

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 97  
5365138  
5365148

BETWEEN

LINDA GIBSON  
Applicant (5365138)

HEATHER MORINE  
Applicant (5365148)

AND

QUANTUM GROW LIMITED  
Respondent

Member of Authority: R A Monaghan  
Representatives: A Taylor, advocate for applicants  
No appearance for respondent  
Investigation meeting: 17 February 2012 at Tauranga  
Determination: 15 March 2012

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Linda Gibson and Heather Morine say their former employer, Quantum Grow Limited (QGL) dismissed them unjustifiably on the ground of redundancy. They also seek reimbursing payments and holiday pay.

[2] In addition there were claims of unjustified disadvantage associated with the claims for payment, and claims for penalties for breach of good faith associated with the procedure used in implementing the redundancies. None of these claims has proceeded, as they are subsumed in the justification for the redundancy and in the claims for payment.

[3] Although separate employment relationship problems were lodged, both concern the same circumstances and were heard together.

**Preliminary matter**

[4] QGL did not appear and was not represented at the investigation meeting. Its director, Alan Canavan, contacted the Authority on 17 January 2012 to express a concern about confidentiality, but no statement in reply was lodged. As a result, however, I am satisfied QGL had notice of the claims. I am also satisfied that it had notice of the Authority's investigation meeting.

[5] No reason for the failure to attend or be represented has been provided. I therefore proceed to hear and determine these matters under clause 12, Schedule 2 of the Employment Relations Act 2000 as if QGL had attended or been represented.

**Background**

[6] QGL is in the business of selling horticultural products to commercial growers. It sought more recently to expand into retail outlets, selling hydroponic and home garden kitsets. It is based in Christchurch, but had a branch in Tauranga.

[7] Ms Gibson was employed as the administration and purchasing officer in Tauranga, commencing on 1 September 2008. When the finance and administration manager was made redundant in October 2009 she took over some of that person's duties.

[8] Ms Morine was employed as the branch manager, commencing on 5 October 2009.

[9] In or about 2010 the Tauranga office was closed but the employees' employment continued and they worked from home.

[10] In a conversation on 1 August 2011 Mr Canavan informed Ms Gibson that QGL was experiencing financial difficulties and she was being made redundant. Shortly afterwards Ms Gibson received a letter from Mr Canavan dated 29 July 2011, which confirmed the termination of her employment on the ground of redundancy. The letter said the company was in a difficult financial position, there was no money left, and the bank was reviewing the payment of wages on a weekly basis. Ms Gibson

was to take 'garden leave' during her notice period of one month, would be paid weekly during that time and would receive her holiday pay at the end of it.

[11] Ms Morine said Mr Canavan told her in June 2011 that the company name was to be changed in the near future and that the staff would be required to sign new employment agreements. She made follow up enquiries, to be told the matter was being worked on. When she too received a telephone call from Mr Canavan on 1 August, she expected the call was to discuss the new agreements. Instead she too was informed the company was experiencing financial difficulties and she was to be made redundant. She, too, later received a letter dated 29 July 2011. Its contents were the same as those in the letter sent to Ms Gibson.

### **The dismissals**

#### 1. Justification for the dismissals

[12] The Tauranga branch was a separate financial reporting entity, and Ms Gibson and Ms Morine were both aware of its poor financial performance. However they were also aware that funds were being provided when necessary, they had no information to indicate that practice would cease, and they were not expecting to lose their employment as suddenly and without warning as they did.

[13] The lack of response to the claims from QGL means that, although I would accept indicators of a failing operation were present, there is no explanation of QGL's reasons for deciding to terminate the employment of Ms Gibson and Ms Morine at the time and in the manner it did. In particular there was no attempt to consult with either of them as is usually expected of an employer in order to meet its obligation to act in good faith, and no explanation of that failure.

[14] Moreover, the written employment agreements for both women included express provision for the procedures to be followed when the employee's position could be made redundant, and which were not followed.

[15] I therefore conclude that the dismissals of both women were unjustified.

## 2. Remedies

[16] Both women seek the reimbursement of remuneration lost as a result of their personal grievances, and compensation for injury to their feelings.

### A. Ms Gibson

[17] Ms Gibson was unemployed for three weeks after the termination of her employment, and subsequently obtained part time employment for 24 hours a week at a rate of \$625 per week. She quantified her loss over the first three month period<sup>1</sup> as \$7,499.97.

