

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Elizabeth Wilson (Applicant)
AND Department of Child Youth and Family Services (Respondent)
REPRESENTATIVES Elizabeth Wilson, In person
Michele Ryan, Advocate for Respondent
MEMBER OF AUTHORITY Ken Anderson
INVESTIGATION MEETING 21 March 2006
DATE OF DETERMINATION 28 March 2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] Ms Wilson claims that she has a personal grievance in that she was unjustifiably disadvantaged in her employment with the Department of Child Youth and Family Services. Ms Wilson seeks that the Authority finds that she has a personal grievance and award her compensation under the provisions of section 123(1)(c)(i) of the Employment Relations Act 2000.

The Department of Child Youth and Family Services (“the Department”) deny that Ms Wilson was unjustifiably disadvantaged in her employment and say that she was treated fairly and reasonably at all times.

Background

- [2] Ms Wilson commenced her employment under the terms of a casual employment agreement on 21 January 2005. While it appears that Ms Wilson may have had some other employment experience with the Department before this date, it is only the most recent employment relationship that is relevant to the investigation of the Authority.
- [3] Ms Wilson has a background in social work and was employed by the Department at the Youth Justice Upper North Residence located at Wiri. The North Residence comprises of six units and resides up to 46 young people between the ages of 14 and 16 years, who have either been remanded or sentenced by the Courts to the Youth Residence. The nature of the casual employment relationship was such that Ms Wilson was called upon to fill the role of other employees that were absent for various reasons.

The Incident

- [4] On Sunday 6 February 2005, at approximately 12:15pm, an altercation arose between two of the young residents. Apparently, because of the behaviour of one of the youths, the gym session that had been scheduled, was cancelled by the gym instructor. The outcome was that another youth decided to vent his displeasure on the youth that caused the cancellation of the gym session and a fracas ensued.
- [5] Ms Wilson and two other staff, Mose Wright and Tufoe Fatupaito, were involved in breaking up the physical engagement and as a result, Ms Wilson received some bruising to her arms and back, albeit it appears that the engagement was quite brief and was resolved quickly even before other staff arrived on the scene.
- [6] One of the people that arrived on the scene was Ms Marianne Bartlett, a Supervisor in Unit 3 of the residence. Her evidence is that she advised Ms Wilson and Ms Fatupaito to take some time away from their unit and have a break. Ms Bartlett says that she sat with the other two women for possibly up to two hours and encouraged them to talk through the incident with the intention of defusing the emotion that existed.
- [7] The evidence of Ms Wilson is that she never spent that much time with Ms Bartlett. Nonetheless, I accept that Ms Bartlett did spend quite some time assisting Ms Wilson and Ms Fatupaito to recover from what was obviously a traumatic experience for them. Ms Wilson filled in an incident report and then departed home for the day.

Subsequent Events

- [8] The next day, Monday 7 February 2005, a meeting took place to discuss the incident that occurred the day before. It appears that Ms Wilson had quite strong views as to what should happen to the two youths involved in the incident. In particular, it was her view that the two young men should be placed into secure care. Furthermore, she, and possibly others, wished to have a complaint of assault made to the Police.
- [9] The agreed outcome of the meeting was that Ms Wilson and the other two staff involved in the incident, were granted paid stress leave for one week. Ms Wilson told the Authority that she was happy with this outcome.
- [10] On Tuesday 8 February 2005, Ms Wilson came back into her place of work, Unit 4. She had brought with her a McDonald's meal to give to one of the other residents who had been helpful during the earlier incident. In a written statement provided to the Authority, the Unit Manager, Ms Ana Tuigamala, says that she spoke to Ms Wilson and that Ms Wilson advised her that: ["she was fine and was ready to come back to work in the weekend." Ms Wilson denies saying this. She says that she was apprehensive about working in the weekend as she was still on stress leave, but felt obliged to agree to work as she knew the unit was short staffed. Nonetheless, it appears that Ms Wilson was reasonably relaxed about being back at the work place as she assisted other staff to prepare lunch that day before departing for home.
- [11] However, later that day, Ms Wilson attended her Doctor and obtained a certificate that indicated that she was unfit for work and would not be fit for normal work again until 15 February 2005. This certificate was issued consistent with accident compensation requirements and refers to: "Assault: bruises to arms, back and anxious." – directly related to the incident on 6 February 2005. The Department did not receive this medical certificate until Thursday 10 February 2005 when it was delivered by Ms Wilson's mother.

Debriefing

- [12] When matters such as the incident that happened on 6 February 2005 occur, the Department has a process, whereby staff involved, are debriefed. Apparently this process involves encouraging people to fully discuss what has happened, the effects upon each individual, and a general analysis of the situation, largely aimed at the dissipation of any stress or fearfulness incurred. The process involved is called Critical Incident Situation Management (“CISM”).
- [13] The evidence for the Department is that a CISM meeting was to be held on Wednesday 9 February 2005 and the relevant staff, including Ms Wilson, were invited to attend. However, Ms Wilson says that she never received notification of this meeting. The meeting did not proceed because other staff also were not present, albeit Ms Tuigamala reports that she notified everyone concerned that the meeting was to take place. Another CISM meeting was held on Friday 11 February 2005. The other two staff affected by the incident on 6 February attended but Ms Wilson did not. She conveyed, via one of the other staff, that she did not want to come to the residence. The Department say that an off-site CISM meeting could have been arranged if Ms Wilson had personally notified of her reluctance to attend a work place meeting.

