

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2017] NZERA Wellington 79  
3003061

BETWEEN            NICKA PAPERA  
                                 Applicant  
  
AND                    DELUXE CLEANING SERVICES  
                                 LIMITED  
                                 Respondent

Member of Authority:    M B Loftus  
  
Representatives:        Nicka Papera on own behalf  
                                 John Evans, Counsel for Respondent  
  
Investigation Meeting:    22 August 2017 at Wellington  
  
Submissions Received:    At the investigation meeting  
  
Determination:            23 August 2017

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**DETERMINATION OF  
THE EMPLOYMENT RELATIONS AUTHORITY**

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**Employment relationship problem**

[1]     The applicant, Nicka Papera, claims the respondent, Deluxe Cleaning Services Limited (Deluxe), breached the terms of a mediated settlement the parties completed pursuant to s.149 of the Employment Relations Act 2000 (the Act). He seeks penalties.

[2]     Mr Papera also says Deluxe failed to maintain a safe workplace by not protecting him from bullying and belittling behaviours and that was in breach of an undertaking good faith apply to the relationship. As a result he says he has a personal grievance and for that he seeks compensation.

[3]     Deluxe denies the alleged breaches.

## Background

[4] Mr Papera was employed by Deluxe as a cleaner around April or May 2016.

[5] During August 2016 Mr Papera claimed he was the victim of inappropriate abuse from his supervisor, Alan Ranapia. That resulted in the lodging of a disadvantage claim in the Authority on 2 September 2016.

[6] The claim was mediated and on 3 November 2016 the parties concluded a settlement pursuant to s.149 of the Act. Contained therein, and pertinent to this claim, are the following three clauses:

1. These terms of settlement and all matters discussed at mediation shall remain confidential to the parties.
4. The Respondent will undertake best endeavours to ensure that Alan Ranapia is not the Applicant's supervisor unless the Applicant agrees otherwise in writing.
5. The parties undertake to continue their employment relationship in good faith.

[7] In order to maintain the settlement's confidentiality Deluxe's Managing Director, Terry Rakuraku, advised Mr Ranapia he was no longer Mr Papera's supervisor. He did not say why but instead attributed it to a desire Mr Ranapia undertake other duties and responsibilities. Mr Ranapia's roster was then the subject of incremental changes over next couple of weeks which saw him physically distanced from Mr Papera.

[8] Shortly after the mediation Mr Rakuraku sent Mr Papera a text confirming Mr Ranapia was no longer his supervisor.

[9] For some reason he is unable to explain Mr Papera appears to have had second thoughts. On 5 November 2016 he sent a text to Mr Rakuraku reading:

Terry I don't want anything to change . Im happy to with al (Mr Ranapia) and kahu (another colleague) now that matters resolved like you said business as usual.

[10] Notwithstanding that Deluxe chose to continue with the settlements implementation.

[11] Mr Papera says there came a point where it became clear he and Mr Ranapia were no longer working together. He says notwithstanding that, the two were still in

contact but he had no problem with it. Indeed he welcomed it until there was an incident occurred in which Mr Ranapia is alleged to have sworn at Mr Papera.

[12] In a text message sent to Mr Rakuraku on 10 December 2016, Mr Papera describes the incident as follows:

Hi terry i just spoke to allan he said dont talk to me i know what you done to me , i said what do you mean , he said you know ask you , so whats he talking about i txt him we need the machine.

[13] Ms Ranapia accepts there was a conversation but has a different view of what was said. He says he was approached by Mr Papera and simply said *Go away, I'm not your supervisor.*

[14] Deluxe responded to Mr Papera's text asking *Why are you still calling al.*

[15] That was followed by further exchanges in which Mr Rakuraku reiterated more than once Mr Ranapia was no longer Mr Papera's supervisor and the two should not be talking to each other.

[16] On 19 December, Mr Papera sent Mr Rakuraku an email. In part it reads:

This email is to verify and confirm . I would like to have Allan as my supervisor again. I am unhappy circumstances have changed . . . . But to write this letter in hope the goodwill and good working relationship can be restored again. Amongst all of us.

[17] Deluxe responded essentially advising it would continue to adhere to the terms of the settlement and that would see Mr Ranapia and Mr Papera working apart.

