

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 21
5317764

BETWEEN

ANNA GIMBLETT
First Applicant

SAMANTHA DAVIDSON
Second Applicant

AND

PAPAKURA FRANKLIN
NEWSPAPERS LIMITED
Respondent

Member of Authority: R A Monaghan

Representatives: A Gimblett and S Davidson in person
No appearance for respondent

Investigation Meeting: 17 January 2011

Determination: 17 January 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Anna Gimblett and Samantha Davidson say their former employer, Papakura Franklin Newspapers Limited (PFNL) owes them money in the form of unpaid redundancy compensation and unpaid payment in lieu of notice.

Preliminary matter

[2] PFNL did not attend and was not represented at the investigation meeting.

[3] One of its directors and shareholders, Rex Warwood, acknowledged receipt of the statement of problem and filed a statement in reply. From that document it appears that, aside from the company's ability to pay, there is an issue about whether Ms Gimblett and Ms Davidson were made redundant.

[4] The Authority has not heard further from Mr Warwood. However I am satisfied that PFNL was served with the notice of investigation meeting. As no good cause has been shown for the respondent's failure to attend or be represented I have proceeded under clause 12, Schedule 2 of the Employment Relations Act 2000.

Determination

[5] Ms Gimblett and Ms Davidson were employed to work on PFNL's publication *Franklin Papakura Life*. After several months of discussions about the fact that the newspaper was struggling, by letters dated 23 February 2010 they were advised:

It is with great regret that I have to inform you that Franking Papakura Life Newspaper can no longer operate. ...

These have been two very tough years and, as you know I have mentioned almost every staff meeting that we have to get the paging to 28 before we started making money. Unfortunately it hasn't happened. December and January's disastrous income levels means there is no cashflow. A company cannot operate without adequate cashflow. ...

...

I appreciate your understanding – the decision to close the doors was not made lightly and was done with great regret.

[6] The associated termination of employment was effective immediately. Outstanding wages and holiday pay were paid, but the not sums sought in this employment relationship problem.

[7] That the circumstances set out in the letter amounted to a termination of the employment of Ms Gimblett and Ms Davidson on the ground of redundancy is beyond argument. Mr Warwood's view that the loss of employment associated with the closing of a company's doors is not a redundancy situation is misconceived.

1. Ms Gimblett's claim

[8] Ms Gimblett's employment agreement entitled her to payment of one month's notice of termination of employment, except that the redundancy clause in the agreement specified that the period of notice of termination in redundancy situations

was to be two weeks. The specific nature of the redundancy provision means the notice period contained in it is the applicable period.

[9] The redundancy clause also provided for the payment of redundancy compensation calculated as:

*Upon completion of 1 or more years' current continuous service
2 weeks pay*

[10] Ms Gimblett received neither payment in lieu of notice, nor the redundancy compensation for which her length of service qualified her. At her rate of pay of \$25 per hour she is entitled to payment calculated as:

$$4 \text{ weeks} \times [40 \times 25] = \$4,000$$

[11] Payment is ordered accordingly.

2. Ms Davidson's claim

[12] Ms Davidson's employment agreement entitled her to four weeks' notice of termination of employment in the event her employment was terminated on the ground of redundancy. That provision was expressed to be in substitution for and not in addition to the general notice of termination provision.

[13] The redundancy clause also provided for the payment of redundancy compensation calculated as:

In the event the employee's employment is terminated on the basis of redundancy, the employee shall be entitle[d] to compensation in the sum of four weeks wages.

[14] Ms Davidson received neither payment in lieu of notice, nor redundancy compensation. At her salary of \$45,000 per annum she is entitled to payment calculated as:

$$8 \text{ weeks} \times \$865.38 = \$6,923.04$$

[15] Payment is ordered accordingly.

Summary of orders

[16] PFNL is ordered to pay:

- a. The sum of \$4,000 to Anna Gimblett; and
- b. The sum of \$6,923.04 to Samantha Davidson.

[17] I further order that payment of the above sums be made within 14 days of the date of this determination.

[18] Interest is to be paid on each of these sums, calculated as 5.2% per annum from 23 February 2010 to the date of payment.

Costs

[19] PFNL is further ordered to reimburse the applicants for the filing fee of \$70.

R A Monaghan

Member of the Employment Relations Authority