

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 161
5344922

BETWEEN

LEEANNE FAULKNER
Applicant

AND

CLARITY GROUP LIMITED
t/a TIELCEY PARK
Respondent

Member of Authority: Dzintra King

Representatives: Danny Gelb, Advocate for Applicant
Damon Forde, Advocate for Respondent

Investigation Meeting: 31 August 2011

Determination: 21 October 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Ms Leeanne Faulkner, claims that she has been unjustifiably dismissed by the respondent, Clarity Group Limited. She seeks lost wages from 14 April 2011 to 14 July 2011 being \$10,010 gross plus interest; and \$10,000 pursuant to s123 (1) (c) (i).

[2] Ms Faulkner signed a written employment agreement. This states that employment was to commence on 10 January 2011 and to continue until either party terminated it in accordance with the terms of the agreement

[3] The respondent did not file a Statement in Reply. The Authority attempted to contact the respondent on a number of occasions regarding the Statement in Reply. On 15 July 2011 the respondent was sent a letter referring to Regulation 8 (3). No response was received. Mr Damon Forde, the Manager of Tielcey Park Equestrian Centre, did take part in a conference call on 19 July when a timetable for the filing

and exchanging of briefs, the supply of a Statement in Reply and a date for the hearing were agreed. Mr Forde agreed to supply a Statement in Reply by 26 July. However, no Statement was received despite the Authority's making follow up calls.

[4] Mr Forde did appear at the hearing. When I asked why he had not filed a Statement in Reply or witness briefs he said he had made a conscious decision not to engage in the process and maintained that the applicant had been justifiably dismissed.

[5] Ms Faulkner had been employed to run a Groom School for Tielcey Park. She had been told the grooming courses would run for six weeks every three months depending on the demand.

[6] The employment agreement provides that the hours of work are 55 hours per week Monday to Sunday between the hours of 6.30am and 5.30pm and these hours may be varied. The pay rate was \$14 per hour. The notice period was 2 weeks.

[7] On the afternoon of 13 April 2011 Ms Faulkner was told by Mr Forde that she was suspended on full pay and was to pack her belongings and leave the property within one hour.

[8] Ms Faulkner asked what she had done wrong. Mr Forde refused to tell her but said he would let her know by letter with 72 hours. However, Ms Faulkner did not receive any communication from the respondent.

[9] Despite stating that Ms Faulkner was suspended on full pay she was paid only up to the date of suspension when she received \$220.00.

[10] On 2 April her representative wrote to Mr Forde asking about Ms Faulkner's employment status and the reasons for the suspension.

[11] On 13 May he wrote again saying he was still waiting for a response to his earlier letter.

[12] During the hearing Mr Forde provided a letter he claimed to have sent to Ms Faulkner on 14 April saying he was conducting an investigation and she would be informed of the outcome in due course. Ms Faulkner says she did not receive any letter.

[13] Mr Forde also produced a further letter dated 20 April which he claimed to have posted on 21 April. He stated he had investigated the incident of 13 April and was satisfied that he was justified in terminating her employment on 13 April for serious misconduct. Ms Faulkner says she did not receive this letter either.

[14] I have no hesitation in finding that these letters were never sent to Ms Faulkner or her representative. It would have been a simple matter for Mr Forde to refer to these letters and enclose copies of them in response to Mr Gelb's letter of 13 May. Furthermore, Mr Forde failed on a number of occasions to respond to the Authority and to supply material as agreed.

[15] The respondent did not give the applicant information regarding the reasons for the suspension at the time that took place. It is clear that the applicant was dismissed at that stage and that the dismissal was unjustified.

[16] Ms Faulkner's daughter, Ms Ashlee Ross, deposed that Mr Forde had approached her mother and screamed and yelled at her. Ms Ross gave evidence about the effect of the dismissal on her mother, as did her mother, Ms Joan Coppel.

[17] Ms Faulkner produced a medical certificate detailing the effects of the dismissal on her.

[18] The employment agreement provides for a full time permanent position. The lost remuneration is calculated on the basis of the provisions of the agreement. That was the bargain entered into by the parties.

[19] The respondent is to pay Ms Faulkner the sum of \$10,010 being thirteen weeks' wages.

[20] Pursuant to Clause 11 of Schedule 2 Employment Relations Act 2000 I order the respondent to pay to the applicant interest on the lost remuneration at the rate of 7.5% per annum, the interest to run from the date of dismissal until such time as the amount is paid in full.

[21] The respondent is to pay the applicant the sum of \$6, 000 pursuant to s 123 (1) (c) (i) as compensation.

[22] I have considered the issue of contribution and find that none has been shown to exist. There will be no reduction in the remedies.

Costs

[23] If the parties are unable to resolve the issue of costs, the applicant is to file a memorandum within 28 days of the date of this determination. The respondent is to file a memorandum in reply within 14 days of receipt of the applicant's memorandum.

Dzintra King

Member of the Employment Relations Authority