

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 307
3032231

BETWEEN RENEE MASON
 Applicant

A N D SRAN TRADING NZ LIMITED
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Applicant in person
 Natalie Devery, for the respondent

Investigation Meeting: 25 September 2018 at Auckland

Submissions Received: Orally on 25 September 2018 by both parties

Date of Determination: 9 October 2018

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

- A. Ms Renee Mason’s employment was not affected to her disadvantage by some unjustifiable action by the employer. Accordingly, she has no personal grievance and no remedies are payable.**
- B. Costs are reserved.**

Employment Relationship Problem

[1] The respondent, Sran Trading NZ Limited (Sran Trading), owns and operates the Hardware Café in Titirangi. Mr Paljeet Singh is a director and shareholder of Sran Trading.

[2] Sran Trading purchased the Hardware Café from its previous owners in early September 2017. On 4 September 2017, all employees of the existing café were offered new employment agreements with Sran Trading.

[3] The applicant, Ms Renee Mason, who had been employed by the owners of the existing café was one of the employees who was offered a new employment agreement with Sran Trading. Ms Mason took the employment agreement home with her and discussed it with her parents. Following these discussions Ms Mason made some changes to the employment agreement. Following discussion with Mr Singh and Ms Mason each initialled the variations sought by Ms Mason and the employment agreement was signed on 7 September 2017.

[4] Ms Mason says that during the course of the discussion with Mr Singh over variations to her employment agreement, it was agreed that the hours she had been working for the previous owners, being 20-plus hours per week on Mondays, Tuesdays and Wednesdays would continue.

[5] Ms Mason says that after signing the employment agreement, she asked for a copy of it but Mr Singh did not provide it to her. Ms Mason says she repeatedly asked for a copy but it was not forthcoming.

Commencement of employment

[6] Ms Mason began work on 11 September 2017. Ms Mason's role was "front of house" at the café. Ms Mason's role was to wait on tables, take orders from customers, clear tables, take food to customers and similar type duties.

Ms Mason's claims

Changes to hours of work

[7] Ms Mason says that in the week of 25 September 2017, she was expecting to work on the Wednesday, 27 September, but was informed by Mr Singh that he had

given the Wednesday shifts to another waitress who was full time. Ms Mason sought assurance from Mr Singh that she would be working the following Wednesdays, 4 and 11 October 2017, as she had arranged for both her children to be in full time care for a school holiday programme.

[8] On Tuesday, 3 October 2017, Ms Mason says that Mr Singh again removed her from her normal Wednesday work day, informing her that the other waitress was being trained at that time.

[9] Ms Mason says she asked again for a copy of her employment agreement and was informed by Mr Singh that he would not be giving her a copy of her employment agreement unless she amended it to change her days to Mondays and Tuesdays, not Wednesdays. When Ms Mason informed Mr Singh that she did not want her employment agreement amended, Ms Mason says that in a firm strong voice she was told by Mr Singh that if she did not amend the employment agreement she would be given her two weeks' notice "now!". Ms Mason says that she did not want her employment agreement amended but felt forced into it by Mr Singh's threats.

[10] The following day, Ms Mason says that she and Mr Singh met at the café to amend the agreement. Ms Mason recorded the conversation on her mobile phone. Mr Singh was not aware of this.

[11] Following the amendment of her employment agreement which Ms Mason says was forced on her, Ms Mason says Mr Singh's attitude towards her deteriorated. Ms Mason says Mr Singh micro-managed her work and on one occasion told her to "do the dishes" which was not part of her role.

[12] Ms Mason says she felt increasingly uncomfortable at work and that she was unable to stay in the working environment. On 4 and 5 December 2017, Ms Mason took sick leave and on 11 December 2017 tendered her resignation. Ms Mason said the final straw was being told by Mr Singh to do the dishes in front of the barista who was working in the café. When Ms Mason gave Mr Singh her resignation, she says he smiled and thanked her. There was never any request by Mr Singh for her reasons for resigning.

Remedies sought

[13] Ms Mason says Mr Singh's actions in forcing her to amend her employment agreement and threatening her with dismissal if she did not do so were unjustifiable. Ms Mason says she suffered a disadvantage and seeks compensation for hurt, humiliation and injury to her feelings.

Sran Trading's response

[14] Mr Singh says he and Ms Mason did meet on 6 September 2017 to discuss Ms Mason's employment agreement. Ms Mason took the employment agreement home, filled it in, and following a discussion about amendments she wanted to the agreement, they both signed it on 7 September 2017.

[15] Mr Singh says he copied the agreement for Ms Mason on the printer in the café and provided her with it that day. There was never an issue of not providing Ms Mason with a copy of her employment agreement according to Mr Singh, as she had it from the date it was signed. Ms Mason's requested variations were initialled by both Mr Singh and Ms Mason.

