

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION : 2019 WAIRC 00877

CORAM : COMMISSIONER T B WALKINGTON

HEARD : ON THE PAPERS

DELIVERED : WEDNESDAY, 18 DECEMBER 2019

FILE NO. : U 22 OF 2019

BETWEEN : ELISABETTA MARRAPODI
Applicant

AND

MR ZANE CHARLES NORMAN
TREWIN NORMAN & CO.
Respondent

CatchWords : Harsh, oppressive and unfair dismissal, whether dismissal or resignation, no dismissal at initiative of employer - *Industrial Relations Act 1979* (WA) s 29(1)(b)(i)

Legislation : *Industrial Relations Act 1979*

Result : Application dismissed

Representation:

Counsel:

Applicant : Mr J Hammond

Respondent : Mr M Cox

Solicitors:

Applicant : Hammond Legal

Respondent : MDC Legal

Case(s) referred to in reasons:

Gunnedah Shire Council v Grout (1995) 62 IR 150; (1995) 134 ALR 156

J L v Haydar Family Restaurants t/a McDonalds [2003] WAIRC 09489; (2003) 83 WAIG 3303

Metropolitan (Perth) Passenger Transport Trust v Erhard Gersdorf (1981) 61 WAIG 611

Mohazab v Dick Smith Electronics Pty Ltd (No. 2) [1995] IRCA 625; (1995) 62 IR 200

Robert Gallotti v Argyle Diamonds Pty Ltd [2003] WAIRC 07928; (2003) 83 WAIG 919

Robert John Gallotti v Argyle Diamond Mines Pty Ltd [2003] WASCA 166; (2003) 83 WAIG 3053

The Attorney General v Western Australian Prison Officers' Union of Workers (1995) 75 WAIG 3166

Reasons for Decision

- 1 On 12 February 2019 Ms Elisabetta Marrapodi made application for unfair dismissal to the Western Australian Industrial Relations Commission claiming to have been harshly, oppressively or unfairly dismissed and seeking compensation.

Background

- 2 Ms Marrapodi worked at Trewin Norman and Co, the respondent, for 12 years from August 2006.
- 3 At some time, difficulties in the working relationship developed. On 14 January 2019 Ms Marrapodi attended a meeting with the office manager to discuss complaints from other staff members concerning Ms Marrapodi's behaviour.
- 4 On 15 January 2019 Ms Marrapodi provided two medical certificates certifying that she was unfit for work until 3 February 2019.
- 5 On 22 January 2019 Ms Marrapodi sent a letter notifying of her resignation with immediate effect. On 25 January 2019 Ms Marrapodi sent a second letter to her employer expressing her disappointment with her employer and confirming the end of the employment relationship. Ms Marrapodi says she was forced to resign as a result of the conduct of her employer.
- 6 Trewin Norman and Co assert that it was Ms Marrapodi's attitude and conduct that negatively affected her colleagues and the workplace. The respondent contends that Ms Marrapodi was not forced to resign, did so voluntarily and that being the case the Commission does not have jurisdiction to hear her claim.

Question to be determined

- 7 A threshold issue arises as to whether Ms Marrapodi was dismissed for there to be jurisdiction of the Commission under s 29(1)(b)(i) of the *Industrial Relations Act 1979* (IR Act). This is a jurisdictional fact necessary to be found in order for the Commission to further consider whether any such dismissal is harsh, oppressive or unfair: *Robert Gallotti v Argyle Diamonds Pty Ltd* [2003] WAIRC 07928; (2003) 83 WAIG 919, *Robert John Gallotti v Argyle Diamond Mines Pty Ltd* [2003] WASCA 166; (2003) 83 WAIG 3053, *JL v Haydar Family Restaurants t/a McDonalds* [2003] WAIRC 09489; (2003) 83 WAIG 3303.
- 8 The question I must decide is whether Ms Marrapodi's employment was terminated as a result of a voluntary resignation by her or at the initiative of the employer.

Principles

- 9 Fundamental to the Commission's jurisdiction in matters of this kind is for the applicant to be dismissed as a matter of fact and law. That is a matter of jurisdictional fact as set out in the decision of the Industrial Appeal Court in *Metropolitan (Perth) Passenger Transport Trust v Erhard Gersdorf* (1981) 61 WAIG 611.
- 10 The Industrial Appeal Court in *The Attorney General v Western Australian Prison Officers' Union of Workers* (1995) 75 WAIG 3166 (*Attorney General*), held that the resignation of the employee was in fact a dismissal by the employer. The employee was told that the allegations of the employer, which the employer's agents supported with statements they knew to be false, would be made public unless the employee resigned. The employer's agents stated that they had been directed to obtain the employee's resignation and the letter of resignation was dictated to the employee by the employer's agent. Furthermore, the employee's request for an

opportunity to obtain legal advice was denied. The Court found that the employer's conduct had left the employee with the impression that the options were to resign or be dismissed in circumstances of duress or procedural unfairness and held that Western Australian Industrial Commission had jurisdiction to determine the matter.