Resignation

- [14] At approximately 3:00pm on Friday 11 February 2005, Ms Sabrina Davies, the Manager for Unit 5 at the residence, phoned Ms Wilson and notified her that she was to be transferred from Unit 4 to Unit 5 for her own safety. Ms Davies also wanted to talk about which shift Ms Wilson would be on that weekend. Ms Wilson conveyed that she had a medical certificate that provided that she would not be able to work until Tuesday 15 February. Ms Davies was unaware of this prior to phoning Ms Wilson. Nonetheless, she then went on to inform Ms Wilson that she would still like to have her in Unit 5 when she started back at work.
- [15] The evidence of Ms Davies is that Ms Wilson then informed her that she had contacted a union delegate and intended to contact a lawyer about pursuing a personal grievance. Ms Davies says that she wished Ms Wilson a “good recovery” and would pass on the information, as Ms Wilson had requested. The further evidence of Ms Davies is that at that point in the conversation, Ms Wilson said that she would not be coming back to work at the residence.
- [16] Ms Wilson accepts that the evidence of Ms Davies is correct but says that the phone call was at 6:00pm rather than 3:00pm. However, I conclude that Ms Davies is correct about the time of her phone call as I have viewed an email that she sent at 3:47pm, to Ms Simpson and Ms Tuigamala, recording her discussion with Ms Wilson.
- [17] Ms Wilson did not return to work for the Department but was paid until 1 March 2005.

Analysis and Conclusions

- [18] Ms Wilson claims that during her employment with the Department, she was affected to her disadvantage by an unjustified action by her employer. At the investigation meeting, having heard the overall evidence, I had some difficulty identifying the disadvantage that Ms Wilson is alleging and even more difficulty in identifying any unjustifiable action on the part of the employer.
- [19] When pressed as to the nature of her alleged grievance, Ms Wilson told the Authority that her grievance related to the following factors:

- (a) That she expected to be debriefed immediately.
- (b) That the Department did not have the youths involved in the incident charged by the Police.
- (c) That the youths were not placed into secure care.
- (d) That the Department did not pay for first Doctor's appointment as assured.

(a) *Debriefing*

[20] The evidence is that the Department acted promptly to ensure that Ms Wilson, and the other two staff involved in the incident, were debriefed and steps were taken to provide appropriate assistance in regard to their physical and mental welfare. Indeed, that process began almost immediately with the involvement of Ms Bartlett and again the following day when Ms Wilson and other two staff were granted one week of paid stress leave. Unfortunately, and for reasons that remain inconclusive to the Authority, a scheduled CISM meeting did not take place on 9 February 2005. However, this meeting was rescheduled for 11 February. For reasons that remain unclear, only Ms Wilson chose not to attend – she then resigned.

[21] I find that the Department acted promptly and correctly in regard to ensuring that appropriate steps were taken to debrief Ms Wilson and the other staff involved in the incident. The actions taken were consistent with what appears to be general practice within an environment where the type of incident that occurred on 6 February 2005 is not uncommon. Unfortunately, Ms Wilson chose not to fully participate in, or take advantage of, the services that were available. That was her prerogative but there is no merit in her view that the Department were at fault.

(b) *Complaint to the Police*

[22] I am satisfied that the decision of the Department not to have the Police involved in the circumstances pertaining to the incident was one it was entitled to make. Indeed, it appears that given the background of the youth offenders at the residence, what happened on 6 February 2005 was not exceptional and is something that staff encounters on a regular basis. Ms Wilson was free to, and did, make a complaint to the Police, but apparently no further action eventuated.

(c) *Placement in secure care*

[23] The Department decided that it was not appropriate or necessary to place the two youths in secure care. It is not the role of the Authority to become involved in matters that are the prerogative of the management of the Department, I would simply make the observation that given the overall circumstances, and the seriousness of taking the step to place people in secure care, the decision not to place the youths in secure care appears to be quite reasonable and certainly not something that Ms Wilson was disadvantaged by.

(d) *Payment of Doctor*

[24] While the Department believes that they have paid for a Doctor's appointment for Ms Wilson, they have assured her that if that is not so, then upon production of an appropriate receipt, payment will be made.

Determination

[25] Having given close consideration to Ms Wilson's claims and upon an analysis of the evidence available to the Authority, I find that there is no merit in those claims. While I accept that Ms Wilson may have a genuine perception that the management of the Department did not handle

matters as she believes they should have, her perception and the requirement to show that there are grounds for a personal grievance, do not coincide.

[26] I find that Ms Wilson does not have grounds for a personal grievance and her claims are declined and dismissed.

[27] The Department has indicated that if Ms Wilson was unsuccessful with her claims, costs are not being sought. Costs are to lie where they fall.

Ken Anderson
Member
Employment Relations Authority