

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 84A/09  
5134523

BETWEEN                      DAVID MICHAEL SMITH  
Applicant

AND                              WAIRARAPA MEDICAL  
LIMITED (In Liquidation)  
Respondent

Member of Authority:      P R Stapp

Representatives:            Adam Parker for Applicant  
   No appearance for the Respondent

Investigation Meeting:      8 December 2009 at Wellington

Submissions received:      8 December 2009

Determination:               8 December 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     Dr David Smith was dismissed by Wairarapa Medical Limited on 30 July 2008. Dr Smith has claimed his dismissal was unjustified because he was given no prior notice of the reasons and had no opportunity to comment before the decision was made. He has claimed that the reasons and grounds relied upon by the respondent can not be justified. He was seeking remedies for a personal grievance of lost wages and compensation. At the time he was employed as a general practitioner at Wairarapa Medical Limited (WML).

[2]     WML lodged a statement in reply. Its defence first was that there was a contract for service between it and Dr Smith. I decided that Dr Smith was an employee (P R Stapp 15 June 2009 unreported WA 84/09). Second there was no defence put up for the reasons on why the relationship ended. Dr Nixon the owner of

WML has never directly participated in the Authority's investigations. There has been no amended statement of reply lodged to cover the reasons for the dismissal.

[3] WML has gone into liquidation. The Liquidator have given consent for the current proceedings to be continued against WML on Dr Smith's undertaking that he will not enforce any Judgment or costs awarded against the company.

[4] There has been no appearance for WML in liquidation. I decided to proceed with the investigation meeting that was scheduled on notice. My reasons are because the Liquidator has consented for the proceedings to continue but does not have an ability to defend the matter and would not be offering any defence in the absence of the respondent to appear and justify its actions. The failure of WML to attend or be represented is attributed to the liquidation. Dr Nixon as a director and the person who dismissed Dr Smith has failed to attend although I am satisfied that the liquidators know about the investigation meeting. I accept Dr Nixon no longer has control over WML, but no good cause has been advanced as to why he could not have attended the investigation and helped my enquiry when Dr Smith has given undertakings not to enforce any judgment and costs. I have decided to act as fully in the matter as if WML has duly attended or been represented.

### **Issues**

[5] Was Dr Smith's dismissal justified? Was Dr Smith treated fairly? Has WML breached its obligations to act in good faith?

### **The facts**

[6] Dr Smith raised his personal grievance on 5 August 2008 challenging his dismissal dated 30 July 2008. He says he was given 5 minutes to clear his office and told that his employment had been terminated with immediate effect. He says he protested and asked for a month's pay in lieu, but was told to hand in his keys and leave.

[7] Dr Smith says that he was not given an explanation for his dismissal and has not received any written termination or written explanation.

**Determination**

[8] Dr Smith was dismissed by Dr Nixon on 30 July 2008. The dismissal was unjustified. Dr Nixon did not follow any procedure and has failed to justify any reasons for the dismissal on proper grounds. WML has failed to act in good faith. Therefore Dr Smith has a personal grievance for unjustified dismissal.

**Remedies for a personal grievance**

[9] Dr Smith has requested remedies to which he would have been entitled. He did not contribute to the situation giving rise to his personal grievance. His claim for lost wages including one month's notice has not been quantified due to the undertaking he has given not to enforce the Judgment. Therefore there will be no order made.

[10] He has claimed compensation for hurt and humiliation up to \$25,000. He has requested an indication from me of the sum that I would have otherwise awarded but for his undertaking not to enforce the Judgment. I assess his compensation for hurt and humiliation on the basis of his evidence, and his wife's evidence, that supported their claims that there was an impact on Dr Smith because of his dismissal. I accept he was hurt and humiliated by the manner he was informed that his employment had ceased and the circumstances he found himself in when he was required to leave the premises in front of other people and the impact on him afterwards. I would have awarded him \$10,000 under s 123 (1) (c) (i) of the Employment Relations Act.

**Costs**

[11] There have been costs incurred by Dr Smith in bringing his employment relationship problem before the Authority. It would be futile to make an order given the undertaking. However, I can indicate that Dr Smith would have been entitled to costs where he has been successful. He has been put to unnecessary costs that could have been avoided if Dr Nixon had acted to address the issues on the dismissal. Dr Smith properly and reasonably obtained representation for his employment

relationship problem and that has involved the cost of preparation and attendance. I would have awarded Dr Smith \$3,000 contribution to his costs.

**Conclusion to resolve the employment relationship problem**

[12] This is a situation where a matter of principle exists for Dr Smith seeking vindication without monetary remedies. Dr David Smith was unjustifiably dismissed from his employment with Wairarapa Medical Limited. He has a personal grievance.

P R Stapp  
Member of the Employment Relations Authority