



investigation meeting nor did she appear or cause herself to be represented at the investigation meeting.

[5] Despite Ms Burrow's lack of engagement in the Authority's process, I am satisfied that all proper efforts were made to notify her of the claim made against her by Regent Night'n'Day and that she had every reasonable opportunity to engage with Regent Night'n'Day and to be involved with the Authority's process.

[6] The evidence before the Authority indicates that Ms Burrow commenced employment on 21 March 2007 when she executed a document styled Individual Agreement on letterhead with Night'n'Day Food Stores as a masthead.

[7] Paragraph 9(c) of that individual agreement is in the following terms:

*I do hereby accept the offer of employment made to me by the company and agree to abide by the conditions of employment set out in this Agreement and Employee Handbook.*

[8] The Employee Handbook is a detailed document covering a variety of matters including the terms and conditions of employment. For our purposes, the significance of the Employee Handbook is to be found in a clause entitled *Termination of Employment* which reads as follows:

*Not less than four weeks notice shall be given by either party of the termination of employment, where the employee fails to work any part of any notice, and where the employment is terminated without the requisite notice, four weeks wages shall be paid or forfeited by the party who fails to give notice, or an amount equivalent to the employee's wages for four weeks in the event of default but nothing in this clause shall prevent the summary termination of the employment for serious misconduct. The period of notice in either case shall be exclusive of the whole or any part of the annual holiday required to be given in pursuant [sic] of an employment agreement. Notice shall be paid or worked at the discretion of the employer.*

[9] Regent Night'n'Day relies on this provision to recover from Ms Burrow the money value of the four weeks notice that, by that clause, she ought to have given or suffer the forfeiture of the relevant sum. The amount claimed is \$1,800.00 together with the cost of the uniform not returned to the value of \$163.02 and the cost of the filing fee of \$70 and an unpaid shop account of \$43.00.

[10] In the absence of hearing anything from Ms Burrow, it is difficult to make any conclusion as to her position. However, I am satisfied on the basis of the evidence before me that Ms Burrow left Regent Night'n'Day's employment without giving the

requisite notice and that in consequence she falls within the terms of the provision I have just referred to.

[11] I am further satisfied that Ms Burrow had a proper opportunity to consider the meaning of this provision in that she was advised when she joined Regent Night'n'Day of her right to obtain independent legal advice and I am satisfied that she had the effect of this particular provision specifically drawn to her attention by the clear words in the declaration which Ms Burrow signed when accepting the terms and conditions of employment.

### **Determination**

[12] I direct that Ms Burrow is to pay to Regent Night'n'Day the sum of \$1,800.00 in lieu of notice. That payment is required to be paid by Ms Burrow in reliance on the forfeiture of notice provision in the Employee Handbook which forms part of Ms Burrow's employment agreement.

[13] Ms Burrow is also to reimburse Regent Night'n'Day for the \$70.00 filing fee.

[14] Ms Burrow is also required to pay to Regent Night'n'Day the sum of \$163.02 for the cost of the uniform belonging to Regent Night'n'Day which she failed to return together with the sum of \$43.00 being an unpaid shop account. She is required to make those payments to Regent Night'n'Day as a consequence of the effect of clause 5 of the individual agreement between her and Regent Night'n'Day .

[15] The total amount owing by Ms Burrow to Regent Night'n'Day is \$2,076 made up as follows.

- \$1800.00 in lieu of notice
- \$70.00 filing fee
- \$163.02 cost of uniform
- \$43.00 unpaid shop account

**Costs**

[16] Costs are to lie where they fall.

James Crichton  
Member of the Employment Relations Authority