

[3] Arrangements were made by the company to cover Ms Kaiwai's absence from work. She was asked to assist and show a fill in driver her runs. She agreed to help and agreed to accept a payment for her expenses.

[4] On 9 July 2008 Ms Kaiwai returned to work, but failed to turn up on 15 July 2008. Mr Knolles says he contacted Ms Kaiwai by telephone, and she told him that she could not afford to get to work. He says he pointed out to her her responsibility to get to work and be on time, and that if she could not get to work, they would have to discuss the issue.

[5] Ms Kaiwai claimed that Mr Knolles told her that her run did not exist any more, which he denies. He says that instead of discussing the issue of her responsibility to get to work, she told him that she would have to resign and he informed her that she would have to put her resignation in writing. Ms Kaiwai says that Mr Knolles advised her that she should resign, handed her a piece of paper and pen and told her to write down that she had finished at Fresh Connections as of 16 July 2008. Mr Knolles denied that and says Ms Kaiwai resigned. He says he did not see her write out her resignation in the warehouse.

[6] One of the applicant's claims included a claim for the payment of sick leave that was due. The delay in payment was related to the company's pay systems not picking up that Ms Kaiwai qualified for the entitlement when she was off work injured. The money has since been paid and the claim is not being pursued. The remaining claims are for lost wages and compensation and costs. The respondent has denied the claims.

Issues

[7] Did Ms Kaiwai voluntarily resign or leave her employment, or was she dismissed? There are a number of factual issues that include:

- Did Mr Knolles tell Ms Kaiwai that her run did not exist any more?
- Did Ms Kaiwai say she would have to resign?
- Did Mr Knolles say she should resign?
- Did Mr Knolles hand her a pen and a piece of paper?
- Was Mr Knolles present when Ms Kaiwai wrote out her letter?

Determination

[8] The above issues need to be decided on credibility. Therefore I am required to assess Ms Kaiwai's and Mr Knolles's evidence. Ms Kaiwai was adamant that she did not resign. She was also adamant that she did not prepare her letter in the warehouse, but that Mr Knolles gave her the pen and paper and stood over her while she wrote it out for him.

[9] Debra Knolles, the financial controller, attended the Authority's investigation meeting and says she was in the office at the time of the incident. She could confirm that Mr Knolles and Ms Kaiwai were present, but she did not hear them or see Ms Kaiwai writing out a letter.

[10] I have assessed the following evidence:

- Ms Kaiwai was able to return to work between 9 and 14 July 2008.
- Ms Kaiwai had been late previously and had had trouble getting to work in the past.
- Ms Kaiwai's letter dated 16 July 2008 says that she was leaving.
- Ms Kaiwai did have problems at work with lateness and absences. Despite denying that she had been late and had been absent, the time and wage records contradict her denial. She did not get paid for days that she was absent. The dates were documented: 17 April 2008, 2 May 2008, 24 June 2008, and 14, 15 and 16 July 2008. These were able to be reconciled with the pay slips and the notations for absences on the pay records. The applicant did not complain about not being paid for the dates prior to this employment relationship problem being raised.
- Money was paid in advance to Ms Kaiwai by Mr Knolles despite Ms Kaiwai saying she did not get advances paid. Mr Knolles's evidence was supported by a deduction for repayment in the final pay, which was not challenged by Ms Kaiwai. Ms Kaiwai acknowledged some payments being made although the parties could not tell me with any certainty the exact sums. During the Authority's investigation meeting

they discussed and agreed some sums were paid that included at least one payment and the deduction.

- Mr Knolles acknowledged that, while he had issues with Ms Kaiwai's absences and lateness, he never invoked any disciplinary processes. There were no issues at the three monthly performance review that was required under the terms of the employment agreement.
- Ms Kaiwai bought a car and was conscious of the money needed to run it.
- Mr Knolles believed that a resignation needed to be put in writing. He did not deny telling Ms Kaiwai that if she decided to resign she would need to put it in writing as a matter of the respondent's policy. There was no written policy and I find that this was what Mr Knolles understood needed to happen.
- Mrs Knolles explained that there were delays with the request for wages time and holiday records and the employment agreement when Ms Kaiwai's representative used the company's registered address. This meant that there were delays and she sent the documents to Ms Kaiwai's representative late.
- It was accepted that the employment agreement was signed off and that Ms Kaiwai had time before signing it to get advice. She signed it after she had started work. She could have got advice and assistance when the issue of resigning came up. I am satisfied that if she had wanted advice and assistance Mr Knolles would have given her time given the signing off of the employment agreement and because he has obtained advice of his own since Ms Kaiwai raised a personal grievance.
- There was nothing untoward with the employer not replying to the letter raising a personal grievance (produced at the Authority's investigation meeting) because the parties agreed to go to mediation first.
- Ms Kaiwai made a claim for a work related injury that was not sustained. Her claim I am sure was not deliberately made as such, but it is an incident that supports my conclusion that her claims are not entirely reliable.

Conclusion on the evidence

[11] Ms Kaiwai was clearly upset about what she says happened. It is possible that when Mr Knolles raised with her that they would need to discuss her responsibilities to get to work that she could have got upset too and that has impacted on her understanding of the situation. Without any corroborating evidence from anyone else Ms Kaiwai was always going to have some difficulty in establishing her claims.

[12] Balancing the above I find that Ms Kaiwai has not been able to establish that she was forced to write the letter dated 16 July and to leave her employment under duress from Mr Knolles. This is because Mr and Mrs Knolles were able to contradict her denial on being absent and late to work and being paid advances. There were issues that Mr Knolles was concerned about with Ms Kaiwai's employment that make it probable and more than likely that he wanted to discuss her responsibilities with her. Ms Kaiwai was not able to corroborate her claims of what she says happened given the direct conflict in evidence from Mr Knolles.

Order of the Authority

[13] I conclude that Mr Knolles reasonably concluded that Ms Kaiwai had decided to leave her employment. Ms Kaiwai left her employment and has not been able to establish that her leaving was caused at the initiative of the employer.

[14] Ms Kaiwai's claims are dismissed.

[15] Costs are reserved.

P R Stapp
Member of the Authority