Determination Number: CA 100/05
File Number: CEA 335/04

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE

BETWEEN	Nicola Quinn (Applicant)
AND	Rebecca Cuthbertson (Respondent)
REPRESENTATIVES	Nicola Quinn In person Rebecca Cuthbertson In person
MEMBER OF AUTHORITY	James Crichton
INVESTIGATION MEETING	16 June 2005
DATE OF DETERMINATION	21 July 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Ms Quinn, seeks recovery of training costs incurred in training the respondent (Ms Cuthbertson) with the technology that Ms Cuthbertson would use in Ms Quinn's business.

[2] Ms Quinn runs a Beauty and Day Spa and amongst other things, offers a treatment involving Intense Pulsed Light (IPL).

[3] Ms Quinn recruited Ms Cuthbertson, who was a registered nurse, to provide IPL treatments to clients.

[4] Ms Cuthbertson had moved down to Christchurch from Wellington and she applied for the second IPL nurse position in Ms Quinn's business. Ms Cuthbertson commenced work on 12 July 2004 in what was to be a part-time position with a maximum of 25 hours per week being offered.

[5] Both Ms Quinn and Ms Cuthbertson agree that Ms Quinn made it clear to Ms Cuthbertson that work was only available when clients booked in for treatments and so in Ms Quinn's words *if there were no bookings, she would not be required to work that day.*

[6] However, there seems to have been less certain communication about the question of what happened when there were, for instance, two clients booked for treatments, one at the beginning of the day and one at the end. Ms Cuthbertson thought that in those circumstances, her obligation was to leave the workplace between the two treatments and not expect payment for the intervening period whereas Ms Quinn was clearly of the view at the investigation meeting that she had made it clear that in that circumstance, she as the employer would expect to pay for the period between the two treatments.

[7] The more important issue from both parties' points of view was the issue which both of them referred to as *the reimbursement policy*. Again, it seems to be common ground that Ms Quinn advised Ms Cuthbertson of her reimbursement policy. The reimbursement policy is set out at Schedule 3 of the Employment Agreement offered to Ms Cuthbertson to sign. It is in these terms:

> *Schedule 3*
>
> *Nicola Quinn Beauty and Day Spa*
>
> *Reimbursement Policy*
>
> *Full training in spa assistance and procedures is given as well as training in all our skin care lines. Due to the cost of this training we require a commitment from your [sic] staff to stay with us for a minimum of two years.*
>
> *If you end this employment within two years of commencement, or your employment is terminated as a result of any breach of the employment agreement by you within that time, you will be required to reimburse to us all of the costs associated with this training.*
>
> *These costs amount to up to $5,000.00 over a two year period.*
>
> *I, _____ understand the above terms as part of my employment agreement and am happy to accept the conditions of employment as outlined.*
>
> *Signed:*
>
> *Dated:*
>
> *Employer:*
>
> *Dated:*

[8] Ms Quinn is claiming $2,750.00 from Ms Cuthbertson in reliance on this provision. Ms Quinn told me that that figure represents the cost of two days training plus the disbursements.

[9] Ms Cuthbertson acknowledges that she had the two days training but she was not greatly impressed with the quality of it. She described it as *only satisfactory*. She said the trainer spent most of the second day answering calls from his mobile phone and she thought that the principal purpose of the training was revision for the existing IPL nurse and was geared around the problems that she was having rather than the issues for Ms Cuthbertson.

[10] The principal area of difference between Ms Quinn and Ms Cuthbertson was around the understanding that each of them had about the nature of the bargain that had been struck between them. As a matter of fact, the individual employment agreement which Ms Quinn had proffered was not signed by either party. Notwithstanding that however, Ms Quinn believed that Ms Cuthbertson had accepted the reimbursement policy and it was only on the basis of that understanding that Ms Quinn went ahead and hired Ms Cuthbertson.

[11] Ms Quinn agreed in questioning from me that neither party had signed the agreement and that Ms Cuthbertson had never told her that she accepted the agreement although Ms Quinn claimed (as I mentioned above) that Ms Cuthbertson did accept the reimbursement policy.

[12] Ms Cuthbertson on the other hand did not regard herself as having accepted either the position or the agreement and indeed, she spoke of *negotiating* on the employment agreement. Ms Cuthbertson also told me that she noticed in reading the agreement that the attached house rules included a provision for a probationary period of employment of three months. Ms Cuthbertson

said that she regarded that provision as giving each party the opportunity of considering their position for three months.

[13] The employment relationship had started on 12 July 2004 and was to last just eight weeks. Three weeks into the employment relationship, in early August 2004, Ms Quinn left the workplace to have her baby and it was while she was at home with her new child that she received a call from Ms Cuthbertson who was very anxious about the paucity of hours that she was working.

