



[4] She says the second complaint involved the same employee allegedly staring at her while they were working. She says she found the employee's staring "*creepy*".

[5] Ms Winitana says she made a complaint to her supervisor. The supervisor says she had a discussion with Ms Winitana and when she put the allegation to the other worker that worker denied the allegation. The supervisor says she was not told the details of the complaint by Ms Winitana that she now relies on. However, in the supervisor's statement of evidence she says she did tell the other employee that there had been a complaint made [paragraph 16] about the co-worker "*staring and hassling*" Ms Winitana. The supervisor denied that she told Ms Winitana to "*harden up*". There is evidence that the comment may have been made by the union delegate. The supervisor also says that Ms Winitana would not meet with her and the co-worker to sort the matter out. Ms Winitana says she left work on the advice of the union delegate because she was upset.

[6] Ms Winitana says she tried to raise the matter at other times but that the supervisor and the plant manager were too busy and not available.

[7] Ms Winitana's season ended. She says she returned in the new season with a reduction in her pay, and was required to work longer hours. She claimed that she was required to work in a new area, the offal department on the day shift, instead of working on the night shift in the lamb cuts department. She says the requirement to work in a different area was linked to her earlier complaints, and that the company had failed to resolve those issues.

[8] Ms Winitana decided to leave the company on 13 December 2008 when she recorded, on an employee advice form that she had resigned. She now says that this amounted to a constructive dismissal.

[9] AFFCO denied all the claims made by Ms Winitana, including lost wages, compensation and costs.

## **Issues**

[10] The following issues have emerged:

- Were there complaints? If so, what happened to them?
- What was the nature of the complaint?

- What were the circumstances of Ms Winitana's re-engagement for the new season? Was there any link to Ms Winitana's earlier complaints and her re-engagement in the new season?
- What was the reason for Ms Winitana's resignation?
- Was her decision to resign a constructive dismissal?
- Did the employer act reasonably and fairly?

### **Determination**

[11] I find that Ms Winitana did complain about another employee's behaviour. At the very least she did report to the supervisor that while she was working the worker concerned was "*staring and hassling*" her. It is not clear that Ms Winitana referred directly to being abused, yelled and shouted at. It is also probable that Ms Winitana and the supervisor had some discussion with the union delegate. However, Ms Winitana's complaint was never formally taken up with the union at the time and before she left. This would account for the reason why the supervisor says she did not know all the details of the complaint and what sort of outcome Ms Winitana wanted to resolve the problem.

[12] I accept that the supervisor decided the best way to deal with the problem was for everyone involved to meet and try to sort it out. This did not happen because Ms Winitana was not keen on meeting and then did not turn up for work. The supervisor told me that she told Ms Winitana that she had to face it and that it was the union delegate that told Ms Winitana to harden up. A file note written by the union delegate and produced by the supervisor supported this evidence, although the applicant was surprised by it and told me that she went home on the advice of the delegate. Also, the evidence is that the supervisor and the union delegate had gathered information that Ms Winitana had been gossiping that the co-worker she was complaining about was "*a creep*", and the supervisor considered at the time, if this was so, Ms Winitana needed to deal with it.

[13] I accept that the supervisor monitored and watched for any tension so as to ensure there was order in the workplace.

[14] I find that Ms Winitana's complaint related to poorly conducted inter personal relationships between her and co-workers. It is probable she was also a party and might have been involved in the matter to some extent. Any abuse, shouting and yelling directed personally at another co-worker cannot be condoned, and those employees should be under no illusion that the employer has the right to request them to desist from such behaviour, and that the employer is entitled to put into place procedures to ensure discipline is maintained.

[15] Also, there was an issue about Ms Winitana's availability to meet with the supervisor and the co-worker, but Ms Winitana decided that she could not meet with them and did not turn up to enable a meeting to take place. An employee has as much responsibility to be active and constructive as the employer: s 4 of the Employment Relations Act 2000. In this case, while the supervisor kept a watch on things, she left it with the union delegate, who agreed to encourage and get Ms Winitana to be involved and to sort the matter out. This would not have been inconsistent with any advice to go home, but Ms Winitana would have been expected to return reasonably to meet before the season ended.

[16] I find that while Ms Winitana's issues were never completely investigated by AFFCO when Ms Winitana's season ended, the supervisor had taken adequate action. Despite Ms Winitana having access to her union delegate there is no information available that Ms Winitana approached the union for official help. Her involvement with the delegate is unclear and confusing and seemed to be limited to the union delegate trying to get her to return and sort the matter out. The supervisor justifiably felt that there was nothing more she could do with the matter after she had exercised her judgement to monitor the situation, and found everything in order, and to ensure if there was any tension that it did not get out of hand at the time. I accept she says she spoke with the other worker concerned and decided a meeting was the best way to sort the situation out when the other worker denied the allegation.

[17] I find that when Ms Winitana commenced the new season by accepting work that was available at the time she was contacted and that her placement was not influenced by the events she complained about in the previous season. She has not been able to prove that AFFCO breached any obligation in regard to seniority or been able to link her recommencement for the new season with the earlier incident: AFFCO's evidence that she was called up for the new season on her seniority.

[18] I find that Ms Winitana considered her complaint had not been closed upon returning for the new season. She was entitled to have some closure, which was affected by the unavailability of the plant manager and the supervisor to take any action. They explained that at different times they were busy and they could be forgiven for this because there was no involvement of the union to lead them to believe that reasonably there was some risk to health and safety, before Ms Winitana decided to leave.

[19] I find that Ms Winitana left her employment because:

- She resigned voluntarily.
- She wanted to “blend” with her children.
- She did not like the extra distance she had to travel given that she had moved her home to another location, and had taken up another job.

[20] In all the circumstances there cannot be a personal grievance in the matter. The supervisor’s action was enough to ensure that there was a response to the information that Ms Winitana had given her even though she may not have properly conveyed to Ms Winitana what she did. Her action was impacted upon when Ms Winitana decided at the time she made the complaint not to meet and not turn up to work to enable a meeting to occur.

[21] AFFCO’S response to Ms Winitana’s circumstances was not inadequate and ineffective leading to a breach of the requirement to provide a safe place of work: The supervisor did take some action and did suggest a meeting that was declined.

[22] Ms Winitana’s claim about the reasoning for leaving to constitute a constructive dismissal must be balanced with the reasons for leaving listed above. Thus, I find she does not have a constructive dismissal claim.

[23] Ms Winitana’s claims are dismissed.

[24] Costs are reserved.

P R Stapp  
Member of the Authority