

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Dawn Voisey (Applicant)
AND Age Concern Counties/Manukau Incorporated (Respondent)
REPRESENTATIVES Leon Robinson, for Applicant
Simone Hachache, for Respondent
MEMBER OF AUTHORITY Y S Oldfield
INVESTIGATION MEETING 21 February 2003
7 March 2003
19 March 2003
SUBMISSIONS 25 March 2003, 28 March 2003
DATE OF DETERMINATION 16 September 2003

DETERMINATION OF THE AUTHORITY

The applicant, Mrs Voisey, was employed by Age Concern Counties Manukau (Age Concern) as co-ordinator of the Elder Abuse and Neglect Service ("EA&N"). This was an advocacy service for the vulnerable elderly. She held that role from April 1999 until August 2002 when she resigned. She claims that her resignation was the result of a course of action by the employer to force her out of her employment or alternatively, was the result of breaches of the employer's duty to her. As a result she says it amounted to a constructive and unjustified dismissal.

After it was lodged with the Authority this matter was investigated with a degree of urgency due to the pending departure from New Zealand of the respondent's key witness. Since the completion of the investigation the preparation of this determination has been postponed while other problems with a longer history in the Authority were investigated and determined. The Authority regrets the delay in the issuing of this determination but notes that it had arisen out of a need to deal with employment relationship problems according to priority.

Chronology of events

1. From the time of her engagement with the respondent, Mrs Voisey reported to the executive officer of Age Concern, who was responsible for managing all its operations including EA&N. Where necessary Mrs Voisey also liaised with the Executive Council of Age Concern. Mrs Voisey told me that up until May 2002 she had enjoyed a very good relationship with both.
2. In early 2002 the Chairperson of Age Concern, Mr Hall, became aware of shortcomings in the organisation. He told me that:

“Age concern is totally dependent on funding to carry out its activities, including the payment of its staff. In March 2002 my counterpart at Age Concern North Shore advised me that as we had failed to attend a health promotion meeting and we had also failed to put in returns for it, we would not be provided with any funds until this was done.”

3. The respondent obtains the bulk of its funding from CYFS. As long as CYFS guidelines are met, funding will continue. Compliance with those guidelines is audited annually. EA&N and Age Concern met their audits in 2000 and 2001. (The 2002 audit, which took place after the applicant had left the employ of the respondent, was suspended in order to permit the respondent time to come up to the required standard. Eventually, the organisation narrowly met the required standards.)
4. The incumbent executive officer gave notice of her resignation on 15 April 2002. On 1 May 2002 the respondent engaged a consultant, Mr Strugnell-Combe, for a period of three months to conduct a review of all its operations. His brief was to “review the objects of Age Concern, advise whether they have been carried out properly and to report on how they can be improved or objects that are not being achieved.” He was also asked to “review all current staff.” On 17 May 2002 Mr Strugnell-Combe was appointed as replacement executive officer.
5. Mr Strugnell-Combe told me that very soon after he began his review he became aware that Age Concern faced a number of problems. He also told me that at the time Mrs Voisey expressed to him the opinion that the organisation was in crisis. It was his view that most of the organisation’s problems stemmed from the way in which it had previously been managed.
6. Mrs Voisey does not share this view, and remains very loyal to the previous manager, who had been a personal friend to her. Mrs Voisey told me that in her presence Mr Strugnell-Combe was wont to describe his predecessor as “daft” and “wilfully negligent.” Mrs Voisey found this offensive.
7. She also told me that on one occasion she was asked to pass a message to the previous manager, and on another, told not to have any contact with her during working hours (because the person in question was involved in litigation with the respondent.) She found both of these requests inappropriate.
8. Amongst other things, Mr Strugnell-Combe also identified problems with the way in which Mrs Voisey was carrying out her role. After taking up the manager’s role, he told me he:

