

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 177/10
5077461

BETWEEN ANN VALENTINE
 Applicant

A N D CANTERBURY DISTRICT
 HEALTH BOARD
 Respondent

Member of Authority: James Crichton

Representatives: Frank Wall, Advocate for Applicant
 Penny Shaw, Counsel for Respondent

Submissions Received: 22 June 2010 from Applicant
 13 August 2010 from Respondent

Determination: 3 September 2010

SUPPLEMENTARY DETERMINATION OF THE AUTHORITY

Introduction

[1] By determination dated 9 May 2008 [CA60/08], the Authority's substantive decision dealt in principle with the employment relationship problem raised by the applicant (Ms Valentine) but left the remedies to be determined by negotiation between the parties.

[2] The parties have been unable to resolve matters between them and on reflection, the Authority's substantive decision may not have been as elegantly expressed as it might have been.

[3] The Authority's decision of 9 May 2008 held:

- (a) That the Board had disestablished Ms Valentine's position;
- (b) That the Board had sought to obtain Ms Valentine's consent to changing her hours of work;

- (c) That when Ms Valentine refused her agreement, the Board took it that Ms Valentine wished to cease her employment.

[4] The Authority determined that it was not available to the Board to deem that Ms Valentine wished her employment to end and the parties were directed to attempt to resolve terms of settlement between them having regard to those findings. In directing the parties to pursue an agreement as to remedies, the Authority erroneously referred to compensation pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000 when the reference should have been to compensation pursuant to clause 24 of the relevant collective employment agreement. It was accepted at the investigation meeting that the relevant collective employment agreement was the District Health Board/NZNO Multi Employer Nursing/Midwifery Collective Agreement 1 July 2004 to 31 December 2006 with the relevant clause being clause 24.

[5] In the substantive determination, the Authority concluded that Ms Valentine's position had been made redundant, that the alternative positions offered to Ms Valentine were so different as to entitle her to rely upon the provision that she had to consent to changes of hours, that therefore, reconfirmation was not available and thus severance ought to apply.

The parties' positions

[6] The Authority imagined in the substantive decision issue, that the parties would negotiate and agree on the application of the severance provision provided for in clause 24.3.11 and that that would conclude the matter save for the question of costs. In the result no such agreement was forthcoming and in the submissions now available to the Authority from the parties, Mr Wall for Ms Valentine is seeking large sums in respect to various heads of compensation and lost wages.

[7] Conversely, Ms Shaw for the Board is arguing that there could not be a clearer case for the reconfirmation provision in the collective employment agreement to be applied and that, save for Ms Valentine's refusal to agree to reconfirmation, that ought to be an end to the matter.

[8] Mr Wall's submissions overlook the fact that there was no finding by the Authority of a personal grievance and therefore there can be no entitlement to the remedies of compensation or lost wages as would apply potentially if there were a grievance. In that regard, I accept the submission of the Board that the matter is

essentially a dispute about the meaning of clause 24 of the collective employment agreement. It is the interpretation of that agreement which is the focus of the Authority's substantive decision.

[9] The essence of the difference between the Board's view and the position that the Authority reached in the substantive decision is that the Board has never accepted that it was available to the Authority to conclude (as it did) that the purport of the letter of 29 October 2004 from the Board to Ms Valentine was to require Ms Valentine's agreement to changes in her hours of work.

[10] The factual position is that the Board's proposed redeployment of Ms Valentine was not simply a change in hours of a minor nature but was a fundamental change. Ms Valentine was employed as a day worker and not a shift worker and the Board proposed to re-deploy her as a shift worker. The Authority held in its substantive decision that it was not available for the Board to do that without Ms Valentine's consent.

[11] In those circumstances, and in the absence of any agreement from the parties, the Authority will simply provide that Ms Valentine is to be paid severance within the terms of sub-clause 24.3.11 of the collective employment agreement.

Determination

[12] The Authority directs that Ms Valentine is to be paid severance in accordance with the provision of sub-clause 24.3.11 of the collective employment agreement.

Costs

[13] Costs are reserved.

James Crichton
Member of the Employment Relations Authority