## **Issues**

[18] Mr Papera claims there have been three breaches of the mediated settlement. They are:

- (a) The confidentiality provision has been breached by Mr Ranapia having knowledge of the settlement's detail;
- (b) Mr Ranapia had continued to act as Mr Papera's supervisor; and
- (c) The provision the relationship continue in good faith has been breached by Mr Papera again being subjected to bullying and harassment.

[19] The issues are whether the purported breaches occurred and if they did whether or not they also constitute grounds for a disadvantage grievance.

### **Determination**

[20] It is almost impossible to suggest Mr Papera offered any credible evidence in support of his claims.

[21] With respect to the first breach he relies totally on his view of what was said and which is reflected to some extent in the text of 10 December. I say to some extent as his oral rendition differed in that it contains reference to expletives. To that I add the fact Mr Papera has given conflicting evidence which makes it clear he has no real idea when the alleged conversation occurred. He is now adamant it was mid to late November while the letter his then lawyer sent commencing these proceedings says January. I prefer the contemporaneous text as the more accurate, not that it really matters.

[22] Putting aside the difference in what was said I also note Mr Rakuraku's evidence he never told Mr Ranapia of the real reason for the change. He hid the rationale behind a need to have Mr Rakuraku perform other duties and had to entice him with a pay rise. Mr Rakuraku's evidence is consistent with that. He says all he was told was his duties were changing and as a result he would no longer supervise Mr Papera. He knew nothing of the true reason until he was called as a witness in these proceedings relatively recently.

[23] The only knowledge Mr Papera can evidence Mr Ranapia had about the settlement was that he was no longer the supervisor. Indeed he accepts Mr Ranapia had no knowledge of other terms and Mr Papera says that was appropriate in the circumstances.

[24] Given the evidence of others and the inconsistencies in Mr Papera's assertions, I conclude there was no breach.

[25] Mr Papera could offer no evidence in support of his claim Mr Ranapia remained his supervisor and all the documentary evidence shows Deluxe was making it clear to those concerned that was not the case.

[26] Indeed the 5 December text and the 19 December e-mail both strongly suggest Mr Papera was having second thoughts and wanted to retain Mr Ranapia as his supervisor. When that was put to him his answers were vague but he appeared to accept that is correct. It is difficult to see how there could have been a breach when the evidence now strongly suggests Mr Papera's real concern was Deluxe was refusing to breach the settlement, at least in this respect.

[27] I can again conclude there is no evidence of a breach.

[28] The final claim is Deluxe failed to allow the relationship to continue in good faith by allowing Mr Papera to be bullied.

[29] When asked about the alleged bullying he initially said he was referring to last August's events. When it was explained he could not pursue that given the settlement he made a number of incomplete and confused statements which inevitably ended with an assertion I must know what he was referring to.

[30] The answer is I don't and that is because he proffered no evidence supporting a claim he had been bullied after the settlement was entered into.

[31] Again the claim fails due to a lack of any supporting evidence.

[32] Having dismissed all three alleged breaches it follows the consequential disadvantage claim must also fail.

### **Costs**

[33] Costs were addressed during the investigation with Mr Evans asking that if successful his client be awarded an amount in keeping with the tariff approach normally applied by the Authority.<sup>1</sup> Deluxe has been totally successful and given the principle cost follow the event it is entitled to a contribution toward those incurred in defending Mr Papera's claims.

[34] The investigation took an hour and a half. Applying the tariff that would see a contribution of around \$1,000. In the absence of any contrary argument or, indeed, any objection from Mr Papera, I consider that appropriate.

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<sup>1</sup> refer *PBO Ltd (formerly Rush Security Ltd) v Da Cruz* [2005] ERNZ 808 and *Fagotti v Acme & Co Ltd* [2015] NZEmpC 135

## **Conclusion and Costs**

[35] There has been a complete failure on Mr Papera part to support his claims with credible evidence. For that reason they are dismissed.

[36] Mr Papera, as an unsuccessful applicant, is ordered to pay the respondent, Deluxe Cleaning Services Limited, the sum of \$1,000.00 (one thousand dollars) as a contribution toward the costs Deluxe incurred in successfully defending the claims.

M B Loftus  
Member of the Employment Relations Authority