“did ask Dawn to make changes to the way in which she worked. I always tried to deal with these issues constructively and explained to Dawn why I thought certain changes were necessary. Despite there being a number of changes, Dawn was never subject to disciplinary action, nor did I ever question her dedication to her job. I did not wish Dawn to leave Age Concern.”
9. Soon after his appointment Mr Strugnell-Combe advised Mrs Voisey that her attendance at Board meetings was no longer required. He told me that he thought she would welcome being relieved of the obligation to attend.
10. On 13 May a new administrative officer, Ms Nicholson-Clark, began work. Her work station and that of Mr Strugnell-Combe were located in what was called the ‘main office.’ Mrs Voisey worked in a smaller separate office of her own. Both occupants of the main office shared a view that it was ‘a disgrace’ and conducted a full clean-up, dispatching old magazines, crockery and other items that they considered rubbish to the bin. Mrs Voisey objected to this as she was not consulted. She was particularly concerned that some of the discarded items had belonged to the previous manager and might still be wanted by her.

11. Mrs Voisey also told me that she needed access to the main office to use the photocopier and fax machine and on approximately eight occasions Mr Strugnell-Combe denied this. He agrees that on occasions he was conducting private meetings in the main office and asked her to wait until he had finished before coming in to use the facilities.
12. Mr Strugnell-Combe also had concerns about security in the office. On one occasion he expressed a belief that someone had been through papers on his desk after hours. Mrs Voisey construed this as a suggestion that she might have done so.
13. Mr Strugnell-Combe told me that although Age Concern did use volunteers to assist with some work, he did not think it appropriate to use volunteers to help with the work of EA&N because of the sensitive and highly confidential nature of the work it did. Nor did he think it appropriate to use volunteers for financial work. On this basis he advised Mrs Voisey that she was not to use volunteer help with her field work or with financial work.
14. By late May/early June, Mr Strugnell-Combe had discussed Mrs Voisey's performance with Mr Hall on several occasions. Both were of the view that changes needed to be made to her work practice to ensure compliance with ACNZ and EAN standards.
15. On 28 May Mr Strugnell-Combe spoke with Mrs Voisey about a number of matters relating to her work practices. He confirmed the outcome of the discussion in the following memo of the same date:

"Further to our brief discussion of this morning, I would like to confirm the following with you.

1. Supervision As of next week you will be recommencing your external supervision sessions, and thereafter be attending fortnightly. Please let me know of any appointments you cancel. You will identify, with Stella, as and when supervision is necessary for her and arrange it accordingly.
2. Time in lieu. You are currently moving towards eliminating the hours which you have accrued, by working four days per week. Thereafter, wherever possible, you will endeavour to recover the time within two weeks as outlined in your contract, as will Stella. In the meantime, please let me have a weekly written note of your's and Stella's actual hours worked.
3. Locum The person you were to recommend is unavailable. Therefore Age Concern will contract a locum as soon as possible.
4. Annual leave To be arranged with you as soon as a locum can be arranged.
5. Staff evaluation Will begin within the next two weeks at times to be arranged.
6. Complaints procedure. Please formalise your concerns to our Chairperson, Alistaire Hall as a matter of utmost urgency. I would reaffirm here that it is not appropriate to express them elsewhere without having first followed the proper procedure as outlined in your KOPS document."

(‘Stella’ was Mrs Voisey’s part-time field worker.)

16. Mrs Voisey told me that she found it difficult to arrange supervision with a qualified social worker in South Auckland. Mr Strugnell-Combe does not accept that this would be difficult but in any event, he told me that she never advised him of any difficulties in arranging this.
17. The sixth item on this list makes reference to an approach by Mrs Voisey to a Board member (Mr Don Sinclair) earlier in July, expressing concerns about Mr Strugnell-Combe.
18. After receiving the memo (later the same day) Mrs Voisey did speak with Mr Hall and told him that she took offence at Mr Strugnell-Combe’s disparaging comments about his predecessor (saying that every time he made such comments she felt as though a meat hook placed in her body ‘moves and I experience pain.’) She also told Mr Hall she objected to Mr Strugnell-Combe’s language especially his frequent use of the word ‘crap’ in her presence. Other than on this

occasion, Mr Hall told me that Mrs Voisey did not express any concerns about Mr Strugnell-Combe until she eventually lodged her first personal grievance in August 2002. Mr Hall passed on to Mr Strugnell-Combe Mrs Voisey's dislike of his use of the word 'crap' and thereafter, as a general rule, he desisted from it.

