

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 157
5361832

BETWEEN

MIA NATHAN-JOYCE
Applicant

A N D

SILVER OAKS GROUP
LIMITED (In Receivership)
Respondent

Member of Authority: K J Anderson

Representatives: Mia Nathan-Joyce in person
Gregory Wilson (Director), Advocate for Respondent

Investigation Meeting: On consideration of the papers

Date of Determination: 1 May 2013

DETERMINATION OF THE AUTHORITY

Introduction

[1] The Silver Oaks Group Limited operates a number of accommodation venues. Ms Nathan-Joyce was employed at the Silver Oaks Resort Heritage (Motor Inn) in Rotorua as a part-time kitchen hand. For various reasons this matter has had a somewhat protracted history.

[2] In an amended statement of problem received by the Authority on 9 November 2011, Ms Nathan-Joyce alleged that the respondent, Silver Oaks Group Limited (SGL), [“... continued to steal hours of time from my wages ...”. Ms Nathan-Joyce also refers to being “deprived” of her break entitlements and having her hours of work reduced. Wage and time records are attached to the amended statement of problem and Ms Nathan-Joyce has marked the respective dates that she alleges she was underpaid.

[3] The application to the Authority follows a complaint to and an investigation by, a Labour Inspector, where the outcome was that SGL paid to Ms Nathan-Joyce the sum of \$105.88 (gross), being payment for public holidays worked by her. Via a letter dated 7 March 2011, the Labour Inspector informed (logically) that it was not within her jurisdiction to come to any conclusions as to whether the hours worked by Ms Nathan-Joyce had been correctly recorded on the timesheet.

[4] In a statement in reply received by the Authority on 16 November 2011, SGL provided a detailed response to the claims of Ms Nathan-Joyce. The company informed that a review of the hours paid to her had been carried out and SGL had reached a conclusion that Ms Nathan-Joyce had been overpaid by three hours and 45 minutes. SGL informed that it would not be taking steps to recover any payments from Ms Nathan-Joyce but would attend mediation to discuss all matters, prior to proceeding to recover the monies that had been (allegedly) overpaid.

[5] The record shows that the next matter that arose for Ms Nathan-Joyce was that she received a letter dated 21 November 2011. This informed that the lease held by SGL would terminate on 6 December 2011 and the property was to revert back to the landlord on that date. Also on this date, the employment contracts with SGL would terminate and the owner of the property (Silver Oaks Trust) would be offering new employment contracts to the existing staff. The letter was signed by Mr Greg Wilson in his role as Director of SGL. Ms Nathan-Joyce says that while the letter is dated 21 November 2011, she did not receive it until 6 December 2011.

[6] The evidence of Mr Wilson is that on 6 December 2011, he met with most of the staff employed by SGL. Mr Wilson says that he explained that the lease held by SGL had expired and the business would now return to the lessor; Silver Oaks Trust (the Trust). However, while the changeover would not occur for a few months, the staff were assured that they would be offered a position with the Trust and this was confirmed via a letter to each employee.

[7] The further evidence of Mr Wilson is that on 6 February 2012, Ms Nathan-Joyce and the Relief Manager at the facility, attended a meeting in Mr Wilson's office. Mr Wilson says that he wanted Ms Nathan-Joyce to understand that the change of ownership between SGL and the Trust would not take place for at least another

month¹ and she was reassured that she would retain a position with the Trust. This reassurance followed Ms Nathan-Joyce being provided with a proposed employment agreement for employment with the Trust, on 6 December 2011.

Mediation

[8] On 9 February 2012, Ms Nathan-Joyce and SGL attended mediation with a Department of Labour mediator to discuss the wage claims raised by her. It appears that the mediation was not particularly fruitful.

The departure of Ms Nathan-Joyce

[9] The evidence of Ms Nathan-Joyce is that she was on annual leave, as of 9 February 2012, when she attended the mediation, and was due to return to work on 4 March 2012. Ms Nathan-Joyce says that she was told by Mr Wilson on the day of the mediation that she was no longer required to work at the restaurant and that she was redundant. Mr Wilson denies that any such thing was said to Ms Nathan-Joyce and he refers again to the fact that all staff, including Ms Nathan-Joyce, and as recently as 6 February 2012 in her case, had been reassured of continuing employment.

[10] The evidence of Mr Wilson is corroborated by the content of an email dated 12 March 2012, from the Manager of the Resort (Margaret) informing Ms Nathan-Joyce that she had been rostered to work. Margaret also refers in her email to a conversation with Ms Nathan-Joyce the week before, whereby Ms Nathan-Joyce had expressed the view that her employment had been terminated, that she had obtained a new position and had requested her final pay.

[11] In a further amended statement of problem received by the Authority on 13 March 2012, Ms Nathan-Joyce repeats her earlier claims (in a very abstract form) and claims that she was unfairly dismissed. The matter was set down for an investigation meeting on 3 October 2012 but due to problems arising in regard to SGL being in receivership, the meeting was adjourned.

[12] Subsequently, in order to complete the investigation into the claims of Ms Nathan-Joyce, the matter has been decided on the papers with written evidence and submissions from both parties.

¹ As of 18 March 2012, SGL was still operating the motor inn at Rotorua

Determination

[13] It has to be said that the claims of Ms Nathan-Joyce are confusing and lacking in substantial evidence to support them. The monetary claims advanced by Ms Nathan-Joyce are deficient in appropriate details and hence the Authority is unable to accord them any validity. I find that they are unproven.

[14] In regard to the claim advanced by Ms Nathan-Joyce that she was dismissed on 9 February 2012, I find that the contrary evidence points to it being more probable that she was not dismissed and that her employment at the Motor Inn remained available, but Ms Nathan-Joyce chose not to return.

[15] In summary, while I accept that Ms Nathan-Joyce may genuinely believe in the substance of her claims, the evidence available does not support them and hence they are not successful.

Costs

[16] As both parties represented themselves, costs do not require consideration.

K J Anderson
Member of the Employment Relations Authority