

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2012] NZERA Wellington 15
5342959

BETWEEN

NICOLE GIBSON
Applicant

AND

CLAUDIO PETRONELLI
Respondent

Member of Authority: Dzintra King

Representatives: Carol Blomkvist, Advocate for Applicant
Respondent In Person

Investigation Meeting: 18 October 2011 at Whanganui

Determination: 10 February 2012

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Ms Nicole Gibson, says she has been unjustifiably dismissed and unjustifiably disadvantaged by the respondent, Mr Claudio Petronelli.

[2] Ms Gibson was employed as a hairdresser from 20 March 2010 until 15 October 2010.

[3] It appears that until 15 October the relationship between Ms Gibson and Mr Petronelli was generally good.

[4] Ms Gibson became pregnant and told Mr Petronelli when she about three months pregnant.

[5] Ms Gibson said that in early October Mr Petronelli called her into his office and asked when she was leaving. She told him she would be taking maternity leave and was planning to do so about the end of March as she was due in April. There is a

dispute about what Mr Petronelli said. Ms Gibson says he told her he was not going to hold her job open and she could not expect him to pay maternity leave. He denies that.

[6] On 15 October Ms Gibson had finished two regular clients and as she was billing them she double checked the price with Mr Petronelli. After the clients left Mr Petronelli asked her where one of the previous clients had been getting her hair done. Ms Gibson said that apparently the client had coloured it itself with the help of her daughter as she had been unwell and did not want to leave the house.

[7] Mr Petronelli said he did not believe her and Ms Gibson replied that was what she had been told. Mr Petronelli then told Ms Gibson she had undercharged the two clients. She apologised and asked what she should charge in future.

[8] Mr Petronelli then became very aggressive and asked her where had all his clients gone. She said he yelled at her saying he had been told by a reliable source that she had been sending clients to a salon around the corner.

[9] Ms Gibson told him she had sent a client to another salon as when she arrived the salon did not have the correct colour so Ms Gibson could not help her. She explained the situation to the client and gave her the option of going to the other salon. The client did that and then subsequently returned as a regular client.

[10] This happened while Mr Petronelli was absent due to illness. Ms Gibson said she had told him about it when he returned and he had not had a problem with it.

[11] Ms Gibson said Mr Petronelli continued to shout and called her selfish and ungrateful. He said she was paid too much and that she did not deserve her wages.

[12] At this point Ms Gibson said she thought they should get a mediator and she started to cry.

[13] Mr Petronelli then said she was to work all her hours from nine to four. Sometimes he had told her to go home early when there was no work. Ms Gibson

replied that she had no problem with that. Mr Petronelli continued to yell at her. She said she had no choice but to remove herself from the situation and leave.

[14] Mr Petronelli told her to write her resignation before she left. At his bidding she wrote "*I Nicole hereby resign due to unresolved issues brought on by Claudio*". She then left the building in tears and made her way to her partner's workplace.

[15] Mr Petronelli agreed that he told Ms Gibson to put her resignation in writing.

[16] Mr Petronelli said Ms Gibson had certain privileges such as leaving early if there was no work and having time off for a scan. Mr Petronelli said he decided to take those off her. That was a result of comments made to him by Ms Tutti. Mr Petronelli accepted the truth of those comments and did not check them with Ms Gibson.

[17] I do not think Mr Petronelli told Ms Gibson that he could not keep her job open while she was pregnant. That was not the reason for the dismissal.

[18] Ms Gibson was constructively dismissed. Mr Petronelli behaved in a way that constituted a breach of the employment agreement and Ms Gibson was entitled to treat the employment relationship as having been terminated at the initiative of the employer. It is a pity Mr Petronelli did not make contact with Ms Gibson after the day of the altercation. It may have been possible to resolve the issue amicably at that stage.

Remedies

[19] Ms Gibson did not make any attempt to find other employment. She has not attempted to mitigate her loss and therefore no award for lost wages can be made.

[20] Had she not been unjustifiably dismissed Ms Gibson would have had reasonable expectation of obtaining entitlement to 14 weeks' maternity leave.

[21] She is to be reimbursed for the maternity payments she would have otherwise received.

[22] If the parties are unable to reach agreement on the amount, leave is reserved to return to the Authority.

[23] Ms Gibson has also sought compensation for humiliation and distress pursuant to s123 (1) (c) (1). The respondent is to pay compensation of \$4,000 to the applicant.

Costs

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

Dzintra King

Member of the Employment Relations Authority