

UNDER Reference No. HRRT 022/2012
BETWEEN THE HUMAN RIGHTS ACT 1993
AND STUART JAMES MEEK
PLAINTIFF
MINISTRY OF SOCIAL DEVELOPMENT
DEFENDANT

AT WELLINGTON

BEFORE:

Mr RPG Haines QC, Chairperson

Ms DL Hart, Member

Hon KL Shirley, Member

REPRESENTATION:

Mr SJ Meek in person

Ms C Fleming and Ms EB Bennett for Defendant

DATE OF HEARING: 19 and 20 August 2013

DATE OF DECISION: 16 September 2013

DECISION OF TRIBUNAL

[1] Mr Meek alleges that he was denied financial assistance by the Ministry of Social Development (the MSD) because he is not a Maori. The issue for determination is whether this allegation has been established on the evidence.

[2] In the course of his evidence Mr Meek gave a number of examples of what he believes to be a failure of service delivery by MSD staff in their interactions with him. However, as the Tribunal emphasised during the hearing, it has jurisdiction under the Human Rights Act 1993 to determine only whether there has been unlawful discrimination on one or more of the grounds listed in s 21 of that Act. The Tribunal has no jurisdiction in relation to complaints that the Ministry failed to properly process or consider an application for financial assistance. That is the function of the Social

Security Appeal Authority. Mr Meek did in fact commence a review under the Social Security Act of the decision in issue in this case but that review was subsequently withdrawn on 7 December 2011. In these circumstances there is no need to set out in detail the service delivery complaints made by Mr Meek against the Ministry. As he fairly accepted, such complaints are relevant in the present proceedings only to the degree that they assist establishing the allegation that Mr Meek has been discriminated against by reason of his race.

The case for Mr Meek

[3] Mr Meek has longstanding mental health problems and in addition his physical health is poor. For some years he has been receiving financial assistance from the MSD and has some familiarity with the Ministry's processes.

[4] Mr Meek was living in Christchurch at the time of the 4 September 2010 and 22 February 2011 earthquakes.

[5] After the 22 February 2011 earthquake he concluded that he was being adversely affected by a combination of stress and difficult living conditions and that his fragile health would be best served by relocating to the North Island. He had friends in the Wellington region and found that they were in need of a house-sitter. This meant that for a short period at least he would not incur accommodation expenses.

[6] Mr Meek arranged for his modest household effects to be packed and moved from Christchurch to Wellington where they were placed in temporary storage. On 6 March 2011 he attended the Ministry's Christchurch Service Centre to request assistance with his relocation expenses and the anticipated travel and accommodation expenses for his trip from Christchurch to Wellington. He was told to wait until he heard from his insurance company before applying for assistance. His request for travel expenses was declined as he did not meet relevant policy criteria. However, on 8 March 2011 he received a \$30 advance payment of benefit for petrol.

[7] On arriving in Wellington Mr Meek decided to approach the Ministry's Naenae Service Centre for financial assistance in relation to his relocation expenses. His friends offered the opinion that because many Maori live in the Naenae area he would stand out as a European and that he would most likely not be treated as favourably as Maori.

[8] On 22 March 2011 Mr Meek attended a pre-arranged appointment at the Naenae Service Centre to request:

[8.1] Reimbursement of accommodation costs of \$472.50 incurred en route to Wellington.

[8.2] Payment to Crown Relocations of \$2,038.00 for the transport and storage of his household effects.

[9] He says that while standing in the reception line he was asked by a female receptionist if he had Maori blood. He responded "No". When the question was repeated the receptionist added that "even a small amount would help". Mr Meek again answered "No".

[10] Mr Meek was then seen by a case manager, Ms JM Blank, who declined both assistance requests after consulting with her Manager, Ms T Grace. While Mr Meek accepts that the reason given to him that day for the decline was that he had not shown

an immediate and essential need, he believes the real reason was because he is not Maori.

[11] Mr Meek says that it was only at the reception line that he was asked a question about his race but believes race played a part in or determined the following outcomes:

[11.1] He was declined reimbursement of his accommodation and removal expenses.

