

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2022] NZERA 1
3129674

BETWEEN RZK
Applicant

AND ALLIED SECURITY LIMITED
Respondent

Member of Authority: Peter van Keulen

Representatives: No appearance by the Applicant
Nathan Williams for the Respondent

Investigation Meeting: 25 November 2021

Submissions Received: 25 November 2021 from the Respondent

Date of Determination: 5 January 2022

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Allied Security Limited employed RZK as a Security Officer. RZK was employed to work a minimum of 32 hours per week and worked at various locations on differing shifts during her employment.

[2] Personal issues for RZK impacted on her ability to perform her work and issues arose with her attendance at work including a high number of absences, many unexplained or

unauthorised, and various inappropriate interactions with staff or public at sites where she worked.

[3] Allied Security worked through these various issues with RZK, conducting disciplinary processes and in October 2019 this culminated with a final written warning being issued to RZK.

[4] Shortly after the final written warning was issued RZK was found sleeping whilst working at Canterbury District Health Board premises. Allied Security investigated this incident, conducted a disciplinary process with RZK and then decided to dismiss her.

[5] RZK then raised personal grievances for the way the last two disciplinary processes were conducted and the sanctions imposed. RZK's grievances were premised on concerns with the investigations, the information provided to her, her representation in the second disciplinary meeting, and the outcomes – in this regard RZK alleging that the final written warning and then dismissal were not substantively justified in light of the behaviour complained of and in light of her explanations for her behaviour, relating to her personal issues.

[6] RZK was unable to resolve her grievances with Allied Security and lodged a statement of problem with the Authority alleging:

- (a) Unjustifiable disadvantage in respect of the disciplinary process for which she received the final written warning and for the representation she says she was given in the last disciplinary process.
- (b) Unjustified dismissal, being based on the process being procedurally unfair and the outcome not being substantively justified.
- (c) A breach of section 236 of the Employment Relations Act 2000 (the Act) for which she sought a penalty.

[7] Allied Security says its actions were justifiable both in terms of process and substantive justification for the sanctions. And it denied the allegation in relation to RZK's representation.

The Authority's investigation

[8] On 18 June 2021 I conducted a case management conference to make directions for the progression of RZK's claim to an investigation meeting. RZK was represented by counsel and counsel participated fully in the conference. Then in terms of the directions made for the exchange of witness evidence counsel lodged and served RZK's witness statement in line with the directions.

[9] Shortly after this RZK's counsel ceased acting for RZK and she advised the Authority of this. The Authority contacted RZK to establish if she was able to proceed with the investigation meeting that was scheduled for 25 November 2021 – a notice of investigation meeting having been served on RZK advising her of this date.

[10] On 4 November 2021 RZK spoke to an Authority Officer and confirmed she was willing to proceed with the investigation meeting without a representative.

[11] On 25 November 2021 RZK did not attend at the Authority's hearing room in Christchurch by 9:30 am when the investigation meeting was due to start. Allied Security did attend.

[12] I was satisfied that RZK was aware of the time, date and location of the investigation meeting. RZK had not contacted the Authority to advise that she could not attend on 25 November 2021 and her only communication with the Authority had confirmed she would attend and be ready to proceed.

[13] Further, the Notice of Investigation Meeting served on RZK had set out that the Authority could proceed in either party's absence; so I decided to proceed with my investigation.

[14] I investigated RZK's claims by receiving written evidence and documents, and then holding the investigation meeting on 25 November 2021 with Allied Security. I received witness statements from RZK and Evan Moran who was the South Island Manager for Allied Security when RZK was employed. In my investigation meeting, under oath Mr Moran confirmed his statement and gave oral evidence in answer to questions from myself. Allied Security then provided oral submissions.

[15] As permitted by 174E of the Act I have not recorded all the evidence and submissions received, in this determination; I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

Non-publication

[16] There are certain aspects to this claim as they pertain to RZK, which I consider I do not need to set out, that mean the publication of RZK's identity is likely to cause her embarrassment and anxiety. Therefore it is appropriate that I prohibit from publication RZK's identity and any information that may identify her.

[17] Therefore, pursuant to clause 10 of the Second Schedule of the Act I prohibit from publication the name and identity of the applicant - she is referred to as RZK in this determination.

Analysis of RZK's claims

What happened?

[18] Allied Security had various concerns over RZK's performance during her employment with it. The two main areas of concern were attendance and inappropriate interactions with staff and public at sites that RZK worked at.

[19] When these concerns arose, Allied Security investigated them and decided to commence disciplinary action against RZK. In total there were four disciplinary meetings. For each meeting RZK received the necessary information setting out the concerns Allied Security had and RZK had an opportunity to respond to the allegations which she did.

[20] In the first two disciplinary meetings RZK put forward explanations for her absences and her behaviour including explaining how her personal circumstances impacted on her ability to attend work and/or her ability to get rosters and know what shifts she was on. Allied Security considered this and put processes in place to assist RZK with her attendance. In relation to her interactions with staff and public at various sites she was working Allied Security excused this behaviour and moved RZK to new sites to end any ongoing issues.

[21] In the last two disciplinary meetings RZK put forward similar general explanations and addressed the sleeping issue by explaining that she believed she was allowed to take a nap during her break.

[22] Allied Security considered RZK's explanations and reached conclusions about sanctions as a result.

Analysis

[23] In terms of the disciplinary processes I am satisfied that Allied Security carried out fair processes. It properly investigated its concerns, it set out the concerns for RZK and provided information to her, it gave RZK an opportunity to respond to the concerns which she did, it considered her responses before it decided to impose any sanctions.

[24] I am also satisfied that in the circumstances both sanctions imposed were substantively justified, in particular Allied Security's explanation for concluding that sleeping whilst working on site was serious misconduct that warranted dismissal was credible and clearly evidenced to me that the conclusion reached was one that a fair and reasonable employer could have come to in the circumstances.¹

[25] The final issue arising for RZK in relation to representation is that she says she was told who was representing her in the disciplinary meeting. The evidence does not support this allegation and I am satisfied that there is no personal grievance based on this allegation nor has Allied Security breached s 236 of the Act.

Conclusion

[26] Allied Security acted justifiably in disciplining RZK, including in relation to her representation in the final disciplinary meeting. There is no basis for her personal grievances nor her claim for a breach of s 236 of the Act.

[27] All of RZK's claims are dismissed.

¹ Applying the test for justification in s 103A of the Employment Relations Act 2000.

Costs

[28] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[29] If they are not able to do so and a determination on costs is needed, any party seeking an order for costs may lodge and serve a memorandum on costs within 14 days of the date of this determination. The other party will then have 14 days from the date of service of that memorandum to lodge and serve any reply memorandum.

Peter van Keulen
Member of the Employment Relations Authority