

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Amanda Newall (Applicant)
AND Galbraith Brewing Company Limited (Respondent)
REPRESENTATIVES Amanda Newall In person
No appearance for or on behalf of the Respondent
MEMBER OF AUTHORITY W R C Gardiner
INVESTIGATION MEETING 24 July 2001
DATE OF DETERMINATION 24 July 2001

DETERMINATION OF THE AUTHORITY

The Respondent Fails To Front

I personally contacted Mr Keith Galbraith and Ms Amanda Newall to arrange the time/date/venue for the investigation meeting for this particular case. Thus I know that both Mr Galbraith and Ms Newall were aware of the date for the meeting and that the date (24 July) was one which they were both accepting of.

Subsequently, written confirmation of the time/date/venue of the meeting was sent to both parties by a Support Officer.

I have no idea why Mr Galbraith failed to front up on 24 July. I phoned his place of work. I was told he was not present. Schedule 2/12 of the Employment Relations Act 2000 provides as follows:

“Power to proceed if any party fails to attend. If without good cause shown, any party to a matter before the Authority fails to attend or be represented, the Authority may act as fully in the matter before it as if that party had duly attended or been represented.”

On that basis, I proceeded with the investigation meeting.

Ms Newall’s Problem

Ms Newall worked only very briefly for Galbraith Brewing Co Ltd. She commenced her employment on 26 February 2001 and her last day of work was Friday 9 March. Ms Newall had her own reasons for not returning to work subsequent to 9 March and they are not the issues as far as determination of this case is concerned. The reality for my purposes is that she chose not to persevere with her employment.

The first (and only) pay Ms Newall received from Galbraith Brewing Co Ltd saw her paid for the period 26 February to 4 March 2001. Ms Newall was not at work on either 5 or 6 March. She did work on 7, 8 and 9 March. Ms Newall has not received payment for those three days. That is to say she has not received payment for what were the last three days on which she worked for Galbraith Brewing Co Ltd.

There is no dispute between the parties concerning whether or not Ms Newall performed work on those three days. It is also common ground that wages in respect to those three days amount to \$388.13 gross. Ms Newall's complaint (or problem) which she brings to the Authority concerns payment for those last three days. She says that Galbraith Brewing Co Ltd has withheld those wages from her and refuses to pay those wages to her. It is common ground that those wages have been withheld from her.

In the Company's Statement in Reply document dated 13 June 2001 Mr Keith Galbraith advised the Authority that:

"On Saturday 10th March Amanda telephoned one of her staff saying that she no longer wished to work for the company. After several days absence we came to the conclusion that Amanda had abandoned her employment with us. I withheld her final week's wages (3 days) in lieu of notice." (my emphasis)

I should also add here that the employer has also not paid to Ms Newall holiday pay calculated on the statutory basis, i.e. 6% of gross earnings.

Ms Newall seeks from the Employment Relations Authority an order of the Authority ordering Galbraith Brewing Co Ltd to pay her the wages, which the company has withheld.

So, and as can be seen from the above, the facts of this matter are not in dispute. The issue, which I have to determine, simply comes down to this. Can Galbraith Brewing Co Ltd lawfully withhold from Ms Newall wages earned by her during the last three days of her employment together with the small sum of holiday pay also involved?

If the answer to that question is yes, then the situation will remain as it presently is. If the answer to that question is no, then it follows that there will be an order of the Authority requiring Galbraith Brewing Co Ltd to pay the withheld wages to Ms Newall.

Determination Of The Authority

It is common ground that the Respondent has withheld from Ms Newall wages in respect to the last three days she worked. I find that the gross sum involved is \$388.13. I find that holiday pay payable to Ms Newall has similarly not been paid. I find that holiday pay owing to Ms Newall is \$60.75 gross. I arrive at that figure by the following process.

<i>The one wage paid to Ms Newall</i>	=	\$624.38
<i>The three days' withheld</i>	=	<u>\$388.13</u>
	<i>Total</i>	\$1,012.51
<i>6% of \$1,012.51</i>	=	\$60.75

For the Respondent to have a legal right to withhold the unpaid sums, the Respondent would need to have an agreed provision in the employment agreement to that effect.

I find that Ms Newall was engaged by Mr Les Bremner as agent for Galbraith Brewing Co. Ltd. Ms Newall was engaged on the basis of an oral agreement. That oral agreement established an agreed hourly rate (\$13.50) and very little else. Certainly there was no oral agreement concerning notice, abandonment of employment or a right to deduct in lieu of notice.

Provisions such as those do appear in an unsigned employment agreement, which was proffered to Ms Newall on 9 March 2001 for her consideration. No such employment agreement was concluded between these parties.

The upshot of all of the above is that the Respondent has no legal basis by which it can withhold the wages that it has. I understand (see Statement in Reply) that Mr Keith Galbraith is aggrieved about the fact that Ms Newall commenced employment and then (from his perspective) “shot through.” However, and I repeat myself, no legal basis exists for withholding final wages from Ms Newall.

There will be an order of the Authority ordering the Respondent to pay to Ms Newall wages in respect to her final three days work \$388.13 gross, holiday pay \$60.75 gross and costs (filing fee of \$70).

Order Of The Employment Relations Authority

The Galbraith Brewing Co Ltd is ordered to pay to Ms Amanda Newall arrears of wages and holiday pay in the sum of \$448.88 gross. In addition, the Galbraith Brewing Company Ltd is ordered to reimburse Ms Amanda Newall \$70 for costs incurred in this matter.

W R C Gardiner
Member
The Employment Relations Authority