

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Mira Raskovic (Applicant)  
**AND** Girls Brigade NZ (Inc) Ltd (Respondent)  
**REPRESENTATIVES** Ken Nicolson, Counsel for Applicant  
Max McGowan, Advocate for Respondent  
**MEMBER OF AUTHORITY** Y S Oldfield  
**INVESTIGATION MEETING** 14 July 2005  
**DATE OF DETERMINATION** 15 July 2005

DETERMINATION OF THE AUTHORITY

**Employment Relationship Problem**

- [1] Ms Raskovic worked for the respondent (“Girls Brigade”) as a part-time debtor’s clerk for a period of six months from January 2004 until July 2004. The Girls Brigade is of the view that the employment was for a fixed term of six months. It says that it chose not to renew Ms Raskovic’s agreement because the introduction of a new accounting system (‘MYOB’) had reduced the workload and she was no longer needed.
- [2] Ms Raskovic believes she was offered permanent work and that by ending her employment in July the respondent unjustifiably dismissed her. She claims remedies of both compensation for hurt and humiliation, and lost earnings.
- [3] The first issue for determination is whether the employment was for a fixed term. If it was not then further issues arise as to whether Ms Raskovic’s position was redundant and whether the termination of her employment was conducted according to a fair procedure. Finally, depending on the outcome in relation to these issues, I may need to consider whether any remedies are due to Ms Raskovic.

**Was the employment agreement for a fixed term?**

- [4] Ms Raskovic was employed to fill a part-time accounting position (sixteen and a half hours per week) which had become vacant for the first time in five years. Ms Dickens, Administrative Director of the respondent, told me that the respondent wanted to employ Ms Raskovic on a fixed term because the MYOB package was being introduced in January 2004 and it was not yet clear what effect this would have on the workload.
- [5] She also told me that when she interviewed Ms Raskovic she told her that the position would initially be for six months after which it would be reviewed. Ms Raskovic agrees that she was

told that the position would be reviewed in six months but says that she did not understand this to mean that her employment would end. English is not Ms Raskovic's first language.

- [6] Ms Raskovic started work on 5 January and signed an employment agreement on 9 January. The agreement contains a start date (5 January 2004) but no termination date although it does contain at clause 3.4:

*"the position will be reviewed in June of 2004."*

- [7] The agreement also provides at clause 11:

*"Employment may be terminated in accordance with the following provisions:*

*11.1 Within the first 3 months of employment, two weeks notice of termination shall be given by either party.*

*11.2 Thereafter four week's notice of termination shall be given in writing by either part [sic] or four week's wages shall be paid or forfeited in lieu of notice."*

- [8] The written agreement contains nothing else to indicate that it is fixed term in nature or to indicate that Subsections 66 (1) and 66 (2) of the Employment Relations Act have been complied with.

### **Determination**

- [9] I am not satisfied that the respondent made it clear to Ms Raskovic that her employment was proposed to be fixed term in nature. At neither her interview nor in the written agreement was there an express statement that the contract would expire in six months. The use of the term "review" was misleading especially to someone for whom English was not a first language. The existence of notice provisions in the written agreement is consistent with permanent employment. I conclude that the employment must be treated as permanent.

### **Was Ms Raskovic's position redundant?**

- [10] Judith Martin (accountant to the Girls Brigade) installed the MYOB package in January 2004. Ms Raskovic was then responsible for entering the names and addresses of the respondent's data base. This took approximately one month. After this she used MYOB for debtor control, preparation of invoices and to maintain the cashbook. She also dealt with account enquiries and was signatory to cheques. Preparation of reports and spreadsheets for the Girls Brigade Executive was done by Ms Martin. Previously Ms Martin had worked about ten hours per month but over the implementation period this had increased by several hours per week.

- [11] By around May 2004 the respondent's finance committee decided that with the MYOB package up and running, there was only about one day's work per week left of what the debtor's clerk had previously done. It decided to disestablish the position and have Ms Martin do any work that was required to operate the package, in association with the tasks she was already performing.

- [12] Ms Dickens was instructed to give Ms Raskovic notice that her employment agreement would not be renewed. She did so on 17 May, initially giving one week's notice. When Ms Raskovic pointed out that this would not bring them to the end of the six months which was being relied

upon Ms Dickens told Ms Raskovic that she could finish on 5 July instead, which is what she did.

[13] After her employment ceased Ms Raskovic was not replaced. Instead, the hours of the part-time creditor's clerk were increased by three a week, and Ms Martin's hours to six per week, based in the office. This means that the work previously being done by Ms Raskovic in sixteen and a half hours is now being done in six to eight hours per week.

[14] Ms Raskovic disputes that there was not enough work to fill her time. She says that she was fully occupied right to the end of her employment. She also says that if she had been consulted about what was to happen she would have been very willing to consider a one day per week position.

### **Determination**

[15] I accept that the installation of the MYOB package reduced the workload of the debtor's clerk. That is only to be expected. I also accept that the respondent is entitled to restructure its business as it sees fit, and to disestablish a position which had become superfluous to its needs. I accept that the redundancy was genuine.

### **Was the employment terminated in a procedurally fair manner?**

[16] Because of the mistaken belief that the employment was fixed term, neither the Finance Committee nor Ms Dickens realised that Ms Raskovic should be consulted about the proposed disestablishment of her position. She was simply given notice that she was to leave.

[17] Ms Raskovic told me that she had had trouble finding suitable work in her field because her English was not fluent. She was over qualified for this job but had been trying hard to make a success of it. She was very distressed at being told her employment was at an end and took it very personally. She had heard that there had been comment about her accent (she is a relatively recent immigrant) and felt that this was the reason she was being told to go. A year later she is still very bitter about the experience which she says has made the process of settling in to New Zealand much harder.

### **Determination**

[18] Through ignorance of its obligations, the respondent has failed to meet the requirements of procedural fairness. This has had very real repercussions for Ms Raskovic. It has led directly to her mistrust that the redundancy was genuine and has meant that the possibility of a reduction to one day a week was not considered.

### **Remedies**

[19] The termination of Ms Raskovic's employment was not procedurally fair and she is entitled to remedies for this.

[20] I am satisfied that an award of compensation is in order. Her deep humiliation was very apparent at the investigation meeting. Taking this into consideration as well as the part-time nature and brevity of the employment I consider an appropriate level of award to be \$4,000.00.

**[21] The respondent is ordered to pay to Ms Raskovic the sum of \$4,000.00 compensation pursuant to s.123 (c) (i) of the Employment Relations Act 2000.**

[22] However this was a genuine redundancy. The respondent redistributed what remained of Ms Raskovic's work and the debtor's clerk position ceased to exist. There was no job left from which anything could have been earned. There can be no question of lost earnings and I make no award in relation to this claim.

### **Costs**

[23] I leave it to the parties to discuss this issue however if it cannot be resolved it should be referred to me for determination. Submissions on the issue should be lodged within 28 days of the date of this determination.

Y S Oldfield  
Member of Employment Relations Authority