

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 342/10  
5158742

BETWEEN                      MYRNA PURVES  
Applicant

AND                              WAIKATO DISTRICT  
HEALTH BOARD  
Respondent

Member of Authority:      Vicki Campbell

Representatives:           Applicant in Person  
Greg Peploe for Respondent

Investigation Meeting:     26 April 2010 in Hamilton

Submissions Received:     18 May 2010 from Applicant  
11 May 2010 from Respondent

Determination:              2 August 2010

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**DETERMINATION OF THE AUTHORITY**

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[1] Ms Myrna Purves was initially employed by Waikato District Health Board (“WDHB”) as a causal Community Mental Health Nurse on 28 April 2006. In July of that same year Ms Purves was offered and accepted a part-time position working rostered duties 20 hours per week as a nurse.

[2] Ms Purves lodged a statement of problem in the Authority on 15 April 2009. Following receipt of the statement in reply from WDHB the parties were referred to mediation. As a result of an understanding reached at mediation and by consent, this matter was set aside for three months to allow further ongoing discussions between the parties.

[3] Those ongoing discussions did not resolve Ms Purve’s employment relationship problem. During a conference call on 5 February 2010 the Authority raised with Ms Purves concerns relating to her statement of problem with respect to it not clearly identifying a type of personal grievance. It was agreed that the Authority should treat

the employment relationship problem as a disadvantage grievance. At that time the employment relationship was ongoing. It has however, now ended as a result of Ms Purves resigning from her employment on 4 March 2010. The Authority does not have any claims before it with respect to Ms Purves resignation.

[4] Ms Purves says her grievance arose as a direct result of a lack of structural systems, processes and the WDHB's lack of interest in her personal well being. Ms Purves says she was subject to situations of personal safety being at risk as well as clients as she could not meet the high demands of continuity of care and risk assessment.

[5] WDHB denies the claims and says Ms Purves' personal grievance was not raised within the 90 day time period required by the Employment Relations Act ("the Act").

[6] During the process of setting up conference calls to set this matter down, Ms Purves wrote to the Authority and complained about further actions taken against her by WDHB. Ms Purves refers particularly to a final written warning issued to her on 15 October 2009 and in her submissions asks the Authority to overturn the warning.

[7] The issues for this determination:

- Did Ms Purves raise her grievances within 90 days as required?
- Did Ms Purves suffer from a disadvantage grievance during her employment as a result of the final written warning?
- If so, what, if any, remedies should be awarded.

#### **Did Ms Purves raise her grievance within 90 days?**

[8] The Act requires employees to raise their grievance with their employer within 90 days beginning on the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is the later, unless the employer consents to the grievance being raised after the 90 day period.<sup>1</sup>

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<sup>1</sup> Employment Relations Act 2000, s 114.

[9] Ms Purves lodged a statement of problem in the Authority on 9 April 2009. The stated problems Ms Purves sought assistance from the Authority to resolve were stated as:

- Terms of employment – 20 hours per week – Ms Purves asked the Authority to restructure her position to suit 20 hours per week/four hours per day and says that the WDHB expected her to complete the demands of a full-time nurse;
- History of discrimination;
- That she had never applied for her current position;
- That she encountered difficulties with training; and
- Unfair leave allocation.

[10] In response the WDHB acknowledged that it was aware historically of some but not all of the problems raised by Ms Purves in her statement of problem but more importantly Ms Purves had not raised a personal grievance with the WDHB prior to her lodging the statement of problem.

*Terms of Employment – 20 hours per week*

[11] It was common ground that Ms Purves accepted a part-time position with WDHB. The parties had previously agreed that the number of hours to be worked each week were 20. Initially these hours were worked on 2.5 days of the week, however, following a request from Ms Purves that arrangement was altered in 2007 so that the 20 hours were worked over 5 days of the week.

[12] No personal grievance was raised after the agreed change in 2007. Therefore the Authority has no jurisdiction to determine Ms Purves claim under this heading. Even if the Authority was to find Ms Purves had raised a personal grievance with regard to her hours of work within 90 days, the Authority does not have the jurisdiction to require the WDHB to restructure her position.<sup>2</sup>

*History of discrimination*

[13] Ms Purves complaint under this heading is that she believes WDHB has adopted a stand of discrimination against her as she is a single parent with a child who has

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<sup>2</sup> Employment Relations Act 2000, s 161(2).

special needs. Ms Purves has provided no evidence in support of her allegation that she was discriminated against.

*Never applied for current position*

[14] It was common ground that in 2006 issues arose between Ms Purves and WDHB with regards a change in her role from triage nurse to key worker. However, I am satisfied that as at November 2007 this issue was finally resolved at a meeting where Ms Purves was represented by the NZ Nurses Organisation.

