

women which also set out some of their contrasting points of view on whether the Respondent still owes the Applicant one week's wages.

[4] The Applicant started working for the Respondent in September 2007. She resigned in writing on 18 January 2008.

[5] The resignation letter, hand delivered to Ms Sullivan's letterbox, gave two weeks notice and identified the Applicant's expected last day of work to be Friday, 1 February.

[6] There was some disagreement in the evidence over when the Applicant had first seen the employment agreement which the Respondent says applied between the parties. I need not resolve that timing issue and need only note that I find the relevant terms regarding notice to those by which the Respondent says it was bound as evidenced by the written agreement. That agreement required "*not less than two weeks notice in writing to the other party, or as mutually agreed*". It also provided that "*the employer may pay wages/salary in lieu of the employee having to work out the notice period*".

[7] The Applicant says that on the evening of 18 January she received a voice message on her mobile phone from Ms Sullivan. She says she made notes of that call and read out what she said was the exact message as follows:

"Just got home and found your note. In view of the circumstances it would be best if you did not come back at all. Good luck with your new job. Goodbye."

[8] Ms Sullivan denies that her message said not to come back but rather said that she said she would "*understand*" if the Applicant did not "*want*" to come back.

[9] Both witnesses agree that the Applicant came to the Respondent's business premises on the following Tuesday, 22 January not having worked on the Monday. Ms Sullivan says there was a "*scene*" where the Applicant shouted and demanded money. The Applicant denies she spoke loudly but did say she did not understand why Ms Sullivan would not let her work out her notice and that if she was not allowed to work out her notice, she was owed two weeks' wages.

[10] Ms Sullivan says she did then agree to “pay out” the notice period provided the Applicant did not work for anyone else in the two week period. The Applicant denies that any such stipulation or restriction was put on the arrangement.

[11] A few days after that conversation the Applicant was paid one week’s wages but Ms Sullivan had meanwhile also sent her a letter attaching a statutory declaration. The declaration, which the Applicant was asked to sign, included a statement that she had not worked for any other employer during the period of notice from 21 January to 2 February.

[12] Ms Sullivan says that she had heard that the Applicant had been working for another company in that week and that this was the reason she did not pay the other week of notice as this would amount to “*double dipping*”.

[13] The Applicant says she did work for another company during that second week but there was no reference to any “*proviso*” not to do so at the time that Ms Sullivan agreed to pay her for the notice period. She also said she had expected to work the notice period and had not arranged other work at the time of giving her notice.

Determination

[14] Having heard from both witnesses I am not satisfied that Ms Sullivan made the arrangement to “*pay out*” the Applicant for her notice period on the conditional ‘garden leave’ basis that she now asserts. I accept the Applicant was available for and would have worked the required notice period. That she did not was at the Respondent’s initiative. Having sent her away during her notice period, the Respondent is liable, under the terms of what it says was its written employment agreement with the Applicant, to pay her wages for that period.

[15] The Respondent is to pay the Applicant the sum of \$600 within 14 days of the date of this determination.

[16] The Applicant is also entitled to reimbursement of her fee for lodging this application in the Authority.

Summary

[17] The Respondent is to pay to the Applicant by no later than 9 June 2008 the following sums:

- (i) \$600 as pay in lieu for her second week of notice; and
- (ii) \$70 in reimbursement of her lodgement fee.

Robin Arthur
Member of the Employment Relations Authority