

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Hannah Jackson (Applicant)
AND Hsien Lee t/a Treasure Restaurant (Respondent)
REPRESENTATIVES Gerard Dewar for Applicant
Ross Jamieson for Respondent
MEMBER OF AUTHORITY G J Wood
INVESTIGATION 28 June 2005
MEETING
DATE OF 12 July 2005
DETERMINATION

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

1. Hannah Jackson claims that she was unjustifiably dismissed and then suspended by Mrs Hsien Lee, a co-owner of the Treasure Restaurant. Mrs Lee, by contrast, claims that none of her actions were unjustifiable.

The Facts

2. Hannah Jackson is a 17 year old school student who wanted regular part time work in October 2004. Through her previous employer, who was selling the business she worked in, she arranged to have a meeting with Mrs Hsien Lee. Mrs Lee and her husband are beneficiaries who have also run family businesses for a great number of years. They had just taken over the Treasure Restaurant in Stokes Valley. This was the first business Mr and Mrs Lee operated that was to involve the employment of staff outside the family. Specifically, they were looking for two waitresses in the restaurant.

3. After some discussions about work duties, Ms Jackson was offered and accepted 3½ hours of work daily, Wednesday to Friday evenings. None of the details of the agreement, which included payment of \$8 per hour in the hand, were committed to writing as is required by the Employment Relations Act.
4. Ms Jackson began work on 6 October 2004. During that week she asked Mrs Lee if she could have certain time off during the Christmas holiday period to go on a family holiday. Mrs Lee agreed to this request and had Ms Jackson write the dates down and put them on the calendar in the restaurant.
5. During that month Ms Jackson had several days off for different reasons.
6. On the advice of their accountant, Mrs Lee decided that the two employed staff would be paid weekly by cheque, instead of by cash each evening. When she told Ms Jackson this at the end of her shift Ms Jackson was upset about not being paid that night and told Mrs Lee so.
7. Ms Jackson's employment was about to come to an end in very strange circumstances. On Thursday 4 November 2004 Ms Jackson was taken to work by her father because her car had broken down. Mr Jackson went into the restaurant to introduce himself to the Lees and questioned why the payment arrangements had changed. At that point Mrs Lee told Ms Jackson that she had one week to find another job. This was said to be because her children would soon be arriving back from university and there would be no need for Ms Jackson. Mrs Lee told the Jacksons that there might be work for Ms Jackson after the university holidays. Mrs Lee then stated that Ms Jackson would receive two weeks' notice. Mrs Lee then offered to pay Ms Jackson in cash for each shift during the notice period.
8. Mr and Ms Jackson sought advice on what had happened from the Labour Department and then returned to the Treasure Restaurant to discuss matters with Mrs Lee on Saturday 6 November. The Jacksons told Mrs Lee that Ms Jackson could not be sacked in these circumstances. Mrs Lee then said that she had given Ms Jackson notice because Ms Jackson did not want tax deducted from her pay. In fact tax had not been deducted from Ms Jackson's pay until some weeks after her employment had

ended. Mrs Lee suggested another meeting the next week when her son, who spoke better English, was available.

9. At that meeting Mr Norbert Lee represented his parents. Ms Jackson sought reinstatement to her position, but Mrs Lee said that Ms Jackson could not work on Wednesdays any more because there was not enough work for her. Ms Jackson refused to agree to this. The Jacksons were then told that this was a new business, that there was not enough work for her and that Ms Jackson had been employed for a trial period of one month. Ms Jackson denied ever reaching such an agreement.
10. After a discussion of the leave arrangements, Mrs Lee asked the Jacksons if they could put forward any more options. They went outside to consider what options were possible. They came back to the Lees and told them that if they could not reinstate Ms Jackson then they would accept compensation for lost wages up to 24 December 2004, plus holiday pay. These options were rejected by Mrs Lee. Mrs Lee wanted to know if Ms Jackson could continue working during her notice period or at all and Ms Jackson stated pointedly that she was fine.
11. After that meeting the Lees took advice from a Ms Allie Hamilton of “Employment Grievances”. She determined that Ms Jackson’s employment relationship problems, including her notice of dismissal (which the Lees had not communicated to her), and the Lees’ concerns about Ms Jackson’s manner (which she was told included demands for money – in fact the pay until Christmas option), should be dealt with by way of suspending Ms Jackson. Accordingly, when Ms Jackson appeared at work on 17 November 2004 she was met by Ms Hamilton, who told her that there had been allegations made against her which were outlined in a letter, which she then provided to Ms Jackson. Ms Jackson was given her pay for the night and told that there would be a meeting on 24 November, but that she was suspended until then and had to leave the premises immediately. Ms Jackson queried about what would happen if she could not attend the meeting as she had exams and she was told that by law she was required to be there.
12. The letter stated that the allegations related to the hours required to work and the way she had treated her employer. She was told that dismissal could be a disciplinary