[15] I am supported in my conclusions by the fact that during the whole of 2008 Ms Purves did not raise any issues regarding her duties or the position which she undertook for the WDHB.

*Difficulties with training*

[16] Ms Purves complaint with regard to training is that she was concerned she would not be paid for attending any training sessions outside of Thames. The evidence indicates that training was generally held in Hamilton. This would require Ms Purves to travel to Hamilton, undertake the training course and travel back to Thames.

[17] It was common ground that when Ms Purves enquired about payment for the time she spent travelling and attending training sessions she was advised that she would receive time off in lieu. Ms Purves argument is that her colleagues got paid and so should she.

[18] Ms Purves argument ignores the fact that she was employed for only 4 hours each day where as her colleagues were employed and paid for 8 hours each day. Ms Purves did not suffer a disadvantage when receiving her usual pay and then additional time off in lieu whenever she attended a training course in Hamilton. It was common ground that Ms Purves had never lodged a claim for payment to the WDHB.

*Unfair leave allocation*

[19] Ms Purves complaint under this heading is that she believes there is a culture of favouritism which allows some staff to receive leave at the expense of others like her. This claim has not been established to my satisfaction.

**Conclusion to 90 day issue**

[20] The evidence relating to the issues raised in the statement of problem was very general in nature. At the investigation meeting Ms Purves could not provide specific examples of the matters pertaining to her employment relationship problem as stated in her statement of problem. This created a difficulty in identifying exactly when an action arose which has led to Ms Purves lodging her statement of problem. Further there is not evidence that Ms Purves raised a personal grievance during 2006 and 2007 except to say that in 2007 Ms Purves did raise issues with regards her working hours and case loads but that issue was resolved by November 2007.

[21] On balance I find Ms Purves has failed to raise her personal grievance within the requisite 90 day period. The Authority therefore has no jurisdiction to determine her claims.

**Additional Claims**

[22] As stated in the opening paragraphs, on 18 January 2010 Ms Purves wrote to the Authority and advised it that changes had been made to her workplace and highlighted her disagreement about receiving a final written warning.

[23] I have considered whether the issue relating to the final warning was raised within 90 days and have found that it was not. Ms Purves received the final warning on 15 October. The 90 day period expired on 13 January 2010. The letter Ms Purves wrote to the Authority was dated 18 January 2010. Notwithstanding my finding on that issue for the sake of completeness I have considered whether the final warning would constitute a disadvantage grievance.

[24] In order to put the warning into context I have set out the events leading up to and including the issuing of the final written warning below.

*Appointment of Ms Sarah Wright*

[25] Ms Sarah Wright was appointed as a Manager for the WDHB and commenced her employment on 15 January 2009. This was a significant event as it was common ground that throughout 2008 Ms Purves had no issues with her employment. Ms Wright was Ms Purves new Manager.

[26] Ms Wright met with Ms Purves on 15 February 2009 ostensibly to discuss a complaint the WDHB had received about Ms Purves conduct during a meeting with a non-government organisation and a Consultant Psychiatrist.

[27] During the course of the meeting the discussion turned to Ms Purves historical concerns which included, among others, concerns of not having enough hours in the day to complete her work, having too many clients, having to assist others in the on-call/crisis function, and clients not being followed up when she was on annual leave or had left for the day.

[28] From their discussion Ms Wright and Ms Purves agreed on the following support plan:

- Clients that Ms Purves had not been able to follow up or who came into Manaaki Centre after 12.30pm would be seen by Ms Wright;
- Ms Wright requested administration to give priority to Ms Purves clients for morning appointments;
- Ms Purves was to leave a full handover of her clients prior to annual leave with a copy on Ms Wright's desk and a copy for the on-call nurses to enable the follow up of any clients who may attend in her absence;
- If other clinicians requested Ms Purves to administer intramuscular injections, then she was to seek guidance from Ms Wright;
- Ms Purves was to focus on her own duties and if the on-call/crisis nurse needed assistance Ms Purves was to liaise with Ms Wright;
- Ms Purves was encouraged to diary her contacts as good time management and to diary time out for the completion of documentation to ensure her four hours could be used efficiently;
- Ms Wright agreed to work alongside Ms Purves on home and clinic visits so that "high crisis" clients could be identified;
- Even though she had complained of having too many clients, during the meeting Ms Purves acknowledged that her case-load was not high at that particular time and it was agreed her case-load would remain at 15.

