

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2014] NZERA Wellington 96
5463907 and 5463913

BETWEEN REBECCA HODGES AND
TUI ALLEN
Applicants

AND GARY ASHLEY AND
DYNAMIC MEATS 2014
LIMITED
Respondents

Member of Authority: P R Stapp
Representatives: Megan Williams for the Applicants
No appearance for Respondents
Investigation Meeting: 30 September 2014 at Napier
Determination: 7 October 2014

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The separate files have been consolidated for one investigation meeting. The applicants claim that they were unjustifiably dismissed. Ms Hodges claims that she was not paid wages. There have been no statements in reply lodged by the respondents. They have not communicated and responded to the Authority's directions in the matter. There was no good cause to support the respondents' non-appearance at the Authority's investigation meeting. I am satisfied that the respondents have been served. I decided to fully proceed in the matter as if the respondents attended and had been represented.

Issues

[2] Who was the applicants' employer?

[3] How did the applicants' employment end and what were the reasons for their employment ending?

[4] Is Ms Hodges' entitled to her claim for arrears of wages?

[5] Are the applicants entitled to any remedies for personal grievance? If so, how much and what for?

Facts

[6] The applicants were employed by Dynamic Meats 2014 Limited. My reasons are that the documentation produced by the applicants makes it more likely than not that the employer was Dynamic Meats 2014 Limited (Dynamic Meats). This finding is supported by a wage slip produced by Ms Hodges, and a letter of offer of employment produced by Ms Allen. There were no written employment agreements. No wage and time and holiday records have been produced by the respondents, despite requests for them to be produced. Ms Hodges started work tele marketing on 1 May 2014. Ms Allen started work as an administration manager on 16 April 2014. Both applicants gave up other jobs to work for Dynamic Meats. Ms Allen left her previous employer without having to work out her notice. Ms Hodges agreed to work for \$17 per hour at Dynamic Meats. Ms Allen was offered and agreed to a salary of \$45,000 per annum.

[7] Their relationship with Mr Gary Ashley, director and Mr Kevin O'Regan who was in charge at the business premises, became strained about the work that was required and how the duties and requirements were being managed. Ms Allen was dismissed on 17 April 2014. Ms Hodges was dismissed on 16 May 2014.

[8] Neither of them was paid. However, Ms Allen was subsequently paid a sum that she agreed to. Ms Hodges claims she has still not been paid for hours that she worked.

[9] The matter has remained unresolved. The respondents have simply ignored and failed to reply. I considered the matter for mediation, but decided that the behaviour of the respondents in refusing to communicate meant that mediation would not be constructive. It now falls to the Authority to resolve the employment relationship problems.

Determination

[10] First, Ms Hodges is entitled to arrears of wages. I accept her calculation from the details of her hours and that the claim is supported by her diary. She is owed \$1,330.25 gross wages.

[11] Second there has been no good cause from the respondents to support the dismissals of both applicants. Further the matter has been compounded by the respondents' failure to have written employment agreements in place. If there is any suggestion from the respondents that they are relying on the 90 day trial provisions then in the absence of any written employment agreement any reliance on a 90 day trial provision applying is entirely misconstrued and invalid.

[12] As I have already held, Ms Hodges and Ms Allen were employed by Dynamic Meats 2014 Limited, and not Mr Ashley personally. This is because the company is registered (and he is entitled to act behind it), and supported by the documentation. Indeed the evidence from the applicants did not support the undisclosed principal approach applying.

[13] Next I hold that if the employer had any concerns they were not put to the applicants for them to reply and comment. It follows that the employer's duty to consider any reply and response from the applicants could not happen. This is a serious failure of procedure by the employer.

[14] The situation is compounded by the employer's behaviour in regard to the applications lodged by the applicants in the Authority. I take it that by deciding not to reply the respondents have not challenged the claims from the applicants. I infer that the respondents have accepted the claims, and thus decided not to provide any mitigating defence.

[15] The respondents have failed to follow the provisions in the Act as to the procedure that must be followed. The absence of the procedure means that the dismissals were unjustified.

[16] Ms Allen has not claimed any loss of wages because she was able to return to her previous job because of the generosity and good will of her previous employer. Ms Hodges is entitled to lost wages as she was not able to get a full time job. Both of them are entitled to compensation. They have not contributed in the situation giving rise to their personal grievances. The personal grievances relate entirely to the employer's dismissal of the applicants without good cause and defective procedure.

[17] Rebecca Hodges' lost income amounts to \$8,763.29. Unchallenged I accept her claim. She has detailed her claim. She has given evidence of attempts to mitigate her lost wages and she has deducted earnings received since her dismissal. She has given evidence about what happened to her, how she feels and the impact of the dismissal on her. I award her \$6,000 compensation, without deduction. She was supported by her partner who confirmed the impact of her dismissal on her.

[18] Ms Allen says that she did get paid and obtained work since her dismissal. Her claim is only for compensation for hurt and humiliation. She too has expressed how she felt and explained the impact of the dismissal on her. I award her \$6,000 compensation, without deduction.

Summary of the Authority's orders

[19] Dynamic Meats 2014 Limited is required to pay:

a. Rebecca Hodges

- 1) \$1,330.25 wage arrears; and
- 2) \$8,763.29 lost wages; and
- 3) \$6,000 compensation for hurt and humiliation.

b. Tui Allen

- 1) \$6,000 compensation for hurt and humiliation.

[20] In addition Dynamic Meats 2014 Limited is required to reimburse the applicants the total sum of \$3,000 for costs for their use, and the \$71.56 filing fee

each. They have both been put to the costs of appearing in the Authority and needing to get a representative. I have up lifted the daily tariff to account for a half day investigation meeting and that both separate applications were able to be consolidated. This is to contribute to the costs of the preparation required and the attendance of their representative.

[21] Dynamic Meats 2014 Limited is to pay Ms Hodges and Ms Allen a total of \$3,000 costs for their use and \$71.56 each for their filing fees.

[22] A certificate of determination is to be issued for enforcement.

P R Stapp
Member of the Employment Relations Authority