Changes in days of work

[16] Mr Singh says that after a couple of weeks in the role, Ms Mason asked if her hours of work could be altered so that she no longer worked on Wednesdays. Mr Singh said he agreed to her request but asked that the employment agreement be amended accordingly. Mr Singh denies ever having a conversation with Ms Mason in which he threatened to give her two weeks' notice if she refused to amend the employment agreement. Mr Singh says Ms Mason did not raise an issue with him or a personal grievance at the time she says he threatened her employment.

[17] On 4 October 2017, Mr Singh agrees they met and amended the employment agreement, but it was amended to record changes required by Ms Mason to her hours of work. Ms Mason worked Mondays and Tuesdays and never raised an issue with him about the Wednesdays, because Mr Singh says it was Ms Mason who no longer wanted to work them.

Sick leave

[18] Work continued as usual with the only issue arising in early December 2017, when Ms Mason took two days sick leave on 4 and 5 December 2017. Mr Singh understood that as Ms Mason had not been employed by Sran Trading for six months, she was not entitled to payment of sick leave. When Ms Mason informed him that the employment agreement provided for the immediate payment of sick leave, he looked into the issue and did pay the sick leave.

Resignation

[19] Mr Singh says that Ms Mason resigned on 12 December 2017 by giving him a handwritten note. It was not expected. Mr Singh asked Ms Mason why she was resigning and was told that she was going to go on holiday. Mr Singh says Ms Mason did not work her notice out and that this caused him difficulties in a busy period of time leading up to the Christmas rush. Mr Singh denies Ms Mason has an unjustifiable disadvantage. Mr Singh says Ms Mason did not raise any issues with him about being unhappy in her employment or suffering a disadvantage until 3 days after she resigned.

The investigation meeting

[20] Ms Mason, Mr Singh and an employee at Hardware Café, Ms Konica Bahru, each gave evidence. Each swore on oath that their evidence was true and correct.

[21] As allowed under s.174 of the Employment Relations Act 2000 (the Act), this determination does not set out all of the evidence. Rather, relevant facts and legal issues are set out, along with the Authority's conclusions.

Issue

[22] The issue for determination by the Authority is whether Ms Mason's employment was affected to her disadvantage by the actions of Mr Singh on behalf of Sran Trading, which Ms Mason says were unjustifiable.

[23] The alleged unjustifiable actions are that Ms Mason;

- was not provided with a copy of her employment agreement despite asking for it repeatedly,
- worked on Wednesdays and this day was unilaterally removed,
- was forced to agree to amend her employment agreement to record that she was no longer working on Wednesdays, and that if she did not do so she would be dismissed.

[24] Ms Mason and Mr Singh dispute the evidence of each other on almost all issues.

[25] It is not disputed that Mr Singh met with staff on 4 September 2017 to discuss employment agreements with each of them. Ms Mason was provided with a copy of an employment agreement and was asked to take it home, complete it and return it to Mr Singh. Ms Mason did so.

Was a copy of the employment agreement given to Ms Mason?

[26] Ms Mason hand-wrote details of her position and date of commencement of employment in the employment agreement. Ms Mason also made alterations to the employment agreement. Her handwritten notes together with her mother and father's appear on the employment agreement.

[27] Ms Mason and Mr Singh talked about the alterations to the employment agreement made by Ms Mason and changes were made accordingly. Each of the changes agreed to by Ms Mason and Mr Singh were initialled by each of them throughout the employment agreement.

[28] Mr Singh says that after the changes had been made to the employment agreement, he went to the printer in the café, copied it and provided a copy to Ms Mason. He had given Ms Mason the employment agreement to go home and discuss with her parents, which she did. They met to discuss changes which Ms Mason wanted made to the employment agreement, changes were made and initialled. There was no reason for Mr Singh not to give Ms Mason a copy of her employment agreement. When the parties met to amend the employment agreement on 4 October 2017, a meeting which was recorded by Ms Mason, Ms Mason is heard saying in respect of the amended employment agreement, "I'll go next door and

photocopy this.” This is consistent in my view with the way in which Mr Singh dealt with giving Ms Mason a copy of her agreement.

[29] I prefer Mr Singh’s evidence that he provided Ms Mason with a copy of the agreement after they met to agree changes to the agreement and to sign it.

Was Ms Mason’s Wednesday day of work, removed unilaterally?

[30] Ms Mason says that her Wednesdays were removed from her because Mr Singh gave the hours to a full timer. Mr Singh says after Ms Mason had worked for a couple of weeks she asked to work just Mondays and Tuesdays as those days worked better with her child care arrangements.

[31] Ms Mason continued working Mondays and Tuesdays during October and November 2017. Ms Mason did not raise a complaint or a personal grievance with Mr Singh despite the provisions in her employment agreement setting out the steps to take if she wished to do so. Further, the audio recording on 4 October 2017, makes no reference to Ms Mason asking for Wednesdays back, the discussion is on sorting out hours for the Mondays and Tuesdays.

[32] I do not consider Ms Mason’s actions to be consistent with an employee who has had her hours of work removed arbitrarily by her employer.

