

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Tracey Ann Skeet (Applicant)  
**AND** Papatoetoe Cosmopolitan Club (Inc) (Respondent)  
**REPRESENTATIVES** Tracey Ann Skeet In person  
Dean Clure, for Respondent  
**MEMBER OF AUTHORITY** Vicki Campbell  
**INVESTIGATION MEETING** 26 May 2005  
**DATE OF DETERMINATION** 27 May 2005

**DETERMINATION OF THE AUTHORITY**

**Employment Relationship Problem**

[1] Ms Tracey Skeet was employed by Papatoetoe Cosmopolitan Club (Inc) (“PCC”) until she resigned her position on 10 August 2004. Ms Skeet provided one months notice which she worked. As events transpired Ms Skeet continued to work for PCC until 24 September 2004 (Ms Skeet’s final pay being for the week ending 26 September 2004).

[2] Ms Skeet says she resigned her employment in circumstances which she claims amounts to constructive dismissal and that the dismissal is unjustified.

[3] PCC denies Ms Skeet was constructively dismissed. PCC also says Ms Skeet raised her personal grievance with PCC outside the requisite 90 day limitation period contained in s.114 of the Employment Relations Act 2000.

[4] Ms Skeet has applied to the Authority for leave to raise her grievance outside the 90 day period pursuant to s.114(3) of the Act. In reply to the application for leave PCC says it finds the matter to be vexatious and frivolous.

[5] The Authority determined that the most efficient way to proceed with this matter was to investigate and determine the 90 day issue. Accordingly this determination is confined to resolving that issue only, with the substantive grievance to be dealt with at a later stage.

[6] The three issues to be determined are:

- When did Ms Skeet raise her grievance?;
- When does the 90 day period begin?;
- Should Ms Skeet be allowed to bring her personal grievance on the statutory basis of “exceptional circumstances”?

### **When did Ms Skeet raise her grievance?**

[7] Ms Skeet says she verbally resigned her employment to Mr Chris Leddie in July 2004. Ms Skeet says she told Mr Leddie she had had enough of the comments being made about her from the Club's committee and that she had woken up the previous day and had cried at the thought of having to return to the workplace. It was common ground that it was agreed Ms Skeet would refrain from making her resignation formal until after the annual conference, about mid August.

[8] Ms Skeet says that before the July discussion she had raised with Mr Leddie the issues relating to the Committee members talking about her behind her back and had asked him to talk to the President and get it stopped. Mr Leddie acknowledged that he did speak to the President after being asked to by Ms Skeet.

[9] On 10 August 2004 and as agreed, Ms Skeet resigned in writing providing PCC with one months notice. That month was extended by agreement to 24 September 2004 in order to allow Ms Skeet to complete some work on employment agreements.

[10] On 13 December 2004 Ms Skeet wrote to her employer advising that she had decided to pursue a personal grievance. In that letter Ms Skeet outlined the issues she had with the conduct of the committee stating that their comments to staff under her control made her position untenable. This amounts to a claim that Ms Skeet has been constructively dismissed. Mr Leddie acknowledged that he received the letter on or about Tuesday 14 December 2004.

[11] Ms Skeet then met with Mr Leddie on 18 December 2004 and discussed the concerns she had had about her employment. Ms Skeet and Mr Leddie discussed various options for resolving the matter to enable Ms Skeet to move on. In particular Ms Skeet requested payment of monetary compensation and a written apology for her treatment at the club. At that meeting Mr Leddie told Ms Skeet that he thought her grievance was outside the 90 day period. This view was then confirmed by PCC in a letter of response to Ms Skeet dated 22 December 2004.

[12] Section 114(2) of the Act provides that a grievance is raised with an employer when the employee has taken reasonable steps to make the employer aware that the employee alleges a personal grievance "*...that the employee wants the employer to address.*"

[13] I find that it is more likely than not, that when Ms Skeet indicated verbally in July that she intended to terminate her employment, she advised Mr Leddie that she was doing so in response to the treatment she believed she was receiving from the Club's committee. Ms Skeet's reasons for her resignation were confirmed to Mr Leddie when she wrote to him on 13 December 2004 and told him she was pursuing a personal grievance and that she felt the committee had undermined her position and made it untenable. These matters were then the topic of discussion at the 18 December 2004 meeting.

[14] I find that Ms Skeet made Mr Leddie aware that she was complaining of having been unjustifiably dismissed i.e. that she was alleging a personal grievance. The grievance was discussed on 18 December 2004 together with options for resolving the grievance.

### **When does the 90 day period begin?**

[15] Mr Clure submitted on behalf of the respondent that the action giving rise to the grievance occurred in July 2004 when Ms Skeet first indicated her intention to resign.

[16] I have not accepted that submission. Ms Skeet claims she was constructively dismissed. Evidence for constructive dismissal cases can span a considerable period of an employee's employment (*Paul Meyer v Ports of Auckland Ltd*, unreported AC 41/04, Judge Shaw, 28 July 2004), however, dismissal runs from the date of termination of employment (*Para Franchising Ltd v White* [2002] 2 ERNZ 120).

[17] Ms Skeet's final date of employment was 24 September 2004. When Ms Skeet and Mr Leddie were discussing Ms Skeet's personal grievance and the possible remedies for that, Ms Skeet was within the 90 day period.

**I find Ms Skeet raised a grievance for unjustified dismissal with Papatoetoe Cosmopolitan Club (Inc) and did so within the 90 days of her employment ending.**

#### **Exceptional circumstances**

[18] It follows that Ms Skeet does not require the leave of the Authority so that she may raise a grievance out of time on the grounds of "exceptional circumstances".

#### **Direction of the Authority**

[19] Ms Skeet is entitled to have her dismissal grievance investigated and resolved by a determination of the Authority, if that is necessary. I appreciate that prior to my determination on the 90 day issue, the parties had already attempted mediation. What has changed since then is that Ms Skeet has had the 90 day door opened for her.

[20] The parties to this matter are directed to use further mediation using the services of a Mediator provided by the Department of Labour, and attempt, in good faith, to reach an agreed settlement of their differences. This direction is made pursuant to s.159(1)(b) of the Employment Relations Act 2000.

[21] Costs are reserved.

Vicki Campbell  
Member of Employment Relations Authority