

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Ella Elizabeth Iosua (Applicant)
AND Peter Morgan (First Respondent)
Iroam Thoroughbred Limited (Second Respondent)
REPRESENTATIVES Applicant In Person
No attendance by Respondents
MEMBER OF AUTHORITY Leon Robinson
INVESTIGATION MEETING 3 November 2006
DATE OF DETERMINATION 3 November 2006

DETERMINATION OF THE AUTHORITY

The Authority determines:-

- A. This investigation is suspended and the Authority will make no further enquiries. Ms Iosua is to advise the Authority of her further intentions if any, by 28 February 2007 failing which the investigation shall then be concluded and the file closed.
- B. The second respondent is struck out.
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[1] The applicant Ms Ella Elizabeth Iosua ("Ms Iosua") applies to the Authority for an investigation into her dismissal from her employment at the Thoroughbred Sportsbar in Takanini Auckland on 18 August 2005. She claims that she was unjustifiably dismissed and asks for orders for compensation and reimbursement. She also claims wages in lieu of notice as well as arrears of wages.

[2] Neither of the alleged employer Respondents attended the investigation meeting today. Nor has either Respondent taken any steps previously to defend the matter. Invitations to attend mediation have been ignored and no statements in reply have been lodged.

[3] Ms Iosua lodged her statement of problem in the Authority on 13 April 2006. That statement of problem was served on the first respondent on 14 July 2006 by a process server. After initial unsuccessful attempts the second respondent company was eventually served on 21 August 2006. Both respondents failed to comply with the Authority's requirement that they lodge a statement in reply within 14 days of the date of service.

[4] The Authority directed the matter proceed to investigation meeting today. A notice of investigation meeting was served on both respondents as evidenced by proof of service held on the Authority's file. The Authority Member's Minute of 14 September 2006 recorded that: -

It is noted that the second respondent has taken steps to remove the company from the companies register.

[5] Both respondents did not attend the investigation meeting today. I asked the Authority's support staff to make contact with Mr Peter Tureiti Morgan ("Mr Morgan") who advised the support officer at 10.12 am that he had forgotten about today's investigation meeting although he had wanted to attend and "had people lined up". He suggested that it be reconvened either next week or the following week.

[6] I have considered the situation in terms of Clause 12 of Schedule 2 of the *Employment Relations Act 2000* ("the Act") which is as follows: -

12. Power to proceed if any party fails to attend-

If, without good cause shown, any party to a matter before the Authority fails to attend or be represented, the Authority may act as fully in the matter before it as if that party had duly attended or been represented.

[7] Subject to what is said later, I initially did not consider that either respondent had "good cause" for failing to attend the investigation meeting and as they had failed to take any previous steps in the matter, I proceeded to act as fully in the matter as if they had attended.

[8] Ms Iosua gives sworn evidence that in May or June 2005 she was given an employment agreement by Mr Morgan. That agreement clearly disclosed the employer as the second

respondent and Ms Iosua signed it. Accordingly, I find that the second respondent Iroam Thoroughbred Limited was the correct employer.

[9] Unfortunately, my enquiries today reveal that the second respondent was "struck off" the companies office register on 12 September 2006. Accordingly, there is no second respondent and it could not attend today.

[10] My further enquiries reveal the registrar of companies published a notice on 13 July 2006 of his intention to remove the second respondent from the register under section 319 of the *Companies Act 1993*. As is usual, that public notice also advised addresses for written objection.

[11] Having regard to these issues, I advised Ms Iosua I could not advance matters.

[12] Ms Iosua has indicated her intention to investigate the company matters further and also, that she remains aggrieved and dissatisfied. In those circumstances, **this investigation is suspended and I will make no further enquiries. Ms Iosua is to advise the Authority of her further intentions if any by 28 February 2007 failing which I direct this investigation shall then be concluded and the file closed.**

[13] The first respondent is to be served with this Determination and **the second respondent is struck out under section 221(a) of the Act.**

Leon Robinson
Member of Employment Relations Authority