Was Ms Mason forced to agree to amend her employment agreement to record that she was no longer working on Wednesdays, and threatened that if she did not do so she would be dismissed?

[33] Mr Singh says Ms Mason asked not to work the Wednesdays and that he requested her employment agreement to be amended accordingly. Mr Singh denies Ms Mason’s claim that it was he who required her to amend her employment agreement and threatened that if she did not do so he would give her two weeks’ notice.

[34] I do not accept the discussion concerning the amendment of the employment agreement occurred in the way Ms Mason says it did. It is accepted by the parties that they met on 4 October 2017, to amend Ms Mason’s employment agreement so that her days of work were recorded as Mondays and Tuesdays, not Wednesdays.

[35] Ms Mason recorded the conversation on 4 October 2017 while the employment agreement was being amended. Mr Singh was not aware of this. The audio recording and the transcript of it make no reference to Ms Mason being forced to sign an amendment to an employment agreement, nor did it refer to a threat that if she did not sign the employment agreement she would be dismissed.

[36] Rather, the transcript is a backwards and forwards discussion about days of work and hours of work. At one point, Ms Mason says she needs “17 hours, absolutely. I do need that, you know?”

[37] The Authority has been provided with Ms Mason’s payslips which record that during the course of her employment she worked more than 17 hours each week. According to the records provided, Ms Mason worked an average of 18.5 hours, probably slightly more because in one week she had days off for her birthday, and in two other weeks she took sick leave. Ms Mason was therefore achieving the 17 hours a week that she referred to in the conversation on 4 October 2017.

[38] Ms Mason says that following the discussions on 4 October 2017, she was not treated well by Mr Singh. This is not apparent from the text message exchanges which have been provided to the Authority in which Mr Singh and Ms Mason communicate about opening hours and similar such matters. On 22 October 2017, there is a text from Mr Singh to Ms Mason, asking if she is able to come to work at 7am the next day. Ms Mason’s response was “Yes I’ll be there normal time” with a smiley face emoji attached.

[39] Following her sick leave on 4 and 5 December 2017, Mr Singh sent a text to Ms Mason asking if she was okay to work the next day. The response from Ms Mason was “Hi pal ... yes I’ll be in tomorrow – smiley face emoji”.

[40] When questioned by the Authority during the course of the investigation meeting about why she did not send an email or raise a complaint with Mr Singh about being forced to amend her employment agreement, Ms Mason’s responses were not convincing. Ms Mason says that she felt that her work situation would not be tolerable if she raised the matter with him. This contradicts the way in which Ms Mason robustly dealt with her employment agreement. Ms Mason, in my view, had a number of options to resolve any issues she says she had with Mr Singh. She could have requested a meeting and taken one of her parents with her – both had

assisted her in queries arising out of her employment agreement, sent an email setting out her issues, taken steps under the personal grievance provisions in the employment agreement. Ms Mason took none of these steps. How could Mr Singh address issues if he was not aware of them.

Ms Mason's notebook

[41] Ms Mason produced copies of entries in her notebook. There were no dates on the pages of the notebook. It was difficult to ascertain when the notes were made by her. I am not satisfied that the notes accurately recorded conversations between Ms Mason and Mr Singh.

[42] I would have thought that the audio recording of Ms Mason and Mr Singh on 4 October 2017, would have made some reference to Ms Mason being forced, on the 3 October 2017, to amend her employment agreement or she would be given notice. There was no such reference.

[43] Further, the text messages produced suggest the parties were working well together following the discussions on 3 and 4 October 2017. The first issue arising between the parties appears to be when Ms Mason took sick leave on 4 and 5 December 2017 and Mr Singh mistakenly believed she was not entitled to payment as she had worked for Sran Trading for less than 6 months.

[44] Ms Mason resigned on Monday, 11 December 2017. Ms Mason's handwritten note said: " pal, As of today I hand in my resignation-, my last day being Tuesday 26/12/17 (2 wks notice as per contract). Many thanks Renee Mason"

[45] There was no mention by Ms Mason of any employment issues in her letter of resignation. It was not until 14 December 2017 that Ms Mason raised any issues. On 14 December 2017, Ms Mason sent a text to Mr Singh stating that she found herself in "an untenable situation which had worsened with your recent attitude towards me. Therefore, I feel under duress and therefore will not be returning to my position...you will be hearing from me in due course."

[46] This was the first occasion on which Ms Mason had raised any issues with Mr Singh, after she had resigned. Mr Singh had no opportunity to address issues if they were not raised by Ms Mason during her employment.

[47] On 15 December 2017, Ms Mason raised a personal grievance claim.

[48] I do not consider there was any action taken by Mr Singh which was unjustifiable and which affected Ms Mason's employment to her disadvantage. Accordingly, she has no claim.

Costs

[49] Costs are reserved. Sran Trading has 14 days in which to file a memorandum as to costs. Ms Mason has 14 days from receipt to file a memorandum as to costs in reply.

Anna Fitzgibbon
Member of the Employment Relations Authority