

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 191/08
5138040

BETWEEN HAMISH CATHRO
 Applicant

AND WAYNE MONASTRA
 Respondent

Member of Authority: James Crichton

Representatives: Hamish Cathro in person
 No appearance by respondent

Investigation Meeting: Interview with applicant on 26 November 2008 at
 Christchurch. No arrangement by respondent to be
 interviewed.

Determination: 12 December 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Cathro) was employed as a chef by the respondent (Mr Monastra) at the Stromboli Restaurant in Christchurch. Mr Cathro was appointed to the position in June or July 2008 and he worked in that capacity until he says he was dismissed on 22 August 2008.

[2] Mr Cathro had been given a written employment agreement and a job *discription* (sic) and although the employment agreement was never signed, I am satisfied that the terms of it cover the relationship between the parties. In particular, as the employment agreement clearly describes Mr Monastra as the employer, I am able to discount the possibility that a company incorporated as Volcano Group Limited of which Mr Monastra is the sole shareholder and sole director, was the employer of Mr Cathro.

[3] Mr Monastra has not made himself available for interview by the Authority. I am satisfied he had every opportunity to do so and that he has chosen not to be involved. Accordingly I have decided to proceed to determine the matter on the evidence before me.

[4] Mr Cathro's evidence was that Mr Monastra did talk about setting up a company but Mr Cathro was absolutely clear that Mr Monastra was his employer and that is confirmed by the unsigned employment agreement.

[5] Mr Cathro complained about the difficulty in obtaining payment for his work and his evidence (which I accept) was that he was never paid in full for any week that he worked. His claim before the Authority includes the shortfall from a significant number of the weeks that he worked for Mr Monastra.

[6] The relationship came to an end in August 2008. Mr Cathro describes how on August 20th, he arrived to work at the usual time and was given movie tickets by Mr Monastra and told that he should go to the movies instead of working. The effect of this, Mr Cathro described to me, was that although he had the benefit of free movie tickets, he missed out on the income that he would have otherwise earned that evening.

[7] The following day, he turned up for work at the usual time and found that the kitchen was in a mess. Mr Cathro told me that Mr Monastra worked the previous evening in the kitchen by himself.

[8] Mr Cathro worked the Thursday lunchtime from 10.30am to 2.30pm in the messy kitchen and left a list of things that he found when he got there. Essentially, Mr Cathro's concern was the health risk of a dirty kitchen.

[9] In the afternoon of that day the 21st of August 2008, Mr Cathro took advice from other cheffing colleagues in the city, and all of them told him that his reputation would be damaged if he continued to work there. This would particularly be the case, it was suggested, if the local authority's health inspectors made a spot check when Mr Cathro was working there.

[10] Having left the list of unsatisfactory items for his employer, Mr Cathro then tried to ring Mr Monastra to discuss the situation. At 5pm Mr Cathro received a text

from Mr Monastra asking where he was. Mr Cathro responded by text and suggested Mr Monastra call him but *he never did*.

[11] On Friday morning 22 August 2008, Mr Cathro decided to go in to the restaurant where he attended at 10.30am. Mr Monastra said to him words to the effect: *what are you doing here. You don't work here any more*. Mr Cathro then grabbed his chef knives and left the workplace.

[12] Mr Cathro told me that he was very upset at being dismissed, particularly in circumstances where he was trying to draw his employer's attention to a very dirty kitchen which he considered was a health risk and which could impact on the reputation both of the people working there and the restaurant itself.

[13] Mr Cathro said he had never been fired before and he was concerned about the effect that might have on his reputation in the small Christchurch hospitality industry. He said that he was stressed at being unemployed with no warning although he managed to find a new position within a week.

Determination

[14] I am satisfied on the evidence I heard that Mr Cathro is owed wages of \$1,170 together with holiday pay on his total earnings over the period of the employment. Given that there are no proper records I will need to estimate the holiday pay calculation.

[15] Further, I am satisfied that Mr Cathro was unjustifiably dismissed; a dismissal in these circumstances without enquiry or any opportunity to be heard is plainly unfair. I am satisfied the termination of Mr Cathro's employment had a negative effect on him and that he is entitled to remedies.

[16] To remedy Mr Cathro's employment relationship problem I direct that Mr Monastra is to pay to him the following amounts:

- (a) Unpaid wages of \$1, 462.50 gross;
- (b) Holiday pay on the total amount earned during the employment in the amount of \$371.00 gross;

- (c) Compensation under s.123(1)(c)(1) of the Employment Relations Act 2000 for the unjustified dismissal in the sum of \$1,500;
- (d) A further weeks wages of \$662.50 gross to compensate for the wages lost after dismissal and before re-employment;
- (e) \$70 to reimburse the filing fee paid by Mr Cathro to the Authority.

Costs

[17] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority