

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 347  
5499263

BETWEEN

MIN HE  
Applicant

A N D

KERIS ENTERPRISES  
LIMITED  
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Yumi Fu for the Applicant  
Ray Parmenter for the Respondent

Investigation Meeting: 5 November 2015 at Auckland

Submissions Received: 5 November 2015(orally) from the Applicant  
5 November 2015 (orally) from the Respondent

Oral Determination: 5 November 2015

Written Record Issued: 9 November 2015

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**ORAL DETERMINATION OF THE  
EMPLOYMENT RELATIONS AUTHORITY**

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**Employment relationship problem**

[1] Ms He was employed as a beauty therapist by Jeanz Beauty Limited t/a Keris Advanced Beauty Clinic Limited ( Jeanz Beauty) from 13 July 2013 until 19 February 2014. Keris Enterprises Limited (Keris) was incorporated on 6 June 2013 by Ms Sha Li known as Neroli and by Ms Amy Feng. Both Ms Li and Ms Feng were its directors and shareholders and had been employed by Jeanz Beauty. Keris and its predecessor, Jeanz Beauty, provide beauty services including nail extensions and similar services.

[2] On 19 February 2014, Keris offered and Ms He accepted employment as a beauty therapist. Ms He thought she was employed by Keris throughout but was in fact employed by it from 19 February 2014 until 9 May 2014.

[3] Ms He has made a number of claims against Keris including that she was bullied by Ms Feng throughout her employment, both at Keris and its predecessor, Jeanz Beauty. Ms He says she was overworked and bullied. However, no formal complaint or personal grievance was raised by her and by that I mean in writing. Ms He says she did verbally complain.

[4] Ms He says she was subsequently dismissed by Keris on 9 May 2014 following a trip to China to attend her cousin's wedding. Ms He says she was not paid holiday pay and seeks remedies including salary in lieu of notice, holiday pay, PAYE, commission and redundancy pay. The total sum sought amounts to \$20,840.91.

[5] Keris denies bullying or dismissing Ms He and says that holiday pay was paid to Ms He during the course of her employment.

### **The investigation meeting**

[6] The investigation meeting for this matter was scheduled a number of times to accommodate both parties. The investigation meeting for 5 November 2015 was notified in an email to the parties on 25 September 2015. I am satisfied that both parties were properly served and were well aware of the date. Both parties were aware that any witnesses were to attend the hearing today.

[7] In addition to her own witness statement, Ms He filed witness statements for three other witnesses. None of the witnesses attended. Ms He says that one witness was in China and another was unable to remain at the investigation meeting as she had to go to work. Ms He blames the fact that Keris did not arrive at the investigation meeting until 11am. While the late start was unfortunate, I am not satisfied that that was the reason for the witness not remaining. It was made clear to all witnesses that they were to remain at the investigation meeting in order to give their evidence. The meeting in any event started at 11am.

[8] Accordingly, I must give the witness statements of the witnesses who failed to attend the investigation meeting very little weight. I have read the witness statements but I am unable to give them much weight because I was unable to question the witnesses.

[9] Under s.174E of the Employment Relations Act 2000 (the Act) I am now going to give my decision but I will not be reciting all the evidence. I will be making findings to dispose of this matter as efficiently as possible.

### **Bullying**

[10] Ms He gave general evidence that she was bullied. There was no substantive evidence, in my view, that there was any bullying. Keris denied any bullying.

[11] I have cited emails between Ms Feng and Ms He and these do not disclose a bullying environment. This is not to say that there was no bullying, but there was no evidence, and certainly no evidence on the balance of convenience, to persuade me that there was any bullying or any bullying to constitute an unjustified disadvantage claim.

### **Alleged dismissal**

[12] As mentioned, Ms He's evidence was the only evidence that she was able to provide. None of her witnesses were able to attend and corroborate her story. I prefer the evidence of Ms Feng and Ms Li in relation to what occurred in terms of the alleged dismissal.

[13] I find that Ms He asked Ms Feng for a month off to travel to China to attend her cousin's wedding and she indicated that she may not return. This time was granted to Ms He to attend the wedding, and Ms Feng asked that she return to work the day after she returned to New Zealand. Ms He returned to New Zealand on 8 May and that evening at approximately 8 or 9pm, Ms He and Ms Feng had a telephone conversation about this. During the course of the telephone conversation, Ms Feng informed Ms He that Keris would need to reduce the hours of another employee, Ms Na Wei known as Nana. There was insufficient work for both of them and her (Ms Wei's) hours would have to be reduced. Ms He was shocked by this as Ms Wei was not only a good colleague, she was a good friend. Ms Wei was at the dinner during the course of which this conversation took place but did not hear the conversation.

[14] Ms He asked if she and Ms Wei could come and talk with Ms Feng about the matter and this was agreed to. Ms Feng, Ms Li, Ms He and Ms Wei met on the same evening. Ms Feng and Ms Li say that when Ms Feng said that Ms Wei's hours needed to be reduced, Ms He objected and said if they could not both work full time

they would both leave. Ms Feng rang Ms He the following day to try and persuade her to return to work but Ms He refused to do so.

[15] Ms He shortly thereafter began her own beauty business and the Authority was provided with copies of advertisements in this regard.

[16] I find that on the balance of probabilities that the evidence provided, including the “we-chat” conversations confirm that Ms He left of her own accord and that she was not dismissed. I find that Ms He resigned and accordingly does not have an employment relationship problem.

[17] With regard to the remedies, as I have mentioned before, the holiday pay was paid during the course of the employment and no further holiday pay is owing. There was insufficient evidence concerning commissions Ms He claims are owing to enable the Authority to make a finding.

[18] Ms He’s claim for compensation for alleged unjustified dismissal and alleged bullying fail as the Authority has found Ms He does not have an employment relationship problem.

### **Costs**

[19] Costs are reserved. Mr Parmenter has 14 days to provide the Authority with a memorandum as to costs and Ms He will have 14 days within which to reply.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**