

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 292/09
5152650

BETWEEN MARY-ANNE SUGANOB
 KETTLE
 Applicant

AND NEW BAR 2008 LIMITED
 Respondent

Member of Authority: Marija Urlich

Representatives: Georgie Pointon, for Applicant
 No appearance, for Respondent

Investigation Meeting: 30 June 2009

Determination: 20 August 2009

DETERMINATION OF THE AUTHORITY

[1] Ms Kettle says she was offered and accepted a position with New Bar which did not commence before she was dismissed. She seeks lost wages and compensation for hurt and humiliation consequent to her dismissal.

[2] New Bar operates a bar and restaurant. New Bar has not filed a statement in reply and no representative attended the investigation meeting. Having satisfied myself that the statement of problem and notice of investigation were duly served on New Bar and having asked a support officer to contact New Bar¹ I proceeded with the investigation meeting satisfied New Bar had had a fair opportunity to attend the investigation meeting and give its side of the story.

[3] This application was originally filed in the name of Ms Kettle and Sophie Louise Burnside. Ms Pointon advised at the investigation meeting that Ms Burnside could not attend because she is in Australia. I have suspended the investigation of Ms

¹ The support officer left a message at New Bar's restaurant premises which has not been returned.

Burnside's employment relationship problem until the Authority receives advice as to her intentions. Therefore, this determination deals only with Ms Kettle's claim against New Bar.

Person intending to work

[4] Ms Kettle says she was offered and accepted employment with New Bar as a full time bar person/waitress. In support of her claim she gave evidence of the following:

- Attending an interview with a representative of New Bar;
- Receiving an offer of employment shortly thereafter;
- Receiving a written employment agreement;
- Signing and returning that document to New Bar;
- Resigning her extant employment in reliance on commencing employment with New Bar;
- Exchanging txt messages with New Bar representatives to arrange training dates;
- Providing bank details and clothing size at New Bar's request;
- Being advised the commencement date of employment was deferred because the opening date of the restaurant had been moved;
- Being then advised New Bar had hired too many staff but she would not be left in the "lurch" and would be paid;
- Making inquiry of her pay and commencement date; and
- Being contacted by the general manager and told the business could not afford to pay her as promised, she would not be hired and no employment agreement had been entered by the parties.

[5] I find Ms Kettle was offered and accepted employment with New Bar, that the offer of employment was made by an authorised representative of New Bar and that the terms of employment were clear between the parties. That New Bar had not counter-signed the employment agreement does not mean a binding agreement had not been entered by the parties; the execution of the document was a formality. I find

Ms Kettle was an employee, the statutory definition of which includes a person intending to work².

[6] I also find Ms Kettle has been unjustifiably dismissed from that employment. She was promised wages when work could not be made available and when she inquired as to the payment of those wages she was told she would not be paid, she would not be employed and no employment agreement had been entered. This conduct falls below the standards expected from an employer acting fairly and reasonably³.

Remedies

[7] Having established she has a personal grievance Ms Kettle is entitled to a consideration of the remedies she seeks.

[8] Ms Kettle seeks a total of 12 weeks lost wages. She said it was very difficult to find another job at the time of year these events occurred (late November 2008) and was unable to do so until February 2009, when she secured part-time employment. The parties' written employment agreement contains a probationary period. This does not render the employment fixed term⁴. If Ms Kettle had commenced work with New Bar she would have had a reasonable expectation of employment beyond the probationary period.

[9] **New Bar 2008 Limited is ordered to reimburse Mary-Anne Suganob Kettle four weeks wages (totalling \$2240 gross) pursuant to section 123(1)(b) of the Employment Relations Act 2000.**

[10] Ms Kettle seeks an award to compensate her for hurt and humiliation consequent to her dismissal. In support she says she resigned secure employment to take up the position with New Bar having taken careful steps to ensure the position was genuine and has been let down. She says she was promised wages when work could not be provided and when she pursued those wages was spoken to rudely by New Bar's general manager. She said she is upset this situation has occurred and that

² Section 6 (1)(b)(ii) Employment Relations Act 2000

³ Section 103A Employment Relations Act 2000

⁴ Section 66 Employment Relations Act 2000

the promise made to her by New Bar has been broken. I accept Ms Kettle has been affected to her detriment by her unjustified dismissal.

[11] New Bar 2008 Limited is ordered to pay Mary-Anne Suganob Kettle \$1000 pursuant to section 123(1)(c)(i) of the Employment Relations Act 2000.

[12] New Bar 2008 Limited is ordered to reimburse Mary-Anne Suganob Kettle \$35, being her share of the filing fee incurred in lodging this application in the Authority.

Marija Urlich

Member of the Employment Relations Authority