

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 82/10  
5162426

BETWEEN                      ELAINE WHITE  
   Applicant  
  
AND                                NOAHS HOTEL (NZ)  
   LIMITED t/a RYDGES  
   CHRISTCHURCH  
   Respondent

Member of Authority:      Philip Cheyne  
  
Representatives:            Tim Oldfield, Counsel for Applicant  
   Quenton Donald, Advocate for Respondent  
  
Investigation Meeting:    30 March 2010 at Christchurch  
  
Determination:              31 March 2010

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**DETERMINATION OF THE AUTHORITY**

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[1]      Elaine White has worked at Noahs Hotel since 1986 and from 1990 as Housekeeping Supervisor.

[2]      From March 2009 Mrs White was required to perform housekeeping duties on a regular basis rather than just her supervisor duties. This problem is about whether that requirement is lawful. Mrs White says that she has been unjustifiably disadvantaged by the requirement to perform housekeeping duties and she claims distress compensation, a determination as to the legality of the change in her duties, a compliance order and a penalty. Noahs Hotel says that no grievance was raised with it in time and that it is entitled to get Mrs White to perform some housekeeping work.

[3]      There is a letter of appointment dated 8 January 2000 which is the most recent expression of Mrs White's individual terms of employment although there are subsequent adjustments to the salary payable. In addition, Mrs White was bound by a collective employment agreement that expired on 30 June 2006. Pursuant to s.61(2)

of the Employment Relations Act 2000 Mrs White remains bound by the terms of that document as an individual employment agreement. Neither the letter of appointment nor the collective agreement says anything about Mrs White's duties other than classifying her as a *Housekeeping Supervisor* reporting to the *Executive Housekeeper*.

[4] Quenton Donald is Noahs Hotel's general manager, a position he took up in September 2008. Before then he worked elsewhere for Rydges and other hotels. Some time prior to March 2009 he received instructions from his managers that the average number of rooms cleaned per 8 hour period at Noahs Hotel was 13 while the majority of Rydges' properties were between 18 to 21. It became apparent that a major reason for Noahs Hotel's low ranking was that the supervisors usually did not clean rooms during their shifts. Mr Donald also conducted some investigations and established that supervisors elsewhere routinely include room cleaning with their supervising duties. At some point Mr Donald was instructed to improve Noahs Hotel's productivity to meet a benchmark of 16 rooms per 8 hour period. He met with the executive housekeeper (Dallas Rees) and they resolved to meet with the two supervisors (Mrs White and Liz MacKay). The four met on either 5 March at 1pm on an hour's notice (Mrs White's evidence) or 3pm on 11 March 2009 on two days' notice (Mr Donald's evidence).

[5] There is also some dispute about precisely what was said at the meeting. Unfortunately no-one took any notes so the participants are relying only on memory now and recollections have no doubt been affected by the disagreement that arose after the meeting. In light of Mr Donald's evidence it is not necessary to resolve the dispute. In short, according to Mr Donald, there was discussion between the four of them about how to achieve the required benchmark and he left it on the basis that they should think about it over the weekend and let him know if they came up with any ideas. Ms MacKay approached him subsequently but Mrs White did not. Mr Donald's evidence is not that there was any agreement as such at the meeting to amend the scope of Mrs White's contractual duties.

[6] About a week after this meeting Mrs White and Ms MacKay started cleaning rooms as part of their regular duties rather than just supervising others who performed that work. They are allocated 8 rooms per shift so approximately half their working day now is work other than supervision. Some weeks later, on 6 April 2009, Mrs White met her union organiser (Simon des Baux) to get advice about the

requirement that she spend about half of her working day cleaning. Mr des Baux took up this matter with Mr Donald on 21 April 2009. I accept Mr des Baux's evidence that he told Mr Donald that he could not unilaterally change Mrs White's terms of employment, that doing so was a breach of her terms and conditions of employment, that it was illegal and that the union would have to commence legal proceedings if Mr Donald did not reverse his decision requiring Mrs White to clean rooms. Mr Donald did not accept this characterisation of events and said so. It is not necessary to closely canvass the discussion between the two men.

