

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 86
5388721

BETWEEN	AMANDA WECK-CLUNIE Applicant
AND	CATHERINE BRONNIMANN First Respondent
AND	SUE MILLAR Second Respondent
AND	KATHLEEN PARNELL Third Respondent
AND	LAURIEL MCKENZIE Fourth Respondent
AND	AMANDA WECK-CLUNIE Fifth Respondent

Member of Authority: P R Stapp

Representatives: Vicki Eades, Advocate for Amanda Weck-Clunie

In Attendance: Catherine Bronnimann, Sue Millar (assisted by Shane Bryers), Kathleen Parnell, Lauriel McKenzie: First to Fourth Respondents

Investigation Meeting: Held on 7 May 2013 at Whanganui

Further information/affidavit: 22/23 May 2013

Date of Determination: 17 July 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Ms Weck-Clunie claims she has not been paid her entitlement to wages under her employment agreement, that her employer has refused to pay her, and that she has been prevented and excluded from work by her employer as a claim for unjustified disadvantage and trying to end her employment.

[2] The personal grievance as raised for unjustified disadvantage on 24 August 2012. A statement of problem was filed on 3 September seeking remedies contained in the personal grievance letter. It was later amended on 10 October 2012 in regard to the citation of the respondents. The details on the claim for unpaid wages were not filed until 23 January 2013.

[3] The respondents have denied all the claims.

Background

[4] Prior to the investigation meeting the Authority held a conference of the parties (18 December 2012 at Wanganui). An amended statement of problem filed by Ms Amanda Weck-Clunie's representative (Vicki Eades) cited Stillbirth and Newborn Death Support Wanganui as a respondent party (originally cited as the third respondent (SANDS)). I ruled that the name had no legal standing, and thus cannot have any standing in the current statement of problem as amended, except in as much as the people now cited as the first to fifth respondents had an involvement in the SANDS Wanganui Committee. I therefore deleted the name Stillbirth and Newborn Death Support Wanganui from the intituling as a purported party on its own.

[5] Pursuant to s 221(a) of the Employment Relations Act 2000 I formally joined to the employment relationship problem: Sue Millar, Kathleen Parnell, Lauriel McKenzie and Amanda Weck-Clunie as respondents. My reasoning for taking this action on notice and from an application made by Catherine Bronnimann was that all of them seem to have some responsibility in the running and management of the SANDS Whanganui Committee. There was also the potential issue of their responsibility for any liability on the claims if Ms Weck-Clunie was successful, given their involvement in the committee at the time.

Issues

- i. Was Ms Weck-Clunie employed, and if so, who employed her?

- ii. What are Ms Weck-Clunie's claims for unjustified disadvantage in her employment?
- iii. Does Ms Weck-Clunie have a personal grievance?
- iv. Is Ms Weck-Clunie entitled to any remedies: compensation for distress, hurt and humiliation and stress, and costs?
- v. What amount of money is Ms Weck-Clunie owed for any arrears of wages and who is responsible for paying it?

The facts

[6] SANDS Whanganui is an unincorporated group of people organised to provide voluntary help and support in the community. It was formed as a voluntary group. It is a non-profit organisation. It was established to provide support and resources to bereaved parents, families and whanau in the Wanganui region following the death of a child at any gestation, age or in any circumstances. As a group the organisation had rules documented in writing (June 2010 - revised on 28 May 2012). The quorum was set under the rules as 3 persons, but without any details. The committee had to be no less than 4 people and no greater than 8. Interested people had to apply to become members of the committee. Income had to be used to advance the charitable purpose of the organisation. This applied to payments too. There was no provision under the rules for employment.

[7] Ms Weck-Clunie joined and commenced as a volunteer before becoming a committee member. Then she accepted Ms Bronnimann's offer of work as an employee and they both signed off an employment agreement. Previously Ms Bronniman entered into an independent contract arrangement purportedly with the group, and then arranged her own employment agreement with another committee member at the time; allegedly Ms McKenzie. The signed agreement was not produced by Ms Bronnimann at the time of the Authority's investigation meeting, although I expected that it would have been, simply to assist in assessing her evidence and proofing it.