*Performance assessments 2008 and 2009*

[29] During the period January 2008 to January 2009 Ms Purves was subject to two annual performance assessments. The first of those assessments covered the period July 2007 to June 2008. The following concerns relating to Ms Purves performance were raised with Ms Purves through that performance assessment:

- That Ms Purves did not complete risk assessments as required and did not seek guidance from other clinicians;
- That Ms Purves “no nonsense” approach restricted client outcomes;
- Ms Purves had not attended all required training sessions, only those required to retain her practice certificate;
- Ms Purves was not working within all DHB guidelines due to what Ms Purves believed were her time constraints;
- Ms Purves does not provide any education or training for others as she does not believe it is her job to train others;
- Ms Purves was not attending clinical supervision as she did not believe it was beneficial;
- Ms Purves identified her 4 hour working day as a barrier to effective time-management;
- Ms Purves is not a team player and prefers to work as an individual and shows minimal respect towards her colleagues.

[30] Overall the assessment shows that Ms Purves was resistant to look at ways to move forward to complete the required competencies. It was agreed that Ms Purves caseload at the time of the assessment was not complex or high.

[31] The second assessment covered the period July 2008 to June 2009 and was carried out by Ms Wright. The meeting to discuss the performance assessment was to have been held in July, however, due to Ms Purves failure to complete the required documentation, the meeting did not occur until mid August.

[32] It was common ground that during the discussion about Ms Purves performance she was unable to communicate evidence of her competencies<sup>3</sup>, did not understand the legal aspects of nursing and her own responsibilities within that, and her rationale for not facilitating care was that she only worked four hours a day. Ms Wright discussed with Ms Purves the need for educational development and that the WDHB had agreed to pay Ms Purves for her attendance at mandatory training.

[33] Ms Wright advised Ms Purves that she would be looking at a performance management plan to assist Ms Purves in achieving the required competencies which had not been achieved.

[34] Before the 2009 performance assessment had taken place, on 29 July Ms Wright wrote to Ms Purves inviting her to a meeting to discuss a variety of issues relating to her performance. The objectives of the meeting were described as being to clarify the issues, provide an opportunity for Ms Purves to respond to the issues and to agree, if it was appropriate, to a performance improvement plan.

[35] The meeting took place on 30 July and a summary of the discussions and agreements was set out in a letter to Ms Purves dated 12 August 2009. Ms Wright concluded her letter by raising a concern that Ms Purves had raised in the meeting with respect to feeling that she was burnt out.

[36] Ms Wright sought Ms Purves consent to be referred to WDHB's Occupational Physician for a health assessment in order to establish her health and fitness to practice and to ensure Ms Purves health and well being was not being compromised. Ms Purves was also reminded of her ability to access the Employee Assistance Program and was provided with a contact telephone number.

#### *Complaints*

[37] On 10 August Ms Wright received a letter signed by the members of the North Team regarding concerns they held about Ms Purves. The concerns included issues relating to Ms Purves nursing style, her limited client contact hours and her lack of team spirit.

[38] Then, in September 2009, the WDHB received a complaint from Social Worker, Ms Catherine Gilberd who raised concerns about Ms Purves dealings with her and a

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<sup>3</sup> How to evidence competencies had been carefully explained to Ms Purves in July 2009.

client who had been referred to the Community Mental Health team, and who had been dealt with by Ms Purves.

[39] On 24 September Ms Purves was invited to attend a disciplinary meeting to discuss 5 issues which had arisen with respect to her performance.

[40] Ms Purves provided a written response to the allegations outlined in the letter. In her response Ms Purves outlined several concerns:

- That she did not receive moral or professional understanding/support in her job situation;
- Lack of training;
- Lack of any direction to requirements;
- Working hours;
- Demands of workload, clients needs and lack of co-operation by colleagues;
- During a training session viewed comments by trainer as a personal attack which she had received on numerous occasions in last 3 ½ years;
- That because she has a different view of the way a team works, her colleagues gang up on her.

[41] Ms Purves then went on a period of sick leave. Prior to her return she met with Robin Zinzan the Hauraki South Team Co-ordinator. Mr Zinzan reported to Ms Carol Clarke, the Service Manager of the Specialty & Rural Mental Health Services, that he had met with Ms Purves to discuss her readiness to return to work. In his report Mr Zinzan mentions Ms Purves belief that she was unable to complete her work in 4 hours each day.

[42] The meeting to discuss the complaints received in August and September and which were outlined in a letter of 24 September was held on 14 October. Ms Purves was supported at the meeting by a PSA delegate, Ms Tauia McDonald.

[43] At the end of the meeting Ms Purves was advised that she would be issued with a final written warning and a performance improvement plan was to be discussed and agreed with her team co-ordinator and clinical nurse specialist.