19. On 26 June Mrs Voisey's performance review was conducted by Mr Strugnell-Combe and a Council member. No mention was made by Mrs Voisey of any concerns with Mr Strugnell-Combe, nor were any serious performance concerns flagged.
20. At the time of Mr Strugnell-Combe's employment Mrs Voisey had a very high level of unused annual leave. At his insistence, she arranged to take some of this leave from **10 July to 24 July**.
21. Mrs Voisey's preference was for a locum to be employed to manage her case load during her absence, and Mr Strugnell-Combe did take the first steps to arrange this. Then on 21 June Mrs Voisey was advised in a memo that he had decided it was not necessary and that Mrs Voisey's part-time field worker could cover things while she was away, under Mr Strugnell-Combe's supervision and with the assistance of other staff.
22. During her leave he spent some time examining Mrs Voisey's client files and became concerned that her standards of case management and record-keeping were not satisfactory. Amongst other things he became aware for the first time of client complaints in relation to certain files.
23. He also became suspicious that Mrs Voisey was continuing to clear her messages from home. He had expressly instructed her not to do so for two reasons. Firstly other staff were managing the cases during her absence and needed to receive the messages themselves. Secondly, he was concerned that Mrs Voisey had been working very long hours for some time and needed a complete break from work. He arranged for the password to be changed to prevent Mrs Voisey accessing the messages from home.
24. Mrs Voisey returned to work, as planned, on **24 July**. Unfortunately during her time away she suffered from a slipped disc and was unable to use her leave as she had planned. Upon her return to work the respondent agreed that the leave would be treated as sick leave rather than as annual leave.
25. Mr Strugnell-Combe and Mr Don Sinclair, a member of the Age Concern Executive Council with whom Mrs Voisey had always had a good relationship, met with her that day. The purpose of the meeting was, in Mr Strugnell-Combe's words:

"to discuss the fact that Age Concern was not complying with its ACNZ [Age Concern New Zealand] obligations and to discuss particulars of this. Dawn was asked for, and provided, her comments on this. We discussed the general ACNZ and EAN standards and the importance of these being adhered to by Dawn. This meeting lasted almost two hours. I informed Dawn that I would be arranging an external review, which would look at the EAN service delivery to ascertain its compliance with relevant standards and contracts. I also asked Dawn to ensure that she:

- (a) keep her mobile on at all times during working hours while out of the office
- (b) provide a full note of meetings attended outside the office
- (c) work within Age Concern's official hours of work and give me a weekly record of the hours she worked (this was because I was concerned about both her safety and ensuring that Dawn did not overwork); and
- (d) keep a phone log to provide to me weekly, to help ascertain her workload."

Mr Strugnell-Combe confirmed these points in a memo to Mrs Voisey of the same date.