[18] Since there was no contributory fault on Ms Gibson's part, and I do not have sufficient information to base a finding that her employment would have terminated by reason of redundancy even without the breaches of duty by the employer, QGL is ordered to pay that amount to Ms Gibson.

[19] Compensation for injury to feelings was sought in the sum of \$6,000. There was limited evidence in support, and much of it concerned a general distrust of Mr Canavan. Only a modest award is called for, so that QGL is ordered to compensate Ms Gibson for injury to her feelings in the sum of \$1,000.

### B. Ms Morine

[20] Ms Morine sought to mitigate the effect of her loss of employment firstly by attempting to set up in business with a friend. The venture was not successful and Ms Morine ended her involvement after 8 weeks without having derived any income. She has since applied for a number of positions, without success. Accordingly she seeks the reimbursement in full of remuneration lost during the three month period following the termination of her employment, in the sum of \$18,006.62.

[21] There was no contributory fault on Ms Morine's part, and I do not have sufficient information to base a finding that her employment would have terminated by reason of redundancy even without the breaches of duty by the employer.

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<sup>1</sup> Ref s 128 Employment Relations Act 2000

Nevertheless QGL should not be required to reimburse Ms Morine for any loss of income caused by her unsuccessful business venture. Accordingly I order QGL to reimburse Ms Morine for the loss of a further one month's salary in the sum of \$6,002.21

[22] Compensation for injury to feelings was sought in the sum of \$6,000. There was limited evidence in support, and much of it concerned a general distrust of Mr Canavan. Only a modest award is called for, so that QGL is ordered to compensate Ms Morine for injury to her feelings in the sum of \$1,000.

### **Ms Gibson's claim for wages and holiday pay**

#### 1. Reimbursement of expenses

[23] Ms Gibson submitted a claim in the sum of \$368.66 for the reimbursement of office-related expenses for the period 1 April 2011 – 29 July 2011. She has not received payment.

[24] Payment is ordered accordingly.

#### 2. Holiday pay

[25] From the records available to her Ms Gibson calculated she is owed \$2,501.75 in holiday pay. The calculation is based on her hourly rate of \$26.44, and an outstanding entitlement of 94.62 hours.

[26] In the absence of any reply from QGL I find payment is owed and order accordingly.

### **Ms Morine's claim for wages and holiday pay**

#### 1. Reimbursement of expenses

[27] Ms Morine had submitted claims for the reimbursement of travel expenses dated 30 June 2010, seeking the sum of \$1,082.14. She enquired about payment on

2 August, and was told Mr Canavan would get back to her. She has not received payment

[28] In the absence of any reply from QGL, I find the payment is owed and order accordingly.

## 2. Holiday pay

[29] Ms Morine did not receive the holiday pay owed to her on the termination of her employment. When she enquired about why, she was told that the bank was refusing to honour the payments. She says she is owed \$2,790.36, calculated at her hourly rate of \$34.6155 x 80.61 hours being her outstanding entitlement.

[30] No payment has been made. Payment is ordered accordingly.

## Summary of orders

[31] QGL is ordered to pay to Ms Gibson:

- (i) \$7,499.97 as reimbursement of remuneration lost as a result of her personal grievance;
- (ii) \$1,000 as compensation for injury to her feelings caused by her personal grievance;
- (iii) \$368.66 as reimbursement of employment-related expenses; and
- (iv) \$2,501.75 as holiday pay.

[32] QGL is ordered to pay to Ms Morine:

- (i) \$6,002.21 as reimbursement of remuneration lost as a result of her personal grievance;
- (ii) \$1,000 as compensation for injury to her feelings caused by her personal grievance;
- (iii) \$1,082.14 as reimbursement of employment-related expenses; and
- (iv) \$2,790.36 as holiday pay.

[33] I further order that interest be paid on all amounts except those set out at [31] (ii) and [32] (ii) above, calculated at 5% per annum from 29 August 2011 to the date of payment.

### **Costs**

[34] Costs were sought. I consider a contribution to costs is warranted and apply a notional daily rate in assessing an appropriate amount.<sup>2</sup> Since both matters required no more than the equivalent of a half day's investigation meeting in total, QGL is ordered to contribute to the costs of both Ms Gibson and Ms Morine in the single sum of \$1,750.

R A Monaghan

Member of the Employment Relations Authority

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<sup>2</sup> Ref *PBO Ltd v da Cruz* [2005] ERNZ 808