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## Burchell v RBR Ltd ta Aubergine Restaurant (Auckland) [2007] NZERA 39 (16 February 2007)

Determination Number: AA 37/07 File Number: 5049461

*Under the [Employment Relations Act 2000](#)*

### BEFORE THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND OFFICE

**BETWEEN** William Burchell (Applicant)  
**AND** RBR Ltd t/a Aubergine Restaurant (Respondent)  
**REPRESENTATIVES** Mr Burchell in person

Ken Nicolson for the respondent

**MEMBER OF AUTHORITY** James Wilson

**INVESTIGATION MEETING** 12 February 2007

**DATE OF DETERMINATION** 16 February 2007

### DETERMINATION OF THE AUTHORITY

#### **Mr Birchall's application**

[1] On 12 October 2006 the Authority received a statement of problem from Mr Burchell. The statement alleged that, after one week's work, he had been unjustifiably dismissed by the respondent, RBR Ltd, trading as Aubergine Restaurant. In the statement of problem Mr Burchell requested that:

- (i) *he be reinstated;*
- (ii) *the contract that was promised be concluded; and*
- (iii) *all false information spread instantly stop.*

[2] In a statement in reply dated 1 November 2006 RBR rejected Mr Burchell's claims saying that they had offered Mr Burchell a trial but that he had failed to complete that trial and had never been offered employment.

#### **The investigation**

[3] Following a conference call with the parties I issued a minute setting out a timetable for the Authority's investigation of Mr Burchell's claim. This timetable requested:

- (i) That Mr Burchell file a statement with the Authority in support of his claim that he was an employee of RBR Ltd, no later than 5 December 2006.
- (ii) That RBR file a statement in response by 19 December 2006.

The minute also stated that if I concluded, from the papers, that Mr Burchell was an employee of RBR I would direct the parties to urgent mediation and if necessary hold an investigation meeting on the 12th of February 2007. If it was not clear whether or not Mr Burchell was an employee of RBR I would hear further argument regarding this point at the meeting scheduled for 12 February 2007.

[4] No submission was received from Mr Burchell in accordance with the timetable set out. I therefore issued a new timetable requiring Mr Burchell to file a statement, and any supporting documents, setting out why he believed he was an employee of RBR, by Monday 15 January 2007. In the same minute I advised the parties that it was my intention to consider the question of whether or not Mr Burchell had been an employee of RBR at the meeting scheduled for 12 February 2007.

[5] Mr Burchell did not file any further submissions or documents. On 12 February 2007 Mr Nicholson and two of the

directors of RBR, duly arrived at the appointed time, 10 a.m., for the scheduled investigation meeting. Mr Burchell did not attend. At approximately 1015 a.m. I requested an Authority Support Officer to attempt to contact Mr Burchell. Mr Burchell failed to respond to either of the cellphone numbers he had previously supplied.

[6] I am confident that Mr Burchell was aware of both the time and location of the investigation meeting. All correspondence regarding this matter has been sent to the address supplied by Mr Burchell and none has been returned. Mr Burchell on at least one occasion asked to personally peruse the Authority file and to be given copies of all of the contents. These copies, including the notice of meeting were provided.

[7] At the investigation meeting I took the opportunity to hear the evidence of Mr Riadh Al Sayed, one of the directors of RBR Ltd. Mr Al Sayed is adamant that Mr Burchell was never offered employment by RBR and was at no time an employee. I accept Mr Al Sayed's uncontested evidence in its entirety.

### **Determination**

[8] Mr Burchell failed to comply with any of the timetables set by the Authority and has failed to provide any evidence in support of his claim that he was an employee of RBR. Under all of the circumstances I accept the uncontested evidence of RBR that Mr Burchell was not an employee of that company.

**[9] Mr Burchell was not an employee of RBR Ltd and his application is dismissed.**

### **Costs**

[10] RBR have indicated that it is not their intention to pursue costs in this matter.

James Wilson  
Member of Employment Relations Authority