

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 122  
5548992

BETWEEN                      Melanie Hope  
   Applicant

A N D                              Zusu Limited  
   Respondent

Member of Authority:      Rachel Larmer

Representatives:              Robert Morgan Advocate for Applicant  
   No Appearance by Respondent

Investigation Meeting:      30 April 2015 at Auckland

Date of Determination:      01 May 2015

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Ms Melanie Hope worked for Zusu Limited (Zusu) as a Charity Liaison from 16 June until her redundancy on 10 November 2014. Ms Hope claims her dismissal was unjustified.

[2] Ms Hope also claims wages arrears consisting of unpaid wages for the last five weeks of her employment, unpaid employer KiwiSaver contribution for the last five weeks of her employment and unpaid holiday pay.

[3] Zusu was served with the Statement of Problem on 25 March 2015. When Zusu did not file a Statement in Reply within 14 days of service it was advised by the Authority that it had to seek leave to defend this matter. Zusu did not file a Statement in Reply and it did not apply for leave to do so out of time.

[4] Zusu was served with the Notice of Hearing on 20 April 2015 but did not attend the investigation meeting. Zusu has not had any contact with the Authority.

[5] I accept Ms Hope's unchallenged evidence that Zusu failed to pay her for the last five weeks of her employment, it has failed to make its 3% employer KiwiSaver contribution and it did not paid her any holiday pay upon termination, despite Ms Hope not taking any paid leave whilst employed.

[6] It also appears that Zusu has not remitted its employer KiwiSaver deductions or Ms Hope's PAYE to Inland Revenue department despite these amounts having already been deducted from the wages she received whilst employed.

[7] Zusu is ordered to pay Ms Hope wage arrears of:

- (a) \$6,250 unpaid wages (5 weeks x \$1,250 per week);
- (b) \$2,000 unpaid holiday pay (8% of total gross earnings while employed);
- (c) \$187.50 unpaid employer KiwiSaver contribution (3% x 5 weeks @ \$1,250 per week).

[8] I also find that Ms Hope's dismissal was unjustified. Zusu's actions and how it acted were not what a fair and reasonable employer could have done in all the circumstances, contrary to the requirements of the justification test in s.103A of the Employment Relations Act 2000 (the Act).

[9] Towards the end of her employment Ms Hinton found out that Zusu had paid some employees their wages in full while she and another employee had not been paid any wages.

[10] Ms Hope approached Zusu to ask whether it was experiencing financial difficulties and whether she should be looking for another job. Ms Hope was told that Zusu had more than enough cash to comfortably keep operating until April 2015. Ms Hinton was told it was simply a technology problem between the bank and with the payroll system. Ms Hope was assured she would be paid and she believed that reassurance.

[11] On 10 November 2014 Ms Hope was handed a letter at a staff meeting (in front of other staff) which said she had been made redundant with immediate effect. Ms Hope was not given notice or pay in lieu of notice and she was never paid her final pay or outstanding wages.

[12] This was a shock and very upsetting to Ms Hope as she had believed her job was safe after she had been reassured the company was in a strong financial position and her wage arrears were just due to a processing error between the payroll software and the bank.

[13] There was no prior discussion that redundancies were possible, no consultation process, no information given to Ms Hope and no explanation as to why she and not other employees had been made redundant.

[14] I find that Zusu breached its good faith obligations under s.4(1A) of the Act by failing to provide Ms Hope with relevant information or an opportunity to comment on it before she was dismissed. Zusu also failed to comply with any of the four procedural fairness tests in s.103A(3) of the Act.

[15] Ms Hope has tried very hard to get a job as she really needs the income to support her two children but until recently had been unsuccessful. On 12 March 2015 she finally secured alternative employment which she starts next month.

[16] Ms Hope claims \$22,500 lost remuneration (18 weeks x \$1,250) and distress compensation of \$8,000.

[17] I am satisfied Ms Hope adequately mitigated her loss and that she has suffered considerable emotional distress as a result of her unjustified dismissal.

[18] Zusu is ordered to pay Ms Hope;

(a) \$16,250 being three months' lost remuneration under s.128(2) of the Act.

(b) \$4,000 distress compensation under s.123(1)(c)(i) of the Act to compensate her for the humiliation loss of dignity and injury to feelings she has suffered.

[19] Zusu is ordered to pay Ms Hope \$580 towards her actual legal costs plus \$71.56 to reimburse her filing fee.

[20] Zusu is ordered to pay Ms Hope the full amounts she has been awarded under this determination with 28 days of the date of this determination.

**Rachel Larmer**  
**Member Employment Relations Authority**