[8] The background to Ms Weck-Clunie's employment includes: signing off the employment agreement with Ms Bronnimann, with Ms McKenzie in attendance.

There was no other formal meeting and Ms Bronnimann says that the three of them constituted a quorum of the committee. This conflicts with the rules at

14. Private pecuniary profit

(a)...

(b) No member of the organisation, or anyone associated with a member is allowed to take part in or influence any decision made by the organisation in respect of payments to, or on behalf of, the member or associated person of any income, benefit or advantage.

(c)...

[9] The terms and conditions of Ms Weck-Clunie's employment were that she would be paid \$20 per hour for 20 hours per week, later increased to \$22.50 per hour. Ms Bronniman prepared the agreement.

[10] Ms Weck-Clunie's job description was for the role of Events and Programmes Coordinator. She was required to create successful events and fundraising activities that promoted awareness and the values of SANDS Whanganui within the community (Whanganui, Rangitikei, Waimarino and Ruapehu districts, based from Whanganui). The job description listed Ms Weck-Clunie's responsibility to SANDS Whanganui. Indeed she did activities that inevitably involved the members of the committee in association with her own involvement as a committee member. Furthermore the first correspondence from Ms Weck-Clunie in regard to her request to be paid involved Ms Bronnimann, Ms Parnell and the treasurer. Ms Millar was replaced when she resigned. Ms Millar pre-signed cheques to enable payments to be made and this included money from one grant to pay Ms Bronnimann and Ms Weck-Clunie. On 21 February 2012 Ms Millar handed in her resignation. Before leaving Ms Bronniman asked Ms Millar to set up SANDS Whanganui as an employer with IRD for 2-3 employees, and she filled out the forms and posted them off to the IRD. She became aware later that wages were not paid by Ms Bronnimann to Ms Weck-Clunie. The matter was then left with the new treasurer.

[11] The three payments that were made to Ms Weck-Clunie were for an advance, reimbursement of a fee and a Christmas bonus.

[12] A summary of Ms Weck-Clunie's wages was prepared by Ms Bronnimann for the purposes of the Authority's investigation. There were no other records except bank payments.

[13] Ms Weck-Clunie says that she filled in timesheets and left them in Ms Bronnimann's "cubby hole" at the workplace. Ms Bronnimann denied getting them and there is no further explanation as to what may have happened to them, if they existed.

[14] Given the above Ms Weck-Clunie did carry out work and continued by arrangement some voluntary activities.

[15] Ms Bronnimann accepted that she did not obtain approval from Ms Parnell, Ms Millar and Ms McKenzie to sign for and on their behalf as employers. Since SANDS Whanganui is not a legal entity and has responsibility for any debts and liabilities then the committee members must be responsible. It has its own bank account and the authorised signatories are personally responsible. The bank accounts are called SANDS. The signatories were Ms Bronnimann, Ms Parnell and Ms Millar. The new treasurer took over from Ms Millar when Ms Millar resigned. However, as individuals the First to Fifth respondents must be seen to have had some involvement, but as Ms Bronnimann never obtained their authorisation and approval to be personally involved in Ms Weck-Clunie's employment then only Catherine Bronnimann is responsible directly for her employment. This is supported by the following:

- a. That Ms Bronnimann signed the employment agreement personally and although her signature is under the name SANDS Whanganui there is no reference to any of the committee members in the agreement.
- b. That there was no approval from Ms Parnell, Ms Millar and Ms McKenzie for Ms Bronnimann to enter into an employment arrangement.
- c. That the minutes produced do not provide any approvals and authorities.
- d. That there is a problematic issue about the quorum and conflicts with the people involved when the employment agreement was signed.

- e. That Ms Bronnimann paid her-self from the funds and decided how to apply any split to Ms Weck-Clunie. The result was that Ms Weck-Clunie was not fully paid.

[16] Therefore I hold that the real nature of the employment arrangement rested with Ms Bronnimann.

