

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 227/08  
5102565

BETWEEN CHRISTINE GUNFIELD  
Applicant

AND REAL COOL LTD  
Respondent

Member of Authority: Dzintra King  
Representatives: Kerry Single, Advocate for Applicant  
No Appearance by Respondent  
Hearing: 25 June 2008  
Costs Submission Received: 27 June 2008  
Determination: 2 July 2008

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**DETERMINATION OF THE AUTHORITY**

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[1] The applicant, Ms Christine Gunfield, says that she has been unjustifiably dismissed by the respondent, Real Cool Ltd. The respondent did not appear at the hearing. This determination is based on the evidence I took from Ms Gunfield.

[2] Ms Gunfield seeks compensation of \$10,000, costs and \$9,230.76 in lost remuneration. She also seeks the imposition of a penalty for failure to provide an employment agreement in accordance with s 65 Employment Relations Act 2000 and for failure to provide a copy of the time and wages records. Since the Statement of problem was filed the time and wages records and a copy of an employment agreement have been provided.

[3] Ms Gunfield was employed by the respondent from 14 May 2007. About a month after she started she was given an individual employment agreement which included a three month probationary period. Ms Gunfield took the agreement home and then returned it her workplace. Mr Jon Rhodes, the manager, later gave her

another version which she also took home and checked. She signed the second version and returned it to her employer. Ms Gunfield was not given a copy of the agreement.

[4] When Ms Gunfield asked Ms Karen Carruthers, the administrator, about the agreement Ms Carruthers told her that she not much good at the work she was doing and would not be staying longer than the three months anyway.

[5] Ms Gunfield was eventually provided with what is purportedly a copy of the second version of the employment agreement. This was after proceedings had been filed. Ms Gunfield says this is the same agreement that she signed.

[6] In its Statement in Reply the respondent asserted that Ms Gunfield was employed pursuant to a three month fixed term agreement. However, the document supplied by the respondent (attached to the Statement in Reply) has no reference to a fixed term apart from the fact that Schedule A gives the date of the agreement as being 11 June 2007, the date of commencement being the same day and the date of termination being 1 September 2007. This is despite the fact that Schedule C - Working Hours – has a handwritten notation by Ms Gunfield dated 27 May 2007. There is a further handwritten notation by Ms Gunfield in the body of the agreement, also dated 27 May 2007. The contract also has a provision for a review of wages, the review to take place on 1 September 2007. There is no reference to a three month probationary period.

[7] Given the above, the length of time it took to supply the document and the odd formatting of the document I conclude that the individual employment agreement attached to the Statement in Reply was not the agreement given to and signed by Ms Gunfield but a poor and inadequate attempt by the respondent to provide an agreement in support of its contention that the employment was fixed term.

[8] Ms Gunfield said that given the remarks made by Ms Carruthers she was concerned that her employment would terminate on 15 August. Ms Gunfield spoke to Ms Carruthers who told her she could stay on working with no employment agreement either until the end of the month or until such time as Ms Carruthers decided.

[9] On 23 August 2007 Ms Gunfield was called into the Boardroom by Mr Rhodes and Ms Chris Maxwell, who had originally hired Ms Gunfield. Ms Gunfield understood that Ms Maxwell was working for Nelson Cold Storage Ltd. Mr Rhodes and Ms Maxwell offered her an administration position with that company, the position to commence on 1 September 2007 on a three month trial period. Ms Gunfield understood that her employment with the respondent had ended and believed it was due to a perception that she was incompetent.

[10] The following day Ms Gunfield was told by Ms Carruthers that she was to start training another person in the position which had been Ms Gunfield's at Real Cool Ltd.

[11] On 30 August Ms Gunfield was contacted by Ms Maxwell who asked that she start at Nelson Coolstores Ltd at 9.30am, which she did. Ms Gunfield was subsequently told that there was no position for her at Cold Storage Nelson Ltd.

[12] Matters between Ms Gunfield and Cold Storage Nelson Ltd have been resolved.

### **Decision**

[13] There is no evidence that Ms Gunfield was employed on a fixed term agreement. I had no evidence that any rationale for such a fixed term was ever conveyed to Ms Gunfield. I am satisfied that she was employed on a permanent agreement with a three month probationary period.

[14] Ms Gunfield's employment was terminated unjustifiably and she has a personal grievance.

### **Remedies**

[15] The Statement in Reply makes a number of allegations about Ms Gunfield which could not be other than distressing. As the respondent did not appear no evidence was given to substantiate any of these allegations.

[16] Ms Gunfield spoke about the effects of the dismissal and her attempts to find other employment. I am satisfied that she attempted to mitigate her loss and that she was deeply hurt and humiliated by the dismissal and the manner in which it was effected. The respondent is to pay Ms Gunfield the sum of \$8,000 pursuant to s 123 (1) (c) (i) and the sum of \$9,230.76 pursuant to s.128.

[17] Ms Gunfield did not contribute to the personal grievance so there will be no reduction in remedies.

[18] An employment agreement was provided, albeit not until after the employment had commenced. I decline to award a penalty.

[19] The claim for a penalty for failure to supply the time and wages records was made before the records were provided. Section 130 (2) provides that a request for records must be complied with immediately. A penalty of \$1000 for failure to supply the records in accordance with s 130 (2) is imposed. The penalty is payable to the Crown.

[20] The applicant has incurred costs. Costs generally follow the event. The applicant asks that costs related to mediation be taken into account on the grounds that a direction had to be issued and the employer did not participate in good faith. I am prepared to take into account the fact that a mediation had to be directed which involved the applicant in additional costs.

[21] The applicant's costs for mediation total \$1,500 and for the hearing \$1,705. There is also the matter of the filing fee and \$28.90 photocopying charges.

[22] The respondent is to pay the applicant the sum of \$1,800 in costs plus the \$70 filing fee and \$28.90 in disbursements.

Dzintra King

Member of the Employment Relations Authority