26. In a separate discussion on the same day Mr Strugnell-Combe also questioned Mrs Voisey about the concerns he had identified, during her leave, in relation to the management of certain specific cases. He did not put these concerns to her in writing and told me that on the whole he was satisfied with her explanations in relation to most of these matters. Mrs Voisey told me that she found his manner in presenting his concerns, and his insistence on explanations for those issues, offensive.
27. Mr Strugnell-Combe continued to have concerns about related issues of client confidentiality and record keeping. He recorded these concerns and instructions to her about the procedures required, in a memo dated **26 July**. On **30 July** he spoke with Mrs Voisey again about these issues, and again outlined what he wanted from her. In addition he advised that he was concerned about EAN involvement in Court applications and instructed that she was not to undertake any further Court applications until further notice. He considered it a breach of the respondent's operating protocols for her to do this work. (I have checked the relevant protocol and note that there is at least an arguable case for his assertion.)
28. Mr Strugnell-Combe told me:
- "I want to stress that, throughout this time, I was making a genuine effort to try to get Dawn to correct her working practices. I was not in any way trying to bully or harass Dawn or force her to leave her employment. Despite Dawn's continual refusals to make any of the changes I requested of her, I did not go through a disciplinary process with Dawn, nor did I wish her to leave. I had no doubts as to Dawn's loyalty to her clients or her dedication to the job. There were practices she needed to change and standards she needed to meet for her own protection, as well as the protection of her clients and the organisation."
29. Mr Hall also told me that he was very much of the view that Mrs Voisey had not been properly managed in the past and that any deficiencies in her work practices were not her fault. It is relevant in this regard that she was not a qualified social worker. He confirmed that Mrs Voisey had a considerable degree of support in the community and "got results." This view was confirmed during my investigation by provision of testimonials from a number of people with whom she had worked.
30. As advised to Mrs Voisey on **24 July**, Mr Strugnell-Combe had proceeded to arrange for an independent reviewer to undertake a review of Age Concern's provision of its EAN services. Mr Hall told me that the exercise was to be wide in scope. Its purpose was to compare what Age Concern locally was doing against Age Concern New Zealand and EAN standards and CYFS protocols, and to see whether anything needed to change, irrespective of the identity of the incumbent co-ordinator.
31. He and Mrs Voisey met with the reviewer, Ms Thomson, on **30 July**. Ms Thomson outlined her process and what would be required of Mrs Voisey. A further meeting between Ms Thomson and Mrs Voisey was arranged for 1 August.
32. However, **Wednesday 31 July** was to be Mrs Voisey's final day of work. Since her return on 24 July there had been just eight working days. It had been a very stressful time for Mrs Voisey. She had continued to experience health problems relating to her slipped disc and in addition her daughter was hospitalised. (Because of this she had taken 29 July as domestic leave.) In addition, as we have seen, the respondent had taken steps to address matters associated with her work. Mrs Voisey felt that she was not getting the support she needed from her employer during this time.
33. She visited her doctor on either Friday **2 August** and obtained a medical certificate which stated very briefly that she would be off work because of illness from 5 August until 12 August.

34. At this point, Mr Strugnell-Combe was very concerned about the fact that Mrs Voisey had not participated in the review process. He was also concerned that after having taken two days leave already since returning from a fortnight away, she now proposed to take a further five days. He told me he wanted to know whether the problem was due to the slipped disc, or was due to stress and related to her job in some way.
35. On the evening of 5 August Mrs Voisey visited Mr Sinclair at his home to air her concerns. He already knew that she had problems in her working relationship with Mr Strugnell-Combe. In addition, Mr Strugnell-Combe had spoken with him that morning with regard to Mrs Voisey's sick leave, in anticipation of sending out a letter seeking clarification from her of the reasons for the leave. Mr Sinclair realised from all this that the situation was becoming more pressing.
36. Mrs Voisey talked for some time about how she was feeling. They then discussed whether an appropriate first step to addressing the situation might be for Mrs Voisey to meet with the Executive Committee. Mr Sinclair obtained her permission to speak to both Mr Strugnell-Combe and the Chairperson to arrange this. There was also some discussion of her sick leave and the fact that Mr Strugnell-Combe sought clarification of the reasons for it. She told him that if she got a letter seeking details of her illness she would take some sort of action. She then expressed concerns that Mr Hall (who is a barrister and solicitor) might 'treat her like he was a defence lawyer.' Mr Sinclair did not say anything to contradict this. The meeting ended with goodbyes and a hug. After Mrs Voisey had left Mr Sinclair telephoned Mr Hall to suggest that a meeting between Mrs Voisey and the Board be arranged. Mr Hall agreed that this was a reasonable request and Mr Sinclair left the arrangements to him.
37. After e-mailing a draft to Mr Hall for approval Mr Strugnell-Combe sent Mrs Voisey the following letter:

"Sick leave

Thank you for the copy of your most recent certificate of absence from your doctor which I received by fax today. Please note I shall need the original from you in due course. I also need a similar certificate to cover your absence if Monday the 29th of July and Friday the 2nd August (since on Tuesday the 30th of July you decided not to submit the original certificate from your doctor confirming your absence for the whole of the week 29th July-2nd August. As it was then your intention to attend work.