[17] Ms Weck-Clunie's wage claim amounts to 22.50 per hour for 20 hours per week to a maximum of 80 hours per month. Her representative quantified the amounts owing in a letter dated 23 January 2013. She claims \$14,942.15 is owed. This excludes hours worked in July and August and sick leave and bereavement leave entitlements in October and November 2012 not provided by the employer. Ms Weck-Clunie could not detail these periods in her claim.

[18] In Ms Bronnimann's statement in reply a detailed analysis was provided as to the wages claimed and the amounts under the employment agreement. There is a counter claim from Ms Bronnimann to off-set sums already received by Ms Weck-Clunie. The money paid was \$3,333.34 on 28 June 2011 as an advance, \$2,000 in December 2011, and \$3,098.66 paid on 13 April 2012.

[19] The claim for wages and personal grievance was first raised on 24 August 2012 by letter from Vicki Eades to the committee's Chairperson at the time (Kathleen Parnell).

[20] Ms Weck-Clunie had not been paid except for the occasions referred to earlier. She responded to this by saying in an email; dated 4 April 2012 that:

...I would be happy to come and do the work for SANDS. But sadly, I cannot do 152 hours and 45 minutes work for a kindergarten, run a house and be a mum like I did for the month of August for nothing.

[21] Also, that email conceded that Ms Weck-Clunie did understand that any money received from grants and funds would be split 60:40 between Ms Bronnimann and her, but she says Ms Bronnimann paid herself all her wages, and any further wages owing to Ms Weck-Clunie would be paid later.

[22] The ending of Ms Weck-Clunie's employment occurred when she did not return to the place of work. This involved a variety of concerns between some of the committee and Ms Weck-Clunie, and although there was a discussion about having a

meeting, nothing happened further. Indeed Ms Weck-Clunie indicated she was seeking other work. She was not paid and thus the matter has ended up with the Authority.

Determination

[23] Ms Weck-Clunie believed on reasonable grounds that Catherine Bronnimann had ostensible authority to sign off on the employment agreement. Since Ms Bronnimann had no personal authority to sign off an employment agreement from Ms Parnell, Ms McKenzie, and Ms Millar then Ms Weck-Clunie reasonably relied upon Ms Bronnimann, and as such Ms Bronnimann is personally responsible. She was the chairperson of the group at the time.

[24] Ms Bronnimann may have believed that she was signing off for SANDS, but it is not incorporated. As SANDS was not incorporated there has to be personal responsibility. It is a long bow to presume authority on Ms Parnell, Ms McKenzie and Ms Millar when they certainly did not provide any approval and authority for the employment agreement and had no direct role in it. I am supported in this conclusion by:

- i. Ms Bronnimann's clear and unambiguous evidence in answering questions from me in the investigation meeting that she did not have any authority from Ms Parnell, Ms McKenzie and Ms Millar.
- ii. Ms Bronnimann prepared the employment agreement without any advice.
- iii. Ms Bronnimann did not sign off the agreement for and on behalf of anybody personally. She signed her own name under the name of SANDS.
- iv. Ms Weck-Clunie reasonably accepted the offer from Ms Bronnimann and was entitled to believe the offer was genuine; based on Ms Bronnimann's role in the group as the Chairperson at the time. Also she understood her role involved work and volunteering. She received some payments. However, I hold that Ms Weck-Clunie has not ever been clear about who her employer was because of the way she has named different respondents in the claims filed in the Authority, signed

the employment agreement with Ms Bronnimann and raised her personal grievance with Ms Parnell. I hold Ms Weck-Clunie genuinely, but gravely mistakenly, believed her employer to be SANDS. This may explain why she raised her personal grievance with Ms Parnell, the chairperson at the time. Her further confusion is accentuated by her belief that Ms McKenzie, Ms Millar and Ms Parnell have nothing to do with being her employer personally, although they were all members of the committee at the time. Their responsibilities lay elsewhere; such as authorities for the bank accounts and signing cheques.