[14] Ms Quinn's evidence was that, on average, Ms Cuthbertson was working nine hours a week. Ms Cuthbertson told me that she contacted Ms Quinn at home after she had worked a week where she was paid for four hours and she indicated to Ms Quinn that that level of remuneration was simply not sustainable.

[15] There was a discussion between the two women as to whether a guaranteed retainer ought to be paid or whether Ms Cuthbertson should only be available for work with Ms Quinn on certain days of the week. In the result, it was agreed that they trial a retainer of 15 hours a week.

[16] During the four week period in which this retainer arrangement was being trialled, although Ms Cuthbertson's income was up because of the guaranteed retainer, her bookings remained low and she of course became anxious about what happened at the end of the retainer period.

[17] Ms Cuthbertson told me that she thought that she could live on 15 paid hours a week but found that she could not. She saw another similar position with a competitor, applied for the position and got it. The principal attraction of the new position was that the rostered hours worked were also the hours paid and she needed the income as security for herself and her children.

[18] Ms Cuthbertson told me at the investigation meeting that she had not told her employer that she was a solo mother because she did not want her status to affect the nature of the employment relationship. Ms Quinn told me that she had assumed that Ms Cuthbertson had a partner and so there would be another income coming into the home.

[19] By letter dated 27 August 2004 Ms Quinn wrote to Ms Cuthbertson in these terms:

> *Dear Rebecca,*
>
> YOUR EMPLOYMENT
>
> *I confirm that I have received legal advice that you are bound by the terms of the employment contract, despite the fact that it was not signed.*
>
> *You are obliged to repay me for the training you received. The total value of the training was $2,750.00.*
>
> *You have indicated that your last day of work will be Saturday 4th September. Please ensure that you pay me the sum of $2,750.00 by no later than that date.*
>
> *Yours faithfully,*
>
> *Nicola Quinn*

[20] Ms Cuthbertson gave evidence that she objected to paying this money because:

- The employment agreement had not been signed by either party;

- Ms Quinn had told her that her training costs were part of the free support provided by the manufacturer of the machine;
- The amount claimed was not value for money;
- There was no breakdown of the cost;
- The employer would have to train her anyway in order to operate the equipment safely and competently.

[21] Ms Quinn acknowledged that the training cost was absorbed by the equipment provider but pointed out that she then had to pay for the training for Ms Cuthbertson's replacement.

[22] Of perhaps more importance than any of those matters was the fact that Ms Cutherbertson had not been told what the training cost would be until the letter that she received from Ms Quinn dated 27 August, which I have just referred to. In her evidence, Ms Cuthbertson said had she known the training would cost the amount it did, when she got the training, she would have immediately complained.

[23] Ms Cuthbertson also invited me to take notice of the fact that during the period she was employed by Ms Quinn she earned a total gross income of $2,213.00. Although that amount was disputed as to its accuracy by Ms Quinn she agreed that it would be roughly correct. Assuming that that amount is reasonably accurate, it is noticeably less than the amount Ms Quinn was trying to recover from Ms Cuthbertson in her application to the Authority.

Issues

[24] The issues that I need to determine are as follows:

(a) Was there a binding agreement between the parties?

(b) What if anything flows from that?

Was there a binding agreement?

[25] In my opinion there was no binding agreement between the parties. There was I think no real meeting of the minds to settle on the terms of the bargain between them. Ms Quinn readily and honestly acknowledged that Ms Cuthbertson never said that she accepted the agreement but she claimed that Ms Cuthbertson accepted the reimbursement policy.

[26] For her part, Ms Cuthbertson regarded herself as still in negotiation on the agreement and said that she did not sign the agreement deliberately. It was not an act of forgetfulness but a deliberate act. Having been through the contract with Ms Quinn, Ms Cuthbertson believed that she had a period of time in which to make her mind up. Her view was that she was happy to accept the reimbursement policy but only once she had committed to the employment relationship and she never did.

[27] Not only was there no meeting of the minds to determine the actual nature of the bargain but also the nature of the documentation was plainly incomplete. Neither party had signed the employment agreement offered by Ms Quinn and in relation to the most significant part of the document in terms of the dispute between the parties, the so-called reimbursement policy, neither

party had signed that part, Ms Cuthbertson's name had not been filled in in the space provided and, most significantly of all, no amount had been recorded to evidence the liability.

[28] In those circumstances, I find it difficult to see how an employer could recover against an employee when the first occasion the employee has to establish what their liability is, is when they get a letter from their employer asking for a cheque.

[29] Given those findings, there are no other outstanding issues on which I need to make decisions.

Determination

[30] Ms Quinn's application is dismissed in its entirety on the basis that there is no contractual footing on which she can enforce the reimbursement of the training costs that she calculates Ms Cuthbertson incurred.

[31] As both parties appeared in person I make no order for costs.

James Crichton
Member of Employment Relations Authority