I would confirm here that you took Thursday the 1st August as a day of annual leave and that this was granted at such short notice (4pm the preceding day) only and exceptionally because I was aware of your daughter's illness. Nevertheless, I would express the extreme disappointment of both myself and our Executive Council that you were therefore unable to keep your appointment with Vivienne Thompson, the Independent reviewer of the EA&N service. I am very saddened that your extended absence over this week now makes it unlikely that you will be able to meet with her (as we told you, she intends to have her report finished and with me by the end of business on Friday the 9th August) although should your circumstances alter, she will make herself available here on Friday morning. Alternatively she can speak with you at some time by telephone. Please let me know if either of these options is acceptable to you. I would urge you if at all possible, to take part in the process of revue.

Since your doctor's certificate does not allude to the nature of your illness, I would like your written permission to obtain this information from him. Additionally, the Executive Council may require you to undergo an independent medical, naturally at their expense.

I hope that your health improves quickly."

38. Mrs Voisey received this letter on 6 August. She told me that she felt she was being treated differently from other staff. On one occasion, one woman had been given permission to leave the office immediately upon hearing that her daughter had broken her arm at school. Another had been given two-three weeks leave in order to undergo gall bladder surgery.

39. At the investigation meeting, Mr Strugnell-Combe distinguished the example of the staff member who underwent surgery by saying that this person had volunteered information about the nature of her illness and the time she would require off work. In relation to the other example it is relevant that Mrs Voisey's daughter was an adult and that her hospitalisation was not due to a life-threatening or otherwise serious illness.
40. Mrs Voisey was not prepared to authorise her doctor to speak to the respondent, and the following day, she instructed Counsel. On 9 August 2002, on her behalf, he raised a personal grievance alleging disadvantage. Her actions pre-empted the proposed special meeting of the Board for which a date had yet to be arranged, due to the logistics of getting all its members together. After this, the respondent made all further contact through Counsel for the applicant, and the plans to convene a special general meeting were put on hold.
41. Mrs Voisey was offered further opportunities to comment on the review on August 8 and again on August 16. She did not take these up.
42. The review was presented to Age Concern in mid August and raised a number of concerns in relation to the provision of EAN services, which in turn gave rise to a number of issues for discussion with Mrs Voisey. She was however still on sick leave. On **23 August** a copy of the review was provided to Mrs Voisey via her solicitor. Again, she made no comment.
43. On **26 August** she saw the doctor again and obtained a further medical certificate for the period from **15 August 2002** until **9 September 2002**.
44. On **5 September** 2002 the parties attend mediation but were unsuccessful in resolving any of the issues between them.
45. As a result, on **9 September** Mr Strugnell-Combe prepared a document setting out a number of questions and issues (relating to the review) for comment by Mrs Voisey. The respondent says that this process was not disciplinary in nature. Mrs Voisey says that the document contained a multitude of interrogatories which are accusatory in nature.
46. On 16 September the respondent wrote to Mrs Voisey, through her solicitor, again, as follows:
- “Please note that your accrued annual leave entitlement of 37 days plus 10 days annual sick leave will be at an end by the close of business in Thursday 19th of September 2002. However, you will be paid until Friday the 20th of September 2002 but not thereafter. Your continued absence beyond the 20th instance must be supported by a medical certificate.
- I understand that a record of Age Concern Counties/Manukau Inc's outstanding concerns was passed to your solicitor's office at the beginning of last week...we have to date not received your response.
- You are required to respond in writing and in full to all the points raised, by no later than lunchtime on Thursday the 19th of September 2002.
- Since there concerns are considered by our Council to be of a profoundly serious nature you are further required to attend the office of our Chairperson at 15 Norman Spencer Drive to discuss your written response on Monday the 23rd of September 2002 at 10.00a, where you will meet with our Chairperson, Alistaire Hall, and myself. Another Council member may also be present . You are entitled to bring with you a support person and I urge you to do so.”
47. On 18 September 2002 Mrs Voisey's solicitor wrote acknowledging the correspondence of 9 and 16 September as follows:

“We acknowledge receipt of your letter of 9 September 2002 together with a document entitled “Strictly Confidential” in which our client is asked to respond to the matters raised therein.

