms O'Donnell's seniority Mr Robins had not previously informed the

human resources manager of what had happened. She was not therefore able to address Ms O'Donnell's concern and instead, passed it back to Mr Robins.

[12] On 24 January Mr Robins advised Ms O'Donnell that he had written to her on 13 December to notify her of the meeting of 16 December, and had subsequently confirmed its outcome (the warning) in writing also. Ms O'Donnell had not received either of these letters, apparently because they had been incorrectly addressed. On 26 January Ms O'Donnell was provided with a copy of the warning letter of 16 December and on 1 March with the earlier letter of 13 December.

[13] Ms O'Donnell told me that when she saw the warning letter she was even more shocked and hurt than she had been before. It included the statement: "*This letter is to serve as a formal written warning that any further instances of this sort of behaviour could lead to further disciplinary action or dismissal.*" Ms O'Donnell told me that Mr Robins had not previously indicated that the matter was at this level of seriousness. She told me that receiving the letter of 1 March made it stressful for her working out her notice period. In addition Ms O'Donnell told me that she felt hurt at her treatment as she had put in a great deal of effort to make the change of ownership go smoothly. In particular she had assisted the respondent to gain re-accreditation after the sale.

Determination

[14] The receipt of an unjustified warning caused Ms O'Donnell to lose trust and confidence in her employer and made the final months of her employment something of an ordeal for her. Her upset was compounded by the fact that she had previously had a long and (evidently) exemplary work history.

[15] I am satisfied that the warning changed the work environment for her in a way which was a disadvantage in itself. This distressed her greatly and a small award is in order to compensate her for this. **The respondent is ordered to pay to Ms O'Donnell the sum of \$500.00 compensation pursuant to s 123 of the Employment Relations Act 2000.**

Costs

[16] This issue is reserved at this stage to give the parties an opportunity to seek to resolve it between themselves. Should this prove impossible they have a period of 28 days in which to request a determination on the issue.

Y S Oldfield
Member of Employment Relations Authority