action to follow in this matter. She was accordingly suspended until the meeting on 24 November. Ms Jackson was very upset and was in hysterics when talking to her father on the telephone. As a result of the suspension Ms Jackson was not paid for the last two days of her two weeks' notice period.

13. Mr Jackson was very concerned about what had happened and sought legal advice. Consequently a grievance was submitted on Ms Jackson's behalf on 23 November, claiming unjustifiable dismissal, amongst other things.
14. Ms Hamilton replied on behalf of the Lees on 26 November stating that the Lees believed Ms Jackson had verbally threatened them and demanded money from them. Ms Hamilton went on to state (verbatim) –

“Due to Ms Jackson refusing to participate in the scheduled meeting on Wednesday, 24 November 2004. We are left with no other choice but to ask the police to investigate the verbally threats and demands for money.

My clients will be seeking compensation for stress and costs from Ms Jackson.”

15. Ms Jackson did not attend the disciplinary meeting, as she believed she had already been dismissed. The police were never involved, but that threat, amongst other things, has meant that Ms Jackson and her father have decided to pursue this personal grievance.
16. The Lees' children subsequently both worked in the restaurant over the course of the university vacation. The restaurant no longer employs any staff outside of the family and the bank accounts do not show a successful trading position.
17. Ms Jackson obtained work for several weeks over Christmas, earning significantly more than she earned at the restaurant. That employer later took her on again in April for hours that were acceptable to her.
18. Mrs Lee has qualified for legal aid as she and her husband are beneficiaries. She was only granted legal aid at a very late stage, but was represented by an experienced advocate. Despite discussions between the parties, no resolution has been able to be achieved in this matter and it falls to the Authority to make a determination.

19. I have determined the facts as above on the basis of my acceptance of Mr and Ms Jackson's evidence over that of the Lees for the following reasons:
- The Lees were first time employers who may not have known that it was wrong to change their staff member's hours arbitrarily;
 - The Lees' children did work in the restaurant over the university vacation, even though it may have been unpaid;
 - Mr Jackson, although an extremely protective father, was clear and consistent in his evidence and did make some concessions about issues in general;
 - The whole course of events is consistent with Ms Jackson being told that there would be no more work for her after mid November.

Determination

20. It is clear on any reading of matters that Ms Jackson was first unfairly given notice of termination of employment and then unfairly suspended. No fair and reasonable employer would have suspended Ms Jackson in these circumstances, let alone dismissed her. There were no grounds for suspension whatsoever. There was similarly no just cause for dismissing Ms Jackson, who had been taken on for on-going employment, just because Mrs Lee did not like some of her behaviour and/or to replace her with her children over the university vacation. Any necessary changes to Ms Jackson's regular hours of work could have been achieved after proper consultation, which did not occur here.
21. In determining remedies I need to take account of Mrs Lee's financial position as a beneficiary and a recipient of legal aid. On the other hand, she does have significant equity in the family home.
22. There can be no certainty over the degree to which Ms Jackson has mitigated her losses in this matter. It was clear that she was taking family holidays over the usual school holiday period and the hours of work she was seeking were fairly limited. Furthermore, this was a part time after school job for Ms Jackson, which did not pay a lot of money. In equity and good conscience I determine that she should be

reimbursed for 10 week's wages constituting \$1,002.75 gross, inclusive of the two days that she was not paid for while on suspension.

23. While this is an unfortunate experience for Ms Jackson, in the overall scheme of things, it would not have been particularly significant had she not been suspended and threatened with police investigation. In these circumstances I consider that compensation in the sum of \$1,500 does justice to the employment relationship problem.
24. I therefore order the respondent, Hsien Lee, to pay to the applicant, Hannah Jackson, the sums of \$1,002.75 gross in lost remuneration, and \$1,500 in compensation.

Costs

25. Costs are reserved.

G J Wood
Member of Employment Relations Authority