[7] In May 2009 Mr des Baux requested mediation which occurred on two days in June 2009. The matter was not resolved. There was a further meeting and correspondence in August 2009 but the matter remained unresolved. For Mrs White it was indicated that she would cease any room cleaning duties but Mrs White relented on that position when Mr Donald said he would have no option but to act *accordingly* if Mrs White did not perform this work. During much of this time Mrs White was on ACC either fully unfit or fit for light duties which excluded room cleaning.

#### **Raising a personal grievance**

[8] Counsel refers me to *Clark v Nelson Marlborough Institute of Technology* (2008) 8 NZELC 99,483, (2008) 5 NZELR 628, *Ruebe-Donaldson v Sky Network Television Ltd (No 1)* [2004] 2 ERNZ 83 and *Poverty Bay Electric Power Board v Atkinson* [1992] 3 ERNZ 413 to support the submission that Mr des Baux did enough during the meeting on 21 April to raise Mrs White's grievance about being required to do work outside the scope of her terms of employment. I accept that submission. If Mrs White has a grievance, it was raised orally by Mr des Baux on 21 April 2009.

#### **The scope of Mrs White's duties**

[9] When Mrs White commenced work as a *Housekeeping Supervisor* her duties involved checking rooms, allocating rooms to the housemaids in the executive housekeeper's absence and supervising the housemaids. There was another *Housekeeping Supervisor*. While checking rooms they would regularly do an item of cleaning on a rotating basis. Mrs White's evidence is that she did not routinely clean rooms except in the quiet season over the winter when there was not enough work for the two supervisors and they took it in turns to make up their day by cleaning rooms. In 1998 the other supervisor was made redundant and a new position of *Room*

*Attendant/Relief Supervisor* was created. That person then was the one to do the room cleaning over the quiet winter period and Mrs White simply performed the supervisor duties. Ms MacKay was appointed as a *Housekeeping Supervisor* in 2008. Mrs White was ill and did not work between May and August 2008 and then worked part-time for a period on her return. She still did not clean rooms as part of her routine work until after the March 2009 meeting when she was required to do so in order for Noahs Hotel to meet its productivity benchmark. It is accepted by Mrs White that she did clean rooms on other occasions because of unexpected staffing shortages and the like but these occasions were infrequent. There is no reason to doubt any of Mrs White's evidence as above.

[10] There is a statement of evidence from Mrs Rees, the executive housekeeper. Her evidence is that all supervisors have cleaned rooms in the past with numbers depending on how quiet it is including supervisors cleaning rooms every day over the quiet winter period. There is perhaps a difference between Mrs Rees and Mrs White as to the degree of room cleaning done by supervisors but in substance they are both saying that room cleaning was never a routine part of a supervisor's duties.

[11] Arrangements at other hotels or with other employees at Noahs Hotel have little relevance to establishing the scope of Mrs White's duties. That can only be identified from her position title and from what was done in practice. It is clear from the evidence that Mrs White was not required as a matter of routine to do room cleaning. I find that the change required of her from working full time as a supervisor without routinely cleaning rooms to having to routinely clean rooms for about half of her shift each day is not within the scope of the terms of her employment with Noahs Hotel.

### **Remedies**

[12] I am asked to make a compliance order requiring Noahs Hotel to comply with the terms of Mrs White's employment contract. It should not be necessary to do that now that I have determined that she cannot be required to do routine room cleaning. I will adjourn the application for a compliance order to allow Noahs Hotel an opportunity to comply with the terms of Mrs White's employment as now determined.

[13] Counsel submits that the employer's action in requiring Mrs White to do room cleaning is not an action deriving solely from the interpretation, application or

operation or disputed interpretation, application or operation of any provision of the employment agreement. That submission is necessary to avoid the statutory limitation to the definition of an unjustified disadvantage personal grievance: see s.103(3) of the Employment Relations Act 2000. I do not accept that submission. Mr Donald genuinely believed that he was entitled under the terms of Mrs White's employment to get her to include room cleaning as a routine part of her duties. He was simply applying the terms of the employment agreement as he saw it; but as it turns out, he is wrong. There is no grievance.

[14] There is a claim for a penalty but I decline to award any penalty for similar reasons.

[15] Costs are reserved.

Philip Cheyne  
Member of the Employment Relations Authority