[11.2] He was not given a letter of explanation or a notice advising him of his appeal rights.

[11.3] No explanation was given why, as a consequence of his visit to the Naenae Service Centre on 22 March 2011, some of his benefits were cut, particularly his disability benefit.

[11.4] His application for a grant to purchase a washing machine was not approved and he had to apply three times.

[11.5] His debt repayment to the Ministry (from his benefit) went from approximately \$12 per week to \$50 per week.

[11.6] After he relocated to Waikanae, the Ministry's Service Centre at Paraparaumu approved assistance which had been refused at the Naenae Service Centre.

[12] He submits there were too many system failures at the Naenae Service Centre to be explained by mistake or accident. He can only surmise that the difficulties he encountered were due to his race. He concedes, however, that on 22 March 2011 Ms Blank did not say anything about his race and in fact wanted to help him.

The case for the MSD

[13] The Ministry concedes that it does gather information about a person's ethnicity along with other biometric information but:

[13.1] It is optional for a person to provide that information.

[13.2] The information is not used in making decisions about financial assistance. It can be used in the context of certain policies relating to education and work programmes.

[14] The evidence given by Ms Blank was that on the information provided to her by Mr Meek at the meeting on 22 March 2011 she reached the conclusion that he had not established an immediate and essential need because he had furniture at the place he was staying in at Stokes Valley. Nor had he shown any evidence at that time that he had tried to get his insurance company to cover his expenses. He also showed no medical evidence to suggest that he had an essential need. She is certain that she would not have asked Mr Meek about his race or ethnicity and indeed did not know what his race was and would not have taken it into account at any point. She does not remember Mr Meek saying anything to her about anyone telling him he would have a better chance of getting assistance if he was Maori. She does not remember him saying anything to her about the receptionist. She does recall that Mr Meek became upset during the interview and left part way through the meeting. Consequently he did not complete any application forms at the meeting but did leave behind some of the quotes

he had brought in to support his claims. Ms Blank arranged for those documents to be posted back to Mr Meek along with a Disability Allowance review to help him with ongoing medical costs and an Accommodation Supplement application form for when he found his own house. It is conceded by her that she could have been clearer about the documents Mr Meek needed to provide to the Ministry to enable it to complete his application process.

[15] Ms TD Grace was the Assistant Service Centre Manager at the Naenae Service Centre on the date of Mr Meek's visit and was the person consulted by Ms Blank. Her notes show that she told Ms Blank that it was unlikely Mr Meek would be granted a Civil Defence payment because he had not shown he had an immediate and essential need and also because he was requesting reimbursement for costs he had already paid and the Ministry does not generally reimburse people for such costs. Her advice was based on her understanding of the eligibility criteria for Civil Defence payment at that time. She did not know Mr Meek's race or ethnic background and even if she had, that would not have been relevant in deciding whether to grant financial assistance. She does not recall an incident or anyone raising an issue regarding an inappropriate comment on the day.

[16] The next Ministry witness was Ms MRL Leat, who has been a Service Centre Manager with Work and Income for ten years. She was not at the Naenae Service Centre on 22 March 2011 but was notified shortly thereafter that Mr Meek had made a complaint through the electronic system used by Work and Income to record complaints. The complaint was that someone at reception had told Mr Meek that he would have a better chance of getting assistance if he had some Maori blood in him. Ms Leat emphasised that race is not a relevant factor in deciding whether financial assistance is to be granted. She reported to Mr Meek that she had spoken to the staff at the Naenae Service Centre and reminded them of the necessity to be professional at all times and apologised to Mr Meek if he felt that he had not received appropriate service. Ms Leat did not, however, believe that the staff on reception would have made the comment attributed to them.

[17] Finally, the Tribunal heard from Ms RDA Bishop, a Service Centre trainer who was on reception at the Naenae Service Centre on 22 March 2011. She is certain that she would not have made the comment attributed by Mr Meek.

