

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 56  
5349000

BETWEEN

DAVINDER KAUR  
Applicant

AND

R & R GROUP LIMITED  
Respondent

Member of Authority: R A Monaghan

Representatives: G Singh, advocate for applicant  
A Prasad, counsel for respondent

Investigation Meeting: 20 December 2012

Determination: 16 February 2012

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Davinder Kaur says her former employer, R & R Group Limited (R & R Group) dismissed her unjustifiably and without any fault on her part. She seeks the reimbursement of lost remuneration and compensation for the injury to her feelings caused by the unjustified dismissal.

[2] According to a statement in reply lodged belatedly but at my request, R & R Group says Ms Kaur was engaged on a fixed term employment agreement which was not renewed because of her poor performance and her offensive language.

[3] Although counsel attended the investigation meeting, no evidence was offered on behalf of R & R Group and counsel was unable to obtain further instructions. In effect the only evidence I heard was from Ms Kaur, but because that evidence was variously vague, inconsistent or inaccurate I have also noted the contents of the statement in reply.

**Background**

[4] R & R Group employed Ms Kaur as a packer and assembler in its factory.

[5] Ms Kaur said that on 30 September 2010 she was called to the manager's office and informed that a number of students who were also employed in the factory were doing the job better than she was, and for lower wages. There would be no more work for her because the students were cheaper.

[6] According to the statement in reply, in late August 2010 the regional manager advised Ms Kaur that her fixed term employment agreement would not be renewed unless she became more efficient at her work. To that end she was to be given other jobs around the factory in an attempt to find work to which she was better suited. When this arrangement did not prove satisfactory Ms Kaur was given a further two weeks to improve, but failed to do so.

[7] Frequent references in Ms Kaur's oral evidence to the fact that performance concerns had been raised with her, as well as her acknowledgement that attempts were made to find other work for her, lead me to conclude that the actions outlined in the statement in reply are likely to have occurred.

[8] Further, Ms Kaur alleged repeatedly in her oral evidence that she was dismissed so her employer could retain the services of students who were employed on cheaper rates. I consider that unlikely, particularly given the acknowledgements that concerns about her performance were raised with her and unsuccessful attempts were made to find more suitable duties. The dismissal was not imposed by reason of redundancy, and is more likely to have been imposed on the grounds identified in the statement in reply.

[9] Ms Kaur's last working day was 11 September 2010.

[10] Two weeks' payment in lieu of notice was received on 20 September 2010.

**Determination**

[11] Neither party provided a written employment agreement, and there was no evidence to support a finding Ms Kaur was employed under a fixed term agreement. Moreover, even if such an agreement did exist, on the limited information I have the mere existence of a fixed term provision in the agreement is unlikely to amount to a defence to Ms Kaur's claim.

[12] Ms Kaur's employment must be regarded as permanent. It was terminated by a dismissal. Accordingly I approach her personal grievance by addressing whether the dismissal was justified on the ground of poor performance and offensive language.

[13] In the absence of any further details of Ms Kaur's poor performance and offensive language, or further information about how these matters were addressed, it is not possible to find this dismissal was justified.

[14] I therefore find the dismissal was unjustified.

**Remedies**

[15] Ms Kaur obtained alternative employment in June 2011, although she had obtained temporary or casual positions from time to time in the interim. She calculated her lost remuneration as:

9 months x \$2,250/month (earnings that would have been received from R & R Group) - \$10,849 (actually earned since the dismissal) = \$9,401

[16] The figure of \$10,849 was net of tax. Whether the average monthly figure for earnings at R & R Group was net or gross was not specified. However Ms Kaur was paid at the minimum hourly rate, which at the relevant time was \$12.75/hour. If she worked the hours of work she alleged, the average monthly figure cited in her calculation is also a net figure. Accordingly the sum of \$9,401 is also a net amount.

[17] There was no evidence on which I could find the hours of work Ms Kaur alleged were not the hours she worked. Further there was no evidence on which I

could find Ms Kaur contributed to her grievance in a blameworthy way so that the amount sought should be reduced.

[18] R & R Group is therefore ordered to pay to Ms Kaur the sum of \$9,401 net. Its obligation as the employer to remit the tax on that amount to the IRD will remain.

[19] Compensation for injury to feelings in the sum of \$10,000 was sought. There was no evidence of such injury and I make no further award.

### **Summary of orders**

[20] R & R Group is ordered to pay to Ms Kaur the sum of \$9,401 net.

### **Costs**

[21] R & R Group is further ordered to reimburse Ms Kaur for the filing fee of \$71.56.

R A Monaghan

Member of the Employment Relations Authority