[44] The reasons for the final written warning were set out in writing on 15 October and included the issues raised with Ms Purves, that significant performance deficits had been identified and acknowledged with regard to Ms Purves client risk assessments, initial client assessments and client presentations at MDT. The warning also related to Ms Purves interpersonal behaviour towards her colleagues. During the disciplinary meeting Ms Purves acknowledged that there were times when her communication style and acceptance of direction was not of a standard conducive to good team work.

[45] On issuing the final written warning Ms Purves was one step away from being dismissed. This clearly, is a disadvantage. However, I find that how the WDHB acted and its actions in issuing Ms Purves a final written warning were what a fair and reasonable employer would have done in all the circumstances of this case.

### **Improvement Development Plan – November 2009**

[46] Ms Purves met with Ms Wright in November to discuss and agree on an Improvement Development Plan. At that meeting Ms Purves advised her manager that she felt going through the Improvement Development Plan was pointless as she was going to resign from her position and put her house on the market. Ms Purves was advised that as an employee of WDHB she needs to work through the plan as it would help her.

[47] A plan was eventually developed and agreed. In November Ms Purves attended the first review meeting and four particular areas of concern were discussed. The notes from this meeting are set out below verbatim:

(1) Caseload

Myrna states case load not workable due to high case (14) and high complex clients. I went through all her clients with dates, times complexities and strategies. Myrna could not understand how she can change these even with use of diary. Relayed only 2 are weekly visits, others on case load are either 3 or 4 weekly. Most clients have other clinicians or NGO's working with them as well.

(2) Supervision

Inquired if Myrna had contacted a supervisor. She stated she would not travel to Hamilton and then stated she had never said she would not see [Mr Skilton]. Myrna stated she does not believe that she needs supervision. Relayed to her this is a requirement of DHB and explored how this would help her with her clients/workload. Myrna disagreed with this but stated she would talk to [Mr Skilton] about supervision.

(3) Training

Discussed courses Myrna would need to complete as an employee of DHB discussed other relevant courses that would benefit her interpersonal skills, professional

development and working practice. Training calendar for training not out at present. Times to be arranged.

(4) Performance Management Plan

Went through plan with Myrna. Myrna tearful and at times obstructive. She could not identify rationale as to why she has a management plan. Myrna stated the DHB are out to get her and this is why she is on a plan. Unable to change Myrna's view concrete in her thinking, feels she is being persecuted for fighting for her change in position. Myrna stated she should work with a Social Worker at all times stating "they would give social input and I could give injection" Guided Myrna back on track relaying to her she is employed as a community mental health nurse with key working responsibility therefore her performance management plan is on her employed position at this present time and needs to be focused and directed on her as a key worker.

[48] Further reviews were conducted throughout December 2009, January 2010 and February. The reviews showed improvements in most areas however the issue with respect to completing her workload within her 4 hours each day continued to be an issue for Ms Purves.

[49] In February 2010 it was acknowledged that Ms Purves had worked well and had achieved a great deal within the performance improvement plan. Areas identified as continuing to need attention included her interpersonal skills, self development and effective workload and time management.

[50] Before Ms Purves could complete the improvement development plan she first went on a period of sick leave and then resigned from her employment on 5 March 2010.

## **Conclusion**

[51] Ms Purves continues today to feel aggrieved about the historical issues which continued to be at the forefront of her concerns up until the day she resigned from her employment. The major issue for Ms Purves seems to be that she could not complete her tasks within her contracted hours of work.

[52] I am satisfied that by 2008 Ms Purves employment situation had clearly settled down with no issues arising until Ms Wright's appointment in January 2009. It was common ground at the investigation meeting that Ms Purves was being supported by Ms Wright but that this may not have been apparent to Ms Purves.

[53] Processes and strategies had been put in place to assist Ms Purves in completing her work within her contracted hours, including the limiting of her case-load to 15

which was considered manageable for a part-time worker, and had proven to be the case through 2008.

[54] From December 2009 Ms Wright had become very concerned about Ms Purves wellbeing. Steps were put in place to assist Ms Purves including access to external supervision, and access to the WDHB employee assistance program.

[55] Stepping back and considering Ms Purves' employment relationship problems objectively, I find that overall the WDHB has acted fairly and reasonably in providing processes and strategies to assist Ms Purves to undertake her work within her contracted hours. As mentioned previously the Authority has no jurisdiction to require the WDHB to alter the agreement between them, that Ms Purves would work in a part-time position.

[56] I find Ms Purves does not have a personal grievance and I can be of no further assistance to her.

### **Costs**

[57] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, the Waikato District Health Board may lodge and serve a memorandum as to costs within 28 days of the date of this determination with any submissions in reply from Ms Purves to be lodged within 14 days of receipt. I will not consider any application outside that timeframe.

Vicki Campbell  
Member of Employment Relations Authority