IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH

CA 215/10
5310851

	BETWEEN	DEBBIE LEE CHAMBERLAIN Applicant
	A N D	JAY RICHARD SCANLON Respondent

Member of Authority:	James Crichton
Representatives:	Applicant in person Respondent in person
Investigation Meeting:	23 November 2010 at Christchurch
Date of Determination:	24 November 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Ms Chamberlain) alleges that she was not given appropriate notice of the termination of an employment agreement. The respondent (Mr Scanlon) denies that an employment agreement was ever formed and maintains that he fulfilled his obligations of giving proper notice under an earlier employment agreement between the parties.

[2] As a consequence of the failure to form the second employment agreement, Mr Scanlon denies that he is obligated to Ms Chamberlain at all.

[3] The parties entered into an individual employment agreement with effect from 11 May 2009, the written terms of which provided for Ms Chamberlain to be a personal assistant to Mr Scanlon. In effect her duties included housekeeping, such as cleaning, provisioning, and various other personal services.

[4] That employment agreement contained a termination provision giving each party the right to bring the employment relationship to an end on four weeks notice.

During the currency of the agreement (that is before notice had been given) Mr Scanlon wrote to Ms Chamberlain by letter dated 2 March 2010 to provide what amounted to early warning of his intention to reduce the hours of work because fewer hours were now required to cover reduced work demands. Essentially, Mr Scanlon was advising Ms Chamberlain of his intention to bring the present employment relationship to an end but to offer Ms Chamberlain the opportunity of continuing in his employ but for reduced hours.

[5] Then by letter dated 24 May 2010, Mr Scanlon gave formal notice of the termination of the employment agreement, giving the requisite four weeks notice as provided for in the agreement. Other than the four weeks notice, there was no redundancy compensation payable. However, also in the same letter, Mr Scanlon made clear that Ms Chamberlain could indicate her interest in the new position, details of which were provided, and dates and times were suggested for the parties to get together to discuss the matter further.

[6] Ms Chamberlain's evidence is that she accepted the new position as offered but Mr Scanlon disputes that evidence. He agrees that Ms Chamberlain expressed interest in the position and that there were discussions but denies that there was ever, in a legal sense, *a meeting of the minds.* Of course, in the absence of a new employment agreement being formed, Ms Chamberlain can have no claim because there is no question that the termination of the original employment agreement was correctly and properly done. Her complaint is that she entered into a new arrangement and Mr Scanlon terminated that, whereas he says there was never a new arrangement because the terms of that new arrangement were never agreed.

[7] I had the benefit of interviewing the parties briefly and studying the commendably thorough paper trail.

Issues

[8] The only issue in the present case is whether a second employment agreement was ever formed. If a second employment agreement was formed between the parties then a subsidiary question arises of whether the termination of that second agreement was effected in accordance with the law.

Was the second employment agreement ever finalised?

[9] It is common ground that Mr Scanlon offered a second employment agreement to Ms Chamberlain. Further, the parties agree about Ms Chamberlain's response to the extent that both of them acknowledge that the response to the offer was positive. However where they differ is that Ms Chamberlain says there was a concluded agreement on all points (albeit not yet reduced to writing) whereas Mr Scanlon says that no such concluded agreement ever happened notwithstanding Ms Chamberlain's expressed interest.

[10] One of the things that Ms Chamberlain was asked to do was to clean the home of Mr Scanlon's partner. That was part of her duties and she had attended to that regularly during the original employment. On 3 June 2010, Ms Chamberlain had broken a porcelain lid at Mr Scanlon's partner's home. She did not leave a note about the breakage and according to her evidence was rung that night by Mr Scanlon's partner who was angry about the breakage and *yelled* at her.

[11] On 14 June 2010, Ms Chamberlain left a note for Mr Scanlon in the following terms:

> *Hi Jay,*
> *Have to be honest not keen on doing Debs housework.*
>
> *I need the hours and am sure I can fill 12 hours here.*
>
> *Cheers Deb*

[12] Ms Chamberlain told me this note of hers was in response to being yelled at by Mr Scanlon's partner. She asked me whether I would have not done the same thing if somebody had yelled at me. She pointed out the note did not say she would not work at Deb's house again only that she was *not keen*.

[13] However, Mr Scanlon, while noting that Ms Chamberlain did say *I need the hours* pointed out that the thing that troubled him most was the contention that followed, namely Ms Chamberlain's statement that she could *fill 12 hours here.* By that Mr Scanlon took it that Ms Chamberlain was saying that she would work for him for the 12 hours he wanted to pay but she would decide what she did and where she worked. Mr Scanlon was understandably anxious about that prospect.

[14] Four days later on 18 June 2010, the parties met again and Mr Scanlon gave Ms Chamberlain a letter of the same date and it is plain from the text of that letter that there is simply no agreement on the terms of the new employment. As well as the issue about working at Mr Scanlon's partner's home, Ms Chamberlain had also sought flexibility in terms of hours (which did not suit Mr Scanlon) and she wanted some gardening as part of the mix, which again did not suit Mr Scanlon.

[15] In the course of the 18 June letter, Mr Scanlon makes an ex gratia offer to make a payment to Ms Chamberlain but in the result, Ms Chamberlain was unhappy with the quantum of the payment offered and sought a greater amount.

[16] I am satisfied on the evidence before the Authority that there was never a second employment agreement between these two parties. I am satisfied that Ms Chamberlain expressed interest in continuing in the employment but there were a range of issues on which there was no agreement at all and on the face of it, an apparent unwillingness on her part to see that it was the employer's prerogative to decide what work he wished to pay for and what hours he wished that work to be performed in.

Determination

[17] Given my finding that there was never a second employment finalised between the parties, Ms Chamberlain's claim must fail. I am satisfied that Mr Scanlon has complied with his obligations to be a good and fair employer and that Ms Chamberlain's belief that a second employment agreement was entered into is simply mistaken.

Costs

[18] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority