

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 195/10
5285690

BETWEEN ABC DEVELOPMENTAL
 LEARNING CENTRES (NZ)
 LIMITED
 Applicant

AND DONNA PLASMEYER
 Respondent

Member of Authority: Marija Urlich

Representatives: Sharon Harris-Scoble, for Applicant
 Respondent, In person

Investigation Meeting: On the papers

Submissions received: 17 February, 5 and 8 March 2010

Determination: 28 April 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms Plasmeyer was employed as an early childhood teacher by ABC from February 2006 until her resignation in July 2008. During her employment she undertook training part of which involved three 5 week practicum placements at other centres.

[2] On 20 June 2007 ABC agreed to pay Ms Plasmeyer her usual wages whilst on practicum in exchange for her agreement that she would work for two years from the date she completed the training or *pay [ABC] all practicum costs*. This agreement is recorded in writing in a document titled Return to Service Agreement (“the agreement”). The agreement forms part of Ms Plasmeyer’s terms of employment.

[3] The agreement is loosely worded. The agreement does not define what practicum costs are notwithstanding the parties' view all practicum costs means wages paid. Similarly the agreement is not clear as to when the two year period runs – *the completion of the course* could mean the end of a practicum or a block of practica or the completion of the qualification Ms Plasmeyer was undertaking.

[4] The choice to enter the agreement or attend the practicum unpaid was Ms Plasmeyer's.

[5] ABC seeks orders requiring Ms Plasmeyer to repay all wages paid to her during her practicum. The sum claimed is \$6,843.98.

[6] Ms Plasmeyer says she is not liable to repay these wages because ABC's actions in December 2007 have rendered the agreement void. Or alternatively, Ms Plasmeyer accepts liability to repay \$2280.00, a sum equivalent to wages received during practicum prior to December 2007.

Is the agreement void from December 2007?

[7] Ms Plasmeyer says the agreement is void because in December 2007 ABC announced all staff must continue or undertake training towards a recognised qualification in early childhood education.

[8] ABC says there was no change to employment conditions in December 2007, it has always advised employees of Government qualification requirements (that all early childcare workers hold recognised qualifications by 2012) and continues to support some employees with the return of service agreement.

[9] I find Ms Plasmeyer's terms of employment did not change in December 2007. There is no evidence of any such change or evidence that ABC commenced paying employee's practicum without the return of service agreement.

Is Ms Plasmeyer liable to repay the sum claimed?

[10] A lot of confusion has arisen from ABC erroneously invoicing Ms Plasmeyer for a repayment sum including GST. I am satisfied that that error has been clarified and that \$6,843.98 represents the total wages paid to Ms Plasmeyer under the return of service agreement.

[11] I am not satisfied, on the plain words of the parties' agreement, that the claimed sum represents all practicum costs. ABC has had the benefit of Ms Plasmeyer's enhanced training and skill for half of the bond period, off setting half of the practicum costs.

Orders

[12] Pursuant to section 137 of the Employment Relations Act 2000 I order Donna Plasmeyer pay ABC Developmental Learning Centres (NZ) Limited \$3,421.99 within 28 days of the date of this determination.

Costs

[13] Costs are reserved.

Marija Urlich

Member of the Employment Relations Authority