- v. There are no minutes of any meeting held by the group and/or with a quorum for any approval and or authorisation for Ms Weck-Clunie's employment. Indeed the rules may have been gravely breached.
- vi. I hold that although Ms Weck-Clunie and Ms McKenzie were present when the employment agreement was signed, other than being a witness, Ms McKenzie had no other role, and indeed did not provide Ms Bronnimann with her personal authority. This could not possibly be a meeting properly called to approve what was happening. The other committee members were entitled to know properly on notice and given the opportunity to properly consider the matter. Especially as they each could be personally liable.
- vii. I hold that it is more likely than not that Ms McKenzie, Ms Parnell and Ms Millar did know about Ms Weck-Clunie working. It is not so clear that they all knew about the details of the terms arranged and their potential involvement with any responsibility and any liability. Ms Millar on her last day before resigning was asked to register SANDS Whanganui as an employer with IRD. She did as she was told. That is not enough to imply personal responsibility against her. She could not remember attending a meeting that Ms Bronnimann claimed Ms Millar did attend. Ms Millar did accept what Ms Bronnimann said. Because there was no proof of any authorities being given her mistake is not enough for me to consider that she was an unreliable witness. Indeed I

found her helpful and reliable on all other matters that she gave her honest evidence on.

- viii. The employment agreement does not meet all the requirements under the law as to what it needed to contain. Also, Ms Bronnimann was acting outside the written terms in regard to:
 - (a) How she split any funding from grants between her and Ms Weck-Clunie for their wages. This simply seemed arbitrary, I hold.
 - (b) Her belief that any wages was subject to funding.
- ix. On the latter belief it does appear that wages were dependant on funding and the employment agreement failed to cover this at all. It also runs counter to Ms Weck-Clunie's requests to be paid.
- x. The employment agreement had no written arrangements around any splitting of grants received for wages.

[25] I hold that Ms Weck-Clunie worked, and was employed. Indeed she received three payments of which one of the payments was called an advance on wages for work undertaken before she even started, another was called a reimbursement of a fee and the third a Christmas bonus. Ms Weck-Clunie did not challenge the payments being made. The group do not seem to have asked any questions of Ms Bronnimann about what was going on and seem to have accepted that Ms Bronnimann was in charge: examples of this are: (i) the arrangements Ms Bronnimann put in place in regard to the employment agreement, (ii) the arrangements she made for the purported quorum when the agreement was signed, (iii) the instructions she gave Ms Millar to register SANDS as an employer with IRD and (iv) that Ms Weck-Clunie and the others deferred to Ms Bronnimann on what to do. The wage details and arrangements directly involved Ms Bronnimann who decided on what was to be done and instructed people to do different things. There were no checks and balances in place. I hold that Ms Bronnimann was wrong in her approach to Ms Weck-Clunie's employment and pay. Indeed Ms Bronnimann was even acting outside the terms of the employment agreement with Ms Weck-Clunie.

[26] Ms Bronnimann is responsible for the payment of the wages owed to Ms Weck-Clunie because of the employment arrangement. This does not prevent her

attempting to make arrangements with anyone else involved in the group to help pay, if they are of any mind to assist her to meet the liability. However, Ms Bronnimann is ultimately responsible. This is tragic, and was an entirely avoidable situation. Any group of people involved in employment relationships need to understand the importance of getting advice, completing the legal requirements properly and protecting themselves from personal liability. Ms Bronnimann failed entirely to attempt to get advice and or use the information sources available to her and the group for any start out organisation. It is remarkable that Ms Bronnimann did not contact the then Department of Labour (DOL) (now Ministry of Business, Innovation and Employment (MBIE)) for help and assistance.

[27] Ms Weck-Clunie's instructions in regard to who her employer was has been confused, but not to the extent that there has been any deliberate misbehaviour. The real nature of the employment relationship must therefore rest with Ms Bronnimann acting on her own for the committee, I hold.