Our client considers the documents marked “Strictly Confidential” and the voluminous and accusatory allegations made therein as a further example of harassment and bullying that our client had endured during her employment.

In the circumstances and following the advice of 16 September 2002, our client considers that she can no longer have any confidence and trust that an employment relationship with your client will continue in the future

Consequently, she regards her employment as being at an end at the instigation of our client.”

The basis of the constructive dismissal claim

48. Even before he was appointed as executive officer, Mrs Voisey experienced difficulties with Mr Strugnell-Combe’s manner towards and treatment of her. From her point of view, the situation deteriorated further after his appointment to the position of Acting Executive Officer. She found all of the following behaviours highly offensive:

- his use of the word “crap” in her presence;
- the making, in Mrs Voisey’s hearing, of critical comments about his predecessor (Mrs Voisey’s former manager)
- the placement of items of the previous manager’s property in the rubbish;
- his failure to engage a locum to cover for Mrs Voisey during her leave;
- excluding Mrs Voisey from meetings, including Executive Council meetings which she had formerly attended;
- his requirement that she keep her cell-phone on at all times; and advise of her whereabouts when making field calls;
- complaints about her work; and reference to client complaints, without provision of written verification of this;
- a requirement that she obtain peer supervision from a qualified social worker;
- differential treatment compared to other staff with sick family members;
- the making of comments that implied she may have gone through papers on his desk;
- a heavy workload coupled with his refusal to permit continued use of volunteers to assist her with her work;
- the commissioning of an independent review of operations prepared without Mrs Voisey’s input and containing inaccuracies and unwarranted criticisms of her performance;
- demanding she provide details of ill-health causing absence from work;
- communication to her by formal memo;
- interference with her communications to a personal friend, her former manager.

49. The applicant also says that:

- the employer’s criticisms of Mrs Voisey’s performance were unfounded;
- there was never any real concern for her;
- the tone of Mr Strugnell-Combe’s letters and memoranda to her, and his failure to consult with her, are indicative of a disdainful attitude to her.

50. The applicant says that all this amounted to bullying and harassment by Mr Strugnell-Combe which reached a point where she had no option but to resign. It is submitted on her behalf that the facts support a finding that there was a constructive dismissal arising either:

- As a result of a course of conduct by the employer to force Mrs Voisey to resign, or

- Arising out of a breach of the implied term that employers ought not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence.

For its part, the respondent maintains that Mrs Voisey resigned freely and of her own accord from her employment and there was no constructive dismissal.

Conclusions

I indicated to the parties when I met with them that the purpose of my investigation was not to assess the merits of the changes Mr Strugnell-Combe introduced to Age Concern. It is neither necessary nor appropriate for me to attempt to evaluate the management or delivery of the services provided by that organisation.

Nor is it necessary for me to establish whether the respondent would have been justified in instituting disciplinary proceedings against Mrs Voisey. The question whether the proposed meeting of 16 September might have led to such proceedings will now remain unanswered.

However, I will say that I heard evidence which satisfied me that in May 2002 Age Concern was facing serious problems and it was incumbent upon the Executive Council to do something to address those. The organisation was experiencing financial difficulties and was at risk of losing future funding. It was therefore to be expected that the new executive officer, Mr Strugnell-Combe, would make changes to the way in which the operations were administered and conducted. The introduction of such changes was justified.

What was the cause of the resignation?

Reference to the letter of resignation, which came through Counsel, indicates that the immediate trigger for the resignation was receipt of the letter of 16 September and the document of 9 September. Arising out of this, Mrs Voisey had come to doubt her employer's on-going commitment to the employment relationship.

In the investigation meeting, Mrs Voisey clarified for me that she considered the tone of the letter and document to be offensive and took exception to being required to answer points arising out of the independent review. However, she made it clear that the letter and document were not the isolated cause of her resignation, but rather were the 'straw which broke the camel's back' and were viewed by her as part of a sequence of conduct which taken together, made it untenable in her view for her to remain in employment.

Mrs Voisey is of the very firm view that but for Mr Strugnell-Combe's conduct, she would not have felt she needed to leave her employment.

