

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 210/07  
5075410

BETWEEN                   ASHLEIGH BURROUGHS  
Applicant

AND                         SKIN SPA LIMITED (T/A  
"ESSENTIALLY YOU")  
Respondent

Member of Authority:     Robin Arthur

Representatives:         Tony Kurta for Applicant  
No appearance for Respondent

Investigation Meeting:   6 July 2007 at Auckland

Determination:           12 July 2007

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicant says the respondent's director, Emma Davidge, abruptly dismissed her on 15 November 2006 without first giving her an opportunity to comment on an allegation of dishonesty. She seeks lost wages, compensation for hurt and humiliation, a penalty for not being provided with a written employment agreement, and her costs.

[2]     The applicant, 20, was initially employed as a beauty therapist by "Essentially You" in October 2005. The respondent bought the business in February 2006 and the applicant continued to be employed in that role.

**The investigation**

[3]     No one appeared for the respondent at the investigation meeting. A statement in reply had been lodged in late April 2007. Ms Davidge proved difficult to contact to attend a telephone conference to discuss setting down an investigation meeting. She

had told a Support Officer of the Authority that she would be available after 2 May but when contacted arranged to call back to confirm a date and a time. She did not. Neither did she respond to subsequent telephone messages or a letter to the address for service given in the statement of reply.

[4] After an investigation meeting date was scheduled and notified along with a timetable for any witness statements, Ms Davidge called the Authority office to say she would be overseas until the investigation meeting date and might apply for an adjournment. She was asked to put any adjournment application in writing stating the reasons and, if travelling overseas, to provide proof of flight booking details. No such application was received.

[5] On the day of the investigation meeting, I waited a further half hour beyond the notified starting time before proceeding with the meeting.

[6] The statutory form of the notice of investigation meeting, as sent to the respondent at its address for service given in the statement in reply, states that if a respondent does not attend an investigation meeting, the Authority may, without hearing evidence from the respondent, issue a determination in favour of the applicant.

[7] The statement in reply denied the applicant's claim of dismissal without an opportunity to respond to the charge against her. Instead, the respondent says the applicant admitted an accusation of erasing entries in an appointment book and keeping cash from clients. It also alleged that the applicant had taken other money and products from the respondent's business.

[8] I accept and prefer the applicant's sworn evidence that she was suddenly confronted by Ms Davidge at the business premises on 15 November 2006 and given an envelope containing a dismissal letter. She was only told the reason for the dismissal when she asked. Ms Davidge's accusation was that money had gone missing from a cash tin for which the applicant had the only key, something the applicant says was not the case. The applicant was then required to hand over keys to the business and leave the premises immediately.

[9] Two days later, the applicant sent Ms Davidge an email seeking her week's wages and holiday pay.

[10] The applicant was later telephoned by a Police officer and voluntarily attended an interview at the Takapuna Police Station to make a statement. She has heard nothing further from the Police.

### **Determination**

[11] An employee accused of theft or similar dishonesty is entitled to be given information about the basis for such a serious allegation and an opportunity to comment before the employer makes any decision about the alleged event and who might be responsible for it.

[12] It is clear that Ms Davidge did not follow this basic and well known requirement. She prepared and gave to the applicant a letter of immediate dismissal for alleged serious misconduct without taking account of or investigating any information or response from the applicant.

[13] For that reason, the applicant's dismissal was plainly unjustified and she had a personal grievance which requires remedies.

### **Remedies**

[14] The applicant was without work from mid-November 2006 until mid-February 2007 when she started a course of further training at the Auckland University of Technology. She was without income in that period apart from an unemployment benefit. I am satisfied that through the job search requirements of Work and Income New Zealand (WINZ) she made adequate attempts to mitigate her losses.

[15] I am also satisfied that, but for the personal grievance, she would more likely than not have otherwise remained employed by the respondent throughout that period.

[16] Accordingly, under s123(1)(b) of the Employment Relations Act 2000 ("the Act"), I order that the applicant be reimbursed the sum of \$5,712 (gross) in reimbursement of wages she lost as a result of the grievance, being \$408 per week for 14 weeks. (Once the applicant has received this money from the respondent she may have to account to WINZ for some or all of the benefit payments she received for that period. That is a matter which I leave for her to attend to at the appropriate time.)

[17] I accept the applicant's evidence that she has suffered humiliation, loss of dignity and injury to her feelings as a result of the dismissal and her former

employer's subsequent actions. She was upset by the suddenness of her dismissal. She has heard from former clients that Ms Davidge had told them that the applicant was fired for stealing. She continues to feel humiliated by the sting of an unjustified accusation which she was denied the opportunity to refute. She was also embarrassed when seeking further work that she needed to explain to potential employers the circumstances of how she came to leave her last job and the inevitable suspicion of even understanding potential employers that there might be some truth to the allegation.

[18] Accordingly, the applicant is entitled to compensation for the humiliation and injury to her feelings caused by the employer's actions. I fix the amount of compensation under s123(c)(i) of the Act at \$2,000 (without deduction).

[19] The applicant also seeks a penalty for the failure by the respondent to provide her with a written employment agreement. I accept the applicant's evidence that she had asked for a written agreement on a number of occasions and was told by Ms Davidge that one was being prepared. None was provided. This is unacceptable, particularly because Ms Davidge attached to the dismissal letter a clause about termination for serious misconduct taken from the Employment Agreement Guide available via the internet on the Department of Labour website. That Ms Davidge was aware of and used the website resource that enables employers to easily assemble a tailor-made employment agreement that would meet the statutory requirements of s.65 of the Act shows there was no excuse for not having provided a written agreement earlier.

[20] Accordingly, a penalty of \$500 for failure to provide a written employment agreement to the applicant is imposed on the respondent. The penalty is to be paid in full to the Employment Relations Authority for transfer to the Crown account.

[21] The applicant also seeks her costs of representation of \$750. I accept these are within the amount which may be awarded under the Authority's usual tariff-based approach which would allow up to \$1,000 for a matter taking less than half a day as this did. Accordingly the applicant is awarded her costs of \$750 and reimbursement of her filing fee of \$70.

### **Summary of orders**

[22] The respondent is ordered to pay to the applicant the following sums:

- (i) \$5,712 gross under s123(b) of the Act in lost wages; and
- (ii) \$2,000 (without deduction) under s123(1)(c)(i) of the Act in compensation for humiliation and injury to feelings; and
- (iii) \$820 in reimbursement of her costs and filing fee.

[23] The respondent is to pay to the Employment Relations Authority, for transfer to the Crown account, the sum of \$500 as a penalty for failing to provide a written employment agreement.

Robin Arthur  
Member of the Employment Relations Authority