

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
ER AUTHORITY AUCKLAND OFFICE**

**BETWEEN** Chanelle Laker (Applicant)  
**AND** Nick Sharma t/a Nick's Café (Respondent)  
**REPRESENTATIVES** Francis Sabbineni Advocate for Applicant  
Nick Sharma in person  
**MEMBER OF AUTHORITY** Dzintra King  
**INVESTIGATION MEETING** Tuesday 16 May 2006  
**DATE OF DETERMINATION** Friday 9 June 2006

DETERMINATION OF THE AUTHORITY

The applicant, Ms Chanelle Laker, claims she has been unjustifiably dismissed and that she is owed holiday pay.

Ms Laker was employed in May 2005 at Nick's Café as a café assistant. On 12 December 2005 she was dismissed by the café manager in circumstances that clearly rendered the dismissal unjustifiable. Mr. Nick Sharma, the owner of the café, denied any responsibility for the dismissal, claiming it was the manager's responsibility. Mr. Sharma also failed to supply a Statement in Reply, make any response to a request to attend mediation and refused to accept documents sent by the Authority. Mr. Sharma has also failed to supply me with a copy of the applicant's time and wage records despite giving an undertaking that he would do so.

When approaches were made to Mr. Sharma by the applicant's mother she was treated in a cavalier fashion. The final wages were not paid for a month and despite promises to pay holiday pay no payment has been made.

Mr. Sharma told me he had a company, Sharma Commercial Limited. Ms Laker said she had no knowledge of the company and I find that her employer was Mr. Sharma. Mr. Sharma told me he did not provide employment agreements.

Decision

Ms Laker was unjustifiably dismissed and has a personal grievance. As the employer, Mr. Sharma is liable for the unjustified dismissal of his employee and cannot say, as he did, that it had nothing to do with him and that he was in no way responsible.

## Remedies

### *Lost Remuneration*

Nick's Café closed on 30 January. Reimbursement of lost wages has been calculated to that date. Ms Laker earned \$1,791.47 net during the 32 week period of her employment. The calculations are based on her wage slips. Had she not been dismissed her employment would have continued until 30 January, a period of 7 weeks. I am satisfied that she made attempts to mitigate her loss. Ms Laker is entitled to be reimbursed the sum of \$391.89 net for that period.

### Compensation

Ms Laker said she enjoyed her job and believed she was a good employee. The dismissal was sudden and effected second hand via a phone call. She said she was very hurt by what had happened. The respondent is to pay the applicant the sum of \$2,000 pursuant to s. 123 (c ) (i) Employment Relations Act 2000.

### *Holiday Pay*

Ms Laker is also entitled to holiday pay and interest on the holiday pay. The amount of holiday pay owing is \$107.49. Interest on that amount is payable from the date of dismissal, 10 December 2005, and is to run until the amount owing is paid in full. The interest is to be calculated at the 90-day bill rate at the time of this determination plus 2%.

## Costs

Costs were reserved. The applicant is to file a memorandum within 28 days of the date of this determination. The respondent should then file a memorandum in reply within 14 days of receipt of the applicant's memorandum.

Dzintra King  
Member of Employment Relations Authority