

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 449
5295739

BETWEEN JULIE WILLIAMS
Applicant

AND RADIUS RESIDENTIAL
CARE LIMITED
Respondent

Member of Authority: Dzintra King

Representatives: David Flaws, Advocate for Applicant
Sally Leftley, Advocate for Respondent

Investigation Meeting: 18 April 2011

Submissions received: 2 May 2011 from Applicant
27 May 2011 from Respondent

Determination: 19 October 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Ms Julie Williams, says she has been unjustifiably disadvantaged and unjustifiably dismissed by the respondent, Radius Residential Care Limited (“Radius”). She seeks compensation pursuant to s 123 (1) (c) (i) and lost remuneration.

[2] The respondent says Ms Williams was not dismissed but abandoned her employment.

[3] Ms Williams was employed as an Assistant Manager at Radius Oakhaven Hospital (“the facility”). In November 2009 she was appointed as Privacy Officer, a position the respondent says sat alongside her main role and was of a minor nature.

[4] Ms Helen Franklin was the Manager of Oakhaven and Ms Williams' superior.

[5] On the morning of 2 February 2010, her first day back after annual leave, Ms Williams was asked to attend a meeting in Ms Franklin's office.

[6] Ms Williams says that Ms Franklin started to berate her regarding some comfort fund accounts and an unbanked cheque. The comfort fund is an account relating to the personal monies held for each resident for personal spending. Ms Williams says Ms Franklin shouted at her and told her she was being removed as Privacy Officer.

[7] Ms Franklin said she told Ms Williams she was removing her from the role as she did not understand it.

[8] Ms Williams told Ms Franklin she was entitled to have performance issues dealt with formally. Ms Franklin began to shout and swear. Ms Williams said she would not be spoken to like that and walked out of the office reiterating that performance issues should be dealt with formally.

[9] Ms Franklin followed her and ordered her back to her office. Ms Williams refused. Ms Franklin stood at the door and yelled at Ms Williams to leave and that she was to get out.

[10] Ms Williams rang her sister to come and collect her. Ms Franklin told Ms Williams to leave the premises.

[11] Ms Franklin's version differs from Ms Williams' in some respects. She says she asked Ms Williams to attend an informal meeting for the purpose of updating her after her period of leave. Ms Diane Stainton, the Catering Manager, was also in the office.

[12] Ms Williams and Ms Franklin discussed admissions and discharges and the banking of comfort funds and cheques.

[13] Ms Franklin told Ms Williams some issues had arisen regarding the fund that she had had to intervene in and resolve.

[14] Ms Franklin told Ms Williams that a box containing confidential resident notes had been found in an insecure location under Ms Williams' desk. Ms Franklin said these appeared to be the same notes she had previously discussed with Ms Williams and had asked her to resolve the matter.

[15] Ms Williams told Ms Franklin she had delegated that matter and was not responsible for the fact that it had not been done. At that stage Ms Franklin removed the Privacy Officer role.

[16] Ms Franklin says that Ms Williams was very defensive and became very aggressive and got up to leave. Ms Franklin told her the discussion was not finished. Ms Williams said it was as far as she was concerned.

[17] Ms Franklin asked Ms Williams to go home and calm down

[18] Ms Wendy Turner, the Chief Operating Officer for Radius rang Ms Williams that afternoon and asked her to attend a meeting with Ms Franklin the following morning. Ms Williams said she was very shocked and agreed to do so.

[19] On reflection, Ms Williams sought advice. Mr Flaws considered she had been dismissed and cancelled the meeting, telling Ms Turner that Ms Williams was stressed and did not want to meet. He said all communications should be through him.

[20] Ms Turner contacted the Human Resources manager, Ms Eleanor Robinson, who contacted Ms Williams and urged her to attend a meeting.

[21] Mr Flaws contacted Ms Robinson to suggest a without prejudice conversation to try and resolve matters. Ms Robinson agreed.

[22] After a conversation which did not result in agreement, Radius wrote to Mr Flaws stating that Ms Williams had not been dismissed and that the failure to have a meeting with Ms Williams was disappointing. The expectation was that Ms Williams would return to work immediately.

[23] Mr Flaws submitted that Ms Williams' career prospects and advancement were adversely affected by the removal of the Privacy Officer role. Ms Franklin's action in removing the role in the manner she did was less than satisfactory. However, there was no evidence given by Ms Williams of any adverse effects such as could constitute an unjustified disadvantage.

[24] The applicant's witness, Mr Wharia Fletcher, gave contradictory evidence and as a result I attach no weight to his evidence.

[25] Ms Stainton made notes after the incident. These support the account of the incident given by Ms Franklin.

[26] I prefer the evidence of Ms Franklin and the respondent's other witnesses to that of Ms Williams. Ms Franklin did not dismiss Ms Williams; she simply told her to go home after an altercation had taken place.

[27] Ms Williams does not have a personal grievance.

Costs

[28] If the parties are unable to resolve the issue of costs leave is reserved for the respondent to file a memorandum within 28 days of the date of this determination. The applicant is to file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King

Member of the Employment Relations Authority