[28] This employment relationship problem has escalated beyond just a wage arrears claim due to deteriorating personal relationships over Ms Weck-Clunie's request for the group (SANDS Whanganui) to meet its responsibilities and pay her, and there has been a claim made for unjustifiable action and disadvantage in her employment. The latter claims relate to the allegations that Ms Weck-Clunie had various tools of work removed (information was not provided to her and her cell phone cut off) and that she was prevented from working and that the communication broke down once Ms Weck-Clunie obtained a representative. The claimed loss of tools, change in duties and break down of communications in the context of the voluntary organisation of the members of the group, Ms Weck-Clunie's decision to stay at home and not to return to the workplace are not sufficient to establish a claim of unjustified disadvantage, I hold.

[29] I understand how Ms Weck-Clunie came to a conclusion that she felt she was being replaced and disadvantaged, but I am not satisfied that Ms Bronniman was the sole cause of any alleged unjustified action given the communication problems, the voluntary nature of the committee and the group arrangements.

[30] I hold that Ms Weck-Clunie has not established any unjustified disadvantage action to have a personal grievance given her own role in the committee and as a volunteer. Also, she has not established that the actions of the employer were to try

and end her employment I hold. I hold, that she made a decision to work from home afterwards and any authority for this and submitting timesheets is unclear. The situation is further made murky by the employment of another person in an expanded role after Ms Bronnimann considered Ms Weck-Clunie had finished. I accept that Ms Weck-Clunie was not paid (and that this can give rise to a personal grievance), but this claim can be dealt with as an arrears of wages claim as it started out. Such claims in regard to the employment add significantly to the potential liabilities against Ms Bronnimann because she was the face of the group and the person controlling it. This was clearly a group of well-meaning and genuinely concerned people trying to help in a voluntary capacity in the community, including Ms Weck-Clunie who shared the values and aspirations of the group, and indeed was also on the committee. It would be unfair and unconscionable to put any further burden on Ms Bronnimann, and possibly, the group. Ms Weck-Clunie's overly legalistic and formalistic approach to the employment relationship problem extending the employment relationship problem hindered any possibility of earlier and proper settlement, I hold. Having said that I also hold that Ms Weck-Clunie's rights have not been acknowledged either. Even if I am wrong I hold that in equity and good conscience it would be unfair to impose more financial remedies for personal grievances on Ms Bronnimann personally, particularly as it is not likely that she will be able to get the rest of the group to help her out. Moreover the unincorporated nature of the organisation has gone into recess, so there is not much any one can do to try and finance their way out of this messy situation. There are no funds being received by the organisation from fund raising, and in almost all probability it will be difficult to raise funds to pay wages and any compensation and legal costs. Therefore to resolve the employment relationship problem the only remedy I am prepared to order is for Ms Bronnimann to pay Ms Weck-Clunie a sum of wages based on the employment agreement, and interest (as claimed on 24 August and 10 October 2012).

[31] There is clearly a disagreement about Ms Weck-Clunie's entitlement to wages for the hours she has claimed. This was a voluntary organisation and that was recognised in voluntary work on different occasions, for example the organisation and work involved in hosting a national conference. Ms Weck-Clunie's late submission of time sheets, and that without proof that she did submit timesheets to Ms Bronnimann, does raise a question in my mind of the reliability of the claims especially when Ms Weck-Clunie says she worked from home, and that this was

without proper supervision and accountabilities for her hours and work. I therefore restrict the amount to the hours allowed under the employment agreement less the money paid. This is the difference between a total of \$11,114.25 less \$8,401.34 (\$5,098 plus the payment of \$3,333.34) leaving \$2,712.35 owing.

[32] I have also off set the amount of \$600 for the payment of a facilitation paid in advance to Ms Weck-Clunie. The total amount owed is \$2,112.35 gross, plus interest because Ms Weck-Clunie has been denied the use of her wages.

[33] Catherine Bronnimann is to pay Amanda Weck-Clunie \$2,112.35 gross wages. Interest on this sum is calculated at 5% per annum from 12 April 2012 (the last date wages were due) until the date of the determination (17 July 2013). This amounts to \$66.84.

Orders of the Authority

[34] Catherine Bronnimann is to pay Amanda Weck-Clunie;

- i. \$2,112.35 wages; and
- ii. \$66.84 interest.

Costs

[35] Costs are reserved.