[18] For the Ministry it was submitted that through the evidence given by Ms Blank, Ms Grace, Ms Leat and Ms Bishop, the Ministry had established that:

[18.1] No Work and Income staff member asked Mr Meek about his race or told him that "it would help" if he had Maori blood

[18.2] No decisions were made on the basis of Mr Meek's race:

[18.2.1] The guidelines governing whether a person should receive a Special Needs Grant, a Civil Defence payment, or an advance payment of benefit make no distinction in entitlement based on race or ethnicity.

[18.2.2] The case manager and Assistant Service Centre Manager, who together declined the application, did not know Mr Meek's race and did not take race or ethnicity into account

[18.3] The Ministry has acknowledged there were some shortcomings in the way Mr Meek's requests were handled. It had decided to make an ex gratia payment

to Mr Meek of \$2,000 and to forgive his debt of \$2,311.74. Those payments did not affect the Ministry's position in the present case.

[19] In these circumstances the Ministry submits that there is no evidential basis for a finding that race was taken into account in the decline of Mr Meek's request for financial assistance.

[20] As to Mr Meek's assertion that there could be no other reason for the difficulties he encountered dealing with Work and Income staff in relation to his request for assistance with relocation and accommodation costs, the Ministry submits:

[20.1] Mr Meek's accommodation supplement and special benefit were cancelled because Mr Meek informed Ms Blank that he had no accommodation costs at that time.

[20.2] Mr Meek was later granted by the Naenae Service Centre both an accommodation supplement and a special benefit back-dated to 17 March 2011 (that is, before the date of the interview). This grant rebuts the claim that Mr Meek's race played a part in how he was treated by the Naenae Service Centre.

[20.3] Mr Meek's request for a washing machine was not treated differently at the Paraparaumu office.

[20.4] Mr Meek was granted an advance payment in respect of his storage costs, as well as rent, bond and letting fees by Ms Grace, of the Naenae office.

[20.5] Mr Meek also gave evidence that race was never discussed at any point during the interactions he had with staff who were assessing his requests for financial assistance.

[20.6] In sum, there is no evidence, apart from the inferences drawn by Mr Meek, that race played any part in any decisions made in respect of his requests for financial assistance. The evidence shows that those requests were declined because Mr Meek had not satisfied the case manager and assistant service centre manager that he met the policy criteria of an immediate and essential need.

Discussion

[21] On the evidence, the Ministry's case is unanswerable. There is no evidence whatsoever that Mr Meek was discriminated against by reason of his race or ethnicity.

[22] Our finding is that when Mr Meek went to the Naenae Service Centre on 22 March 2011 the earlier comments made by his friends led him to expect to be treated differently because he was not Maori. It is entirely possible that he was asked about his race, but we do not accept that he has established, on the balance of probabilities, that he was asked about his race in the manner he asserts. The more probable scenario is that arriving at the centre primed to experience discrimination, he has misconstrued a request for biometric information and has interpreted that request as a statement that he would receive preferential treatment if he claimed to be Maori.

[23] This does not mean that Mr Meek gave an untruthful account of his dealings with the Naenae Service Centre. To the contrary, he was an honest witness, albeit a mistaken witness.

[24] We find that all the Ministry witnesses were credible and that they gave an accurate and truthful account of the factors they took into account when making decisions about Mr Meek and which they recorded at the time. All decisions made about Mr Meek were based entirely on the applicable policies. Those policies did not include race or ethnicity as a relevant factor and at no time did Mr Meek's race or ethnicity influence the relevant decision-maker.

[25] In these circumstances the claim by Mr Meek must be dismissed.

[26] We do not believe this is an appropriate case in which to reserve the question of costs. Costs are to lie where they fall. Mr Meek may have lost his case but his good faith was not seriously challenged nor was the part his fragile state of health played in the bringing of these proceedings. He is in need of understanding and compassion.

FORMAL ORDERS

[27] For the reasons explained earlier the decision of the Tribunal is that:

[27.1] The proceedings by Mr Meek are dismissed.

[27.2] There is to be no order for costs.

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Mr RPG Haines QC
Chairperson

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Ms DL Hart
Member

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Hon KL Shirley
Member