

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Vanessa Jane Claxton (Applicant)
AND Gary Paltridge and Gillian Kerr t/a Quickprint (Respondent)
REPRESENTATIVES Bill Nabney, for Applicant
Gillian Kerr for Respondent
MEMBER OF AUTHORITY Vicki Campbell
INVESTIGATION MEETING 8 July 2005; and
19 August 2005
SUBMISSIONS RECEIVED 19 August 2005 from Applicant
26 August 2005 from Respondent
DATE OF DETERMINATION 22 September 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms Vanessa Claxton was originally employed by Vivienne Stephens trading as Quick Print Typing Services to work Monday, Wednesday, Thursday and Friday from 8.45am to 5.15pm. Her hourly rate was \$16.00 per hour.

[2] On 4 August 2004 Ms Stephens entered into a conditional sale and purchase agreement for the business with Mr Gary Paltridge and Ms Gillian Kerr with an agreed settlement date of 1 September 2004.

[3] It was common ground that Ms Stephens advised all staff that the business was subject to a conditional sale and purchase agreement and that the new employer wished to continue the employment of all staff.

[4] During August 2004 Ms Kerr met with the employees of Quick Print, including Ms Claxton, and confirmed her intention to carry on the employment of all employees of Quick Print. Ms Kerr says she made it clear to all employees that they needed to be in the employ of Ms Stephens as at the take over date.

[5] Ms Claxton walked away from her employment with Ms Stephens without providing any notice, prior to 1 September 2004. The sale and purchase agreement became unconditional and the business was transferred to Mr Paltridge and Ms Kerr on 1 September 2004.

[6] As a result of not being employed as at take over date, Ms Claxton was not employed by Ms Kerr. Ms Claxton says she has been dismissed and that the dismissal was unjustified.

[7] Ms Kerr says she never had an employment relationship with Ms Claxton and therefore there was no dismissal.

[8] The issues for this determination are:

1. Was there an employment relationship?
2. If the answer to 1 is yes, was there a dismissal?
3. If there was a dismissal was it carried out in a fair and reasonable manner?

Was there an employment relationship?

[9] The definition of employee in the Employment Relations Act 2000 includes a person intending to work and who has been offered and accepted work (sections 6(b)(ii) and 5).

[10] It is common ground that Ms Kerr met with Ms Claxton and another employee, Ms Monique Clark on 18 August 2004. Ms Kerr discussed the purchase of the business and her intention to keep all staff on and into the new business after the take over date. At this meeting Ms Clark advised Ms Kerr that if the sale went ahead then she would not stay. Ms Claxton told Ms Kerr at the meeting that she intended to stay on and work for her.

[11] On 19 August 2004 Ms Kerr met again with Ms Claxton and this time the meeting was also attended by Ms Louise Roper. Ms Roper is self-employed and provided contracted services to Ms Stephens. Ms Claxton says that at the meeting Ms Kerr confirmed that staff would work the same hours and be paid the same rate of pay. Ms Claxton says that this discussion constituted an offer and acceptance of employment.

[12] Ms Kerr confirmed that she discussed with both Ms Claxton and Ms Roper that they would be employed on the same hours and rate of pay as they currently had but that it was a general discussion only and no specific hours or rates were discussed. Ms Kerr says she made it clear to both Ms Roper and Ms Claxton that employment with her was conditional on them being employed

by Ms Stephens as at the date of settlement. Ms Kerr also arranged to meet with each person individually to discuss their individual contractual arrangements.

[13] On 20 August 2004 Ms Claxton's pay was not deposited into her bank account. As a result of this and her view that she could no longer work with Ms Stephens, Ms Claxton left her employment without notice to Ms Stephens.

[14] On that same day Ms Kerr was meeting with Ms Roper to discuss the terms of the contract between Ms Kerr's new business and Ms Roper. Ms Claxton contacted Ms Kerr by cell phone and advised her that she [Ms Claxton] had just walked out on Ms Stephens. Ms Kerr asked Ms Claxton to call her back later that afternoon as she was in the middle of a meeting. Ms Claxton was aware Ms Kerr was meeting with Ms Roper as Ms Claxton had originally tried to contact Ms Kerr through ringing Ms Roper's cell phone.

[15] Ms Claxton called back later that afternoon as requested. The discussion during that telephone conversation is disputed. Ms Claxton says Ms Kerr was not concerned about her leaving her employment with Ms Stephens and that it would not affect her employment come 1 September. Ms Kerr says that she did express concern about her walking off the job without notice and told Ms Claxton that she would have to attend an interview.

[16] I am satisfied that it is more likely than not that Ms Kerr did express her concerns about Ms Claxton leaving her employment without notice. I am also satisfied that it is more likely than not that Ms Claxton was told she would have to attend an interview if she wanted to work for Ms Kerr.

[17] At the time Ms Claxton left her job with Ms Stephens, I am satisfied that Ms Kerr had made it clear to all employees that any offers of employment would be conditional on those employees remaining in employment with Ms Stephens as at 1 September 2004. I am also satisfied that Ms Kerr had not made an offer of employment to Ms Claxton which had the ability of being accepted. What had occurred during the discussions on 19 August was of a general nature and did not constitute a specific offer of employment to Ms Claxton. I am supported in that conclusion by Ms Claxton's evidence that she and Ms Kerr had arranged to meet at 5.30pm on 23 August 2004 to discuss the details of her employment agreement. This arrangement is consistent with the arrangements made with other employees including Ms Roper who met with Ms Kerr over lunch on 20 August 2004 to discuss the details of their contractual arrangements.

[18] Ms Claxton attended a meeting with Ms Kerr and Mr Paltridge at their home on 25 August 2004. At the outset of that meeting Ms Claxton advised Ms Kerr that she had sought legal advice and that she shouldn't have to reapply for her job because an offer had already been made and accepted by her [Ms Claxton]. Ms Kerr says that the purpose of the meeting was to interview Ms Claxton. The meeting ended abruptly when Ms Claxton left. Given that Ms Claxton had sought legal advice regarding her situation, I am satisfied that the purpose of the meeting was clear that it was to interview Ms Claxton as a suitable candidate for employment. Ms Kerr decided that Ms Claxton was not a suitable candidate and advised her of this decision on 27 August 2004.

[19] I find there was no concluded employment agreement between the parties as there was no offer capable of acceptance. If I am wrong about that, I am satisfied that any agreement was conditional on Ms Claxton remaining in her employment with Ms Stephens until 1 September 2004. That issue was critical to the conclusion of any employment agreement between the parties. Ms Claxton failed to meet that condition when she left her employment with Ms Stephens without notice on 20 August 2004.

Ms Claxton was not in an employment relationship with Ms Kerr and therefore does not have a personal grievance.

Costs

[20] As the respondent was unrepresented I shall not be making an order for costs.

Vicki Campbell
Member of Employment Relations Authority