At the investigation meeting I asked her whether some of her feeling of stress at this time might be due also to her own health problems (her slipped disc was continuing to cause discomfort) and her daughter's recent illness. Mrs Voisey denied that these factors contributed significantly to her distress, however, I remain unconvinced of this and consider that they did play a part.

I conclude that although the strength of her reaction was mediated by her personal circumstances (her own ill-health and that of her daughter) Mrs Voisey resigned because:

- She found Mr Strugnell-Combe's conduct in the period from 1 May until 9 August to be unacceptable;

- she considered the tone of the documents of 9 and 16 September to be offensive, and
- she did not consider she should have to answer questions arising out of the independent review, and
- she doubted her employer's on-going commitment to the employment relationship;
- She considered that the employer was engaged in a course of conduct with the dominant purpose of coercing her to resign.

Was there a course of conduct with the purpose of coercing Mrs Voisey to resign?

There is no direct evidence to support the claim that Mr Strugnell-Combe acted with the deliberate and dominant purpose of coercing Ms Voisey to resign. Essentially the applicant is asking that I infer such a course of conduct from the chronology of events.

I cannot do so. Most of Mr Strugnell-Combe's requests of Mrs Voisey were entirely reasonable. All were, I accept, made in the best interests, as he saw them, of the organisation as a whole and EA&N in particular. Whatever conclusions may be drawn about his management style (I discuss this in further detail below) I heard nothing to indicate that his purpose was anything other than to put the organisation, and the delivery of its services, on what he saw as a more professional footing.

Was there a breach of duty by the employer in the conduct up to 9 August?

There is no dispute that on 5 August at the latest, Mrs Voisey put the respondent on notice of her concerns up to that point. This information was responded to by Mr Sinclair in what I consider a very proper manner. He offered a process whereby she would be formally heard by a special meeting of the full Board. This would have enabled her to air her concerns in a forum she considered appropriate and would have provided her with an opportunity to have those concerns addressed. Although she made comments about Mr Hall's manner, she accepted that offer, and Mr Sinclair took the first steps to make the necessary arrangements.

However, upon receipt of the letter of 5 August, she decided not to engage in the process. That letter was, I accept, terse in its language and its request for further information about the reasons for her absence. As I indicated to the parties at the investigation meeting, I do not consider it to be the automatic right of any employer to know the details of a medical condition causing an employee's absence from work. Certainly, it would appear unusual to require this in the event of a proposed five day absence. In addition, it was not acceptable for the respondent to push Mrs Voisey to participate in the review during her sick leave.

However, despite this, I do not consider that this letter changed the situation in such a way as to impair the proposed process. It was of course, posted before Mr Sinclair had spoken with Mr Hall about that process. Mrs Voisey had already shown, in her conversation with Mr Sinclair, that she anticipated the contents of that letter. It did not in my view amount to further or more serious conduct such as to negate the offer Mr Sinclair had made.

In my view, the respondent commenced reasonable steps to address the concerns Mrs Voisey had as at 9 August. She chose not to take up the opportunity provided for her own reasons. Therefore, I have concluded that the conduct prior to 9 August cannot give rise to a constructive dismissal, on its own or as part of a sequence of conduct.

For completeness, however, I make the following point in relation to the issue whether the conduct amounted to a breach of the duty of fair and reasonable treatment.

The two and a half days I spent with the parties have enabled me to make some observations about Mrs Voisey and Mr Strugnell-Combe personally.

Mrs Voisey is, in my concluded view, an extraordinarily sensitive person who took offence at behaviours which fall well within the normal range of what can be expected in the workplace, even a workplace which might be considered less robust than some others. Her reaction to Mr Strugnell-Combe's comments about his predecessor, for example, was in my view extreme. After going through her list of complaints, I find nothing to give cause for concern. Mr Strugnell-Combe was entitled to make changes for the benefit of the organisation and many of the changes he proposed were to Mrs Voisey's benefit also. For example I count amongst these his insistence that she maintain mobile phone contact when on field visits, limit her hours of work to a safe and healthy level and take long-overdue time in lieu and annual leave. I note in relation to the latter point that it is common ground that the work of EA&N was managed adequately during her absence, despite her fears to the contrary. In relation to her claims of having an excessive workload I note that she was offered, but did not take up, assistance with the administrative duties associated with her role

