

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 123  
5428046

BETWEEN                      REBECCA FINLAY  
   Applicant  
  
A N D                              PW HOLDINGS LTD  
   Respondent

Member of Authority:        James Crichton  
  
Representatives:              Keshila Fayen, Advocate for Applicant  
   Paul Whiteford, Advocate for Respondent  
  
Investigation Meeting:        14 February 2014 at Auckland  
  
Date of Determination:        2 April 2014

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**FURTHER DETERMINATION OF THE AUTHORITY**

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**History**

[1] This is the fourth determination of the Authority in this matter. By determination issued as [2013] NZERA Auckland 92 I dealt with the personal grievance claim by Ms Finlay against her employer Blackwoods Bakeries Ltd, found that she had a personal grievance and was entitled to remedies. A second determination issued as [2013] NZERA Auckland 243 fixed costs and a third determination which is particularly in point here, which issued as [2013] NZERA Auckland 532, dealt effectively with the name of the employer.

[2] The correct name of the employer came into issue because in a statement of problem filed in the Authority on 8 August 2013, Ms Finlay sought compliance with both of the two earlier determinations of the Authority.

[3] Service proved challenging and difficult but in the result, was eventually effected by Ms Finlay herself and the matter proceeded first to a telephone conference which I convened with the representatives and then to a determination, by consent, on the papers.

[4] It is necessary to repeat some of my conclusions from the third determination of the Authority in order to provide the context for the present determination. First, it became clear when the Authority proceeded to address the application for compliance that there had been a series of name changes of the employer from the point at which Ms Finlay was employed through to the point that the various proceedings commenced.

[5] While Ms Finlay was in employment, she was employed by Blackwoods Bakeries Ltd. Accordingly, nothing would have put her on notice during the employment that the name or corporate structure of the employer had changed.

[6] However, by the time she was dismissed from her employment (a dismissal which I subsequently found to be unjustified) it is now apparent that the name of the employer had changed. This is because the Companies Office website disclosed that there was a name change for the employer effective 1 July 2012 wherein the name of the entity changed from Blackwoods Bakeries Ltd to Providence Foods Ltd. That being the position, it follows that at the time Ms Finlay was dismissed from her employment, her employer had changed from Blackwoods Bakeries Ltd to Providence Foods Ltd. The reason that I am satisfied that Ms Finlay was oblivious of this change and had no way of knowing that it changed was that Ms Finlay's last day of work with the employer was 29 April 2012 and there was very limited contact from that date until a meeting was held on 11 July 2012 between the parties which resulted in Ms Finlay's dismissal the following day.

[7] So to draw the point out, Ms Finlay's only knowledge about the name of her employer was based on her experience during the employment and during the employment the name of the employer was always Blackwoods Bakeries Ltd. In the period between when she stopped work (because she was not offered work by the employer) and her subsequent dismissal, the employer's name changed.

[8] It is also apparent on the facts before the Authority that the employer never told Ms Finlay that the name of the employer had changed and indeed, worse than that, the letter of dismissal dated 12 July 2012 is headed Blackwoods Bakeries.

[9] So when the statement of problem was filed in the Authority alleging unjustified dismissal of Ms Finlay, those proceedings issued against Blackwoods Bakeries Ltd.

[10] They issued against Blackwoods Bakeries Ltd because nothing Ms Finlay knew of the position suggested that there was any change in nomenclature. Of course, it should be standard practice for advocates practising in this jurisdiction to check by reference to the Companies Office website that there has not been a material change in the corporate structure of the employer where that employer is a limited liability company. But that was not done in this case and there was nothing to suggest that it should have been done.

[11] The statement in reply filed by the employer in responding to Ms Finlay's statement of problem did not quarrel with her labelling of the employer as Blackwoods Bakeries Ltd and indeed there was no suggestion from the employer party throughout the Authority's investigation process that there had been a name change.

[12] It follows that the Authority's first determination, concluding that Ms Finlay had suffered an unjustified dismissal and was entitled to remedies, identified the employer's name incorrectly.

[13] In the meantime, a further name change took place on 6 May 2013 from Providence Foods Ltd to PW Holdings Ltd. That entity remains the successor in title to Blackwoods Bakeries Ltd.

[14] While not strictly relevant to this claim, it is appropriate that I refer to the fact that Blackwoods Bakeries Ltd as a legal entity has not ceased to exist. In fact, when the original proprietors of Blackwoods Bakeries Ltd (the employer of Ms Finlay) sold the business they also sold the name so a casual examination of the Companies Office website would have identified that Blackwoods Bakeries Ltd continued to trade but the members of the current company Blackwoods Bakeries Ltd and its directors are not the proprietors of Ms Finlay's employer.

[15] To try to deal with this confusing state of affairs, my third determination reopened the Authority's investigation, as I said at the time, *principally to identify the correct employer*.

[16] That investigation meeting took place on 14 February 2014 and prior to it, both parties helpfully filed submissions.

### **Determination**

[17] I must conclude that the initial two determinations of the Authority incorrectly named the employer. I am satisfied this is the correct decision because there is no issue about the nature of the decision that the Authority reached in respect to Ms Finlay's employer relationship problem and her subsequent entitlement to costs as the successful party.

[18] The only issue is that the intituling and the references throughout the determinations used an incorrect name for the employer. But the underlying reality is that the employer of Ms Finlay is the party described and discussed in the two determinations; it is simply that that party has been incorrectly named throughout those two determinations. In truth, the Authority is now satisfied that this is not an issue about the identity of the employer but about the correct naming of the employer.

[19] Because the name of the employer changed twice after the employment of Ms Finlay ended, the present determination for compliance will refer to both of the original names for the sake of completeness. This present determination links and explains the rationale for the difference in the naming of the employer.

[20] There will now be an order for compliance against PW Holdings Ltd (formerly Blackwoods Bakeries Ltd and Providence Foods Ltd ) to be fulfilled within 14 days of the date of this determination, for the following sums, enforcing the decisions I have already made in the first two determinations of the Authority:

- (a) .Compensation under s. 123 (1) (c) (i) of the Employment Relations Act 2000 in the sum of \$2500;
- (b) .A contribution to lost wages in the sum of \$550 gross;
- (c) .A contribution to costs in the sum of \$2000;

(d) Reimbursement of the two Authority filing fees in the sum of \$143.12.

[21] I need finally to address the issue of motive. Ms Fayen for Ms Finlay sought to persuade me that Mr Whiteford for PW Holdings Ltd was deliberately trying to deceive me and Ms Finlay in regard to the successive name changes of Blackwoods Bakeries Ltd. I do not accept that Mr Whiteford was deceptive in his behaviour. I am satisfied, having heard Mr Whiteford at the investigation meeting, that he was simply unaware of the legal niceties associated with changes of name and that he was following the instructions of his accountant in that regard.

[22] Nor do I think that Ms Fayen has failed to look after the interests of her client by missing the obvious point of checking that the name of the employer was correctly identified. This is because for reasons I have recited in this determination, I am satisfied that it was not obvious that there had been a name change and indeed Ms Finlay and her adviser, and the Authority for that matter, were lulled into a false sense of security by Mr Whiteford's continued reference to Blackwoods Bakeries Ltd as the employer long after it had ceased to be in that role.

### **Costs**

[23] Given the contribution of all parties to this confusing and most unusual situation, I order that costs are to lie where they fall. I think it fair to say that all parties have contributed to the difficulties and it would not be appropriate to make any further order in relation to costs.

James Crichton  
Member of the Employment Relations Authority