- 11 In *Mohazab v Dick Smith Electronics Pty Ltd (No. 2)* [1995] IRCA 625; (1995) 62 IR 200 (*Mohazab*), the Full Bench of the Industrial Appeal Court held that for a resignation to be considered to be in fact a termination of employment at the initiative of the employer, it is necessary that the conduct of the employer results directly or consequentially in the termination of the employment. In this matter the employer suspected an employee had acted dishonestly and during an interview the employee was told to resign, or the police would be called in. The employee agreed to resign and was escorted out of the premises and left standing in the car park until the respondent prepared a letter of resignation and brought it to him to sign.
- 12 In some cases where a worker resigns in an emotional state and the employer knew the resigning employee suffered from a medical illness or psychological condition, it might have a duty to "enquire into the employee's status at its own initiative in the period following the resignation before accepting the resignation" as in *Gunnedah Shire Council v Grout* (1995) 62 IR 150; (1995) 134 ALR 156. In this matter it was held that an employee suffering severe work-related stress and severe depression was nonetheless capable of acting rationally and had made a considered decision to leave his employment. The employer was entitled to accept the employee's letter of resignation on the basis that although he was stressed, he knew what he was doing.

Consideration

- 13 Ms Marrapodi asserts that the conduct of her employers and the other members of staff forced her to resign her employment. Ms Marrapodi listed examples of types of behaviour such as being excluded from work events, being ignored or not acknowledged, receiving aggressive notes, disrespectful and rude body language such as looks of hatred and disgust and being yelled at. However, Ms Marrapodi has not supported these claims with any specific examples and evidence of the behaviours. Ms Marrapodi's evidence is that she felt she had no choice other than to resign as a result of alleged bullying toward her.
- 14 Ms Marrapodi claims a list of complaints from other staff about her behaviour were formulated in an attempt to exacerbate her anxiety. (Witness Statement of Elisabetta Marrapodi [50]). The claim concerning the fabrication of complaints and its purpose is not supported by any evidence. On the contrary evidence submitted by two colleagues of Ms Marrapodi demonstrate that they had concerns about Ms Marrapodi's behaviour and conduct, considered that there was a negative impact on their work and had raised these concerns with their employer. (Witness Statement of Janice Ellen Sarah Row and Alexis Stella Kapoulitsas).
- 15 Ms Marrapodi's recollection of the process and content of the meeting with the practice manager, held to discuss the complaints of other staff members differs from that of the practice manager. (Witness Statements of Elisabetta Marrapodi and Jacqueline Jo Elizabeth Norman). On either version of this event, I find that it was not inappropriate for Ms Norman to meet with Ms Marrapodi to discuss the concerns colleagues held for Ms Marrapodi's attitude and conduct.
- 16 I do not find the conduct of the employer to be that which would result directly or consequentially in the termination of Ms Marrapodi's employment. The situation was not

those in which an employee would have been left with no option but to resign or be dismissed in circumstances of duress or procedural unfairness as was the case in *Attorney General*.

- 17 Ms Marrapodi says she was experiencing trauma at the time she composed her letter of resignation and she was hoping that her resignation would prompt acknowledgement of her circumstances from her employer (Witness Statement of Elisabetta Marrapodi [51-52]). A copy of the letter is attached to the Witness Statement of Zane Norman [ZN-1]. Ms Marrapodi was disappointed that the letter did not invoke a response and three days later wrote a second letter to her employer explaining how she was feeling. (Witness Statement of Elisabetta Marrapodi [56]). This letter is attached to the Witness Statement of Zane Norman [ZN-2]. In the second letter Ms Marrapodi sets out her disappointment with her employer as to the manner in which she had been treated and denies the veracity of the complaints against her. There is no revocation of her earlier notification of her resignation nor does she express any regret in resigning. The purpose of her second letter was apparently to convey her views about the workplace: “I wish you luck in getting another hard working and loyal employee like myself. I just needed to type this letter to get this off my chest so I can move on and put this behind me. It doesn’t really matter now whether you believe it or not”.
- 18 Ms Marrapodi may have written her first letter in an emotional state; however, her resignation was not in the heat of the moment. On 22 January 2019 Ms Marrapodi was not in the workplace, having commenced a period of personal leave on 15 January 2019. In the three days between writing the second letter, Ms Marrapodi had time to reflect and consider her options, she had an opportunity to consider her circumstances and obtain advice from others including her union, an employment/community law centre or a lawyer if she wished.
- 19 In December 2016, Ms Marrapodi attended a psychologist and was diagnosed with “General Anxiety Disorder”. Ms Marrapodi says that the respondent’s practice manager was provided with correspondence from her psychologist, which I infer was as a result of the consultation in December 2016 and at that time. There is no evidence that Ms Marrapodi nor her psychologist provided any further information concerning her mental wellbeing to her employer after that date. Ms Marrapodi says that despite the information provided by her psychologist she continued to be bullied and harassed at work during her entire employment. Ms Marrapodi provides a letter, dated 14 March 2019 (two months after the employment relationship had ended) from her psychologist that sets out dates of various appointments being three appointments in 2016, eight appointments in 2017 and one appointment almost one year later in 2018. In her record of a meeting with Ms Marrapodi in September 2018 the practice manager acknowledges that she was aware that Ms Marrapodi was anxious, had a bad year personally and was obtaining professional help (Witness Statement of Jacqueline Jo Elizabeth Noman [JN-1]). Following the meeting with Ms Norman on 14 January 2019 Ms Marrapodi left the workplace and did not return. Ms Marrapodi attended her general practitioner and provided two medical certificates for the period 14 January 2019 to 3 February 2019. Ms Marrapodi was clearly unwell and stressed however, similar to *Gunnedah Shire Council v Grout*, Trewin Norman & Co was entitled to accept her letter of resignation, particularly when confirmed by the second letter.
- 20 For the reasons set out herein, therefore I find that the termination was by the applicant and it was not a dismissal. I dismiss the application.