I also note that Mrs Voisey's claim of disparity of treatment is not supported by the evidence. She fails to draw the distinction between the need for a colleague to respond immediately when summoned to her young child's school and the situation in which she found herself (with an adult daughter hospitalised with a condition that was, by Mrs Voisey's own account, not serious.) In my view, the latter situation clearly permitted a more measured departure from the workplace than the former. Similarly, the colleague who was given leave to have surgery fully informed the respondent of her requirements and the way in which they might impact on its service. Mr Strugnell-Combe wanted only the same from Mrs Voisey.

I do accept, because I observed it in the tone of written communications and for myself at the investigation meeting, that Mr Strugnell-Combe's manner could be very brusque and insensitive even, at times, rude. However, this is not a matter of sufficient seriousness that it could be considered (as at 9 August) to have destroyed the trust and confidence in the relationship, particularly given that relatively brief timeframe over which the offending conduct occurred. It was not reasonably foreseeable, at that stage, that Mrs Voisey would resign, as is indeed borne out by the fact that she did not.

The document of 9 September

The applicant did not resign until the presentation of the document of 9 September and letter of 16 September which together constituted for her the final straw, and were in her view part of a continuum of conduct giving rise to her resignation.

As I have explained, I am not satisfied that there was any conduct by Mr Strugnell-Combe up to 9 August which was serious enough to destroy the relationship of trust and confidence between the parties, but even if there had been, the applicant chose not to take advantage of an opportunity to address her concerns about that conduct.

I must now consider whether the written communications of 9 and 16 September gave rise to a constructive dismissal, in isolation. As I have already outlined, the applicant

- considered the tone of the documents of 9 and 16 September to be offensive, and
- did not consider she should have to answer questions arising out of the independent review, and
- doubted her employer's on-going commitment to the employment relationship.

I have avoided reproducing the document of 9 September in full for reasons of economy but record that I consider the language and style of the document to be aggressive and unnecessarily confrontational, especially given that there were no disciplinary proceedings on foot.

However, it was reasonable for the respondent to seek a response to the points it contained, which had arisen out of the independent review. The subject matter needed to be addressed. On this basis I find that there has been a want of manners but not such as to amount to a breach that gives rise to a constructive dismissal.

In relation to the last point, I note that in Business Distributors v Patel [2001] ERNZ 124 at p.131 the Court of Appeal said, in relation to an alleged constructive dismissal claim:

“Mr Patel also said in his evidence that he had a concern that at the end of the 6-month period of salaried remuneration he would not be treated fairly when the review occurred; and that a sales target would then be imposed upon him in an unfair manner. However he was not entitled to treat himself as constructively dismissed in anticipation of something which lay well in the future and may well never have occurred. He cannot point to the employer’s possible future conduct as causative of the resignation.”

In a similar way, Mrs Voisey was premature in anticipating that the employer no longer had a commitment to the employment relationship. As I have indicated above, the outcome of the meeting proposed for 16 September could not be anticipated.

My final conclusion therefore is that there was neither:

- a course of conduct by the employer to force Mrs Voisey to resign, nor
- a breach of the implied term that an employer ought not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence.

I have also, as advised to Counsel, given consideration to whether Mrs Voisey might have a disadvantage grievance arising out of those aspects of Mr Strugnell-Comb’s conduct which I have identified as being less than wholly satisfactory. For the same reasons that the earlier conduct (pre August 9) does not give rise to a constructive dismissal, it does not give rise to a disadvantage grievance either. There was an opportunity to address her concerns and she did not take it.

As to the tone of the final documents, I reiterate that I do find them rude. However, this is quite simply not enough, in my view, to amount to a disadvantage grievance.

I can do nothing more to assist Mrs Voisey with her employment relationship problem.

Costs

I leave it to the parties to attempt to resolve this issue between themselves. If this proves impossible, the Authority will determine the matter. Any request for a determination should be made within 28 days of the date of this determination.

Y S Oldfield
Member of Employment Relations Authority