

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 166/08
5117187

BETWEEN RAQUEL RUFFINI AND
LEONARDO DE OLIVEIRA
Applicants

AND PIZZA FRESCO
FRANCHISING LIMITED
Respondent

Member of Authority: Robin Arthur

Representatives: Applicants in person
No appearance for Respondent

Investigation Meeting: 5 May 2008 at Auckland

Determination: 5 May 2008

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicants seeks orders for payment of one month's notice, their last week's wages and holiday pay. They say they were dismissed on 1 December 2007 without notice and without any reason being given.

[2] The Respondent did not lodge a statement in reply or attend the investigation meeting.

Investigation

[3] A Notice of Investigation Meeting was issued 11 April 2008. The Notice was sent to four separate addresses found on the Companies Office record for the Respondent – its registered office, its address for service and the residential addresses of two current directors, Isaac Zhao and Zhang Xinqiu. Sent with the Notice was a

Minute of the Authority drawing attention to provisions in the Employment Relations Act 2000 (“the Act”) and its regulations that allow the Authority to proceed to investigate and determine a matter where a party does not reply to an application or attend an investigation meeting.

[4] Courier records on the Authority’s file show the Notice and Minute were delivered to the Respondent’s registered office and signed for by “Isaac”. It was also delivered to and signed for at both the address for service and the address given for Mr Zhao.

[5] At the notified time for the investigation meeting no-one attended on behalf of the Respondent. I then arranged for a Support Officer of the Authority to telephone the Respondent’s store and a mobile telephone number for its director Isaac Zhao. Messages were left at both numbers. No reply was received by 10.30 am.

[6] I was satisfied sufficient steps had been taken to advise the Respondent of the application, the investigation meeting and the opportunity to reply and attend. No good cause was shown for its failure to attend or be represented. I exercised the power under clause 12 of Schedule 2 of the Act to act as fully in the matter as if the party had attended and proceeded to determine this matter on the basis of the unchallenged evidence of the Applicants.

[7] Under oath Ms Ruffini and Mr de Oliveira confirmed the information in their application and provided further information in answer to questions.

The facts

[8] Between April and December 2007 Mr de Oliveira worked full-time as a chef and then kitchen manager for the Respondent. During that period Ms Ruffini worked for a total of six months as a kitchenhand.

[9] Mr Oliveira was employed under the terms of a standard individual employment agreement bearing the Respondent’s logo. The agreement provided for one month’s notice, with “*payment or forfeiture of a month’s wage in lieu of notice*”.

[10] Ms Ruffini did not have a written employment agreement. She was paid fortnightly.

[11] After the Applicants finished work on 1 December 2007, Mr Zhao gave them a cheque for \$1500. When they asked what the cheque was for, Mr Zhao said the cheque was to cover their wages for their last week of work and their holiday pay. He told them that they were “fired”. He gave no reason for terminating the employment.

[12] The Applicants banked the cheque for \$1500. On 3 December they wrote to their former employer asking the Respondent to attend mediation to discuss payment of outstanding wages, notice and holiday pay.

[13] The only response from the employer was a telephone call one week later from Ming Dao, who, at that time, was a director and shareholder of the Respondent. During that telephone call, Mr Dao discouraged the Applicants from pursuing any claim about their dismissal, including a threat to “report” Mr de Oliveira to the Immigration Service because he no longer worked for the Respondent. At the time Mr de Oliveira’s work permit identified the Respondent as his employer. He has since secured other employment and made the necessary arrangements for changes to his permit.

Determination

[14] I am satisfied from the information provided by the Applicants that they are entitled to orders for wages and holiday pay owed to them from the time of their abrupt and unexplained dismissal.

[15] During their employment the Applicants were not provided with pay slips for every pay period and their hours of work varied to some degree from week to week. However, based on the Applicants unchallenged evidence, I accept that Mr de Oliveira’s working hours averaged 55 a week at \$12 an hour (\$660 a week gross) and Ms Ruffini’s hours during this period were a minimum of 24 a week at \$11.25 an hour (\$270 a week gross).

[16] Mr de Oliveira's written employment agreement provided for a month's notice or a month's pay in lieu of notice. He is entitled to be paid for the contractual notice period.

[17] Because Ms Ruffini did not have a written employment agreement, I must assess what a reasonable period of notice was implied as a term of her employment as a kitchen hand. Taking into account factors such as industry norms, her length of service and the fortnightly pay period, I find that period of notice to be two weeks. It was this notice that Ms Ruffini was denied by her abrupt and unexplained dismissal by the Respondent. She is entitled to a further two weeks pay in lieu of that notice.

[18] Both Applicants are also entitled to their wages for the last week of work and for their holiday pay for the entire period that they were employed. The cheque for \$1500 given to them by Mr Zhao on 1 December 2007 does not cover their entitlements however half of the amount – \$750 – is to be deducted from the sums awarded to each of the Applicants in this determination.

[19] It is also fit that the Applicants be awarded interest on the amounts of wages and holiday pay determined as owed to each of them. That interest is to apply for the period from 2 December 2007 to 5 May 2008. It is set at today's 90-day bill rate plus two percent – that is a total of 10.82 per cent. Mr de Oliveira is due \$196.05 interest for that period, Ms Ruffini \$26.74.

[20] The amounts due to the Applicants are to be paid in full by the Respondent within 14 days of the date of this determination. In the event that the wages and holiday pay owed are not paid by that date – being 19 May 2008 – further interest is to accumulate on that sum until it is paid in full. The amount of additional interest is \$1.26 a day for Mr de Oliveira and \$0.17 a day for Ms Ruffini. That interest is on the wages and holiday pay owed, not the interest awarded for the period from 2 December 2007 to 5 May 2008.

[21] The Respondent is also to reimburse to the Applicants their \$70 fee for lodging their joint application in the Authority.

Summary of amounts owed to Applicants

[22] **The Respondent is to pay to Mr de Oliveira within 14 days of the date of this determination the sum of \$4435.65**, being \$750 less than the total of the following amounts:

- (i) \$2640.00 as four weeks pay in lieu of notice; and
- (ii) \$1689.60 as holiday pay on estimated total earnings of \$21,120; and
- (iii) \$660.00 as wages for the last week of work; and
- (iv) \$196.05 as interest on these amounts for the period from 2 December 2007 to 5 May 2008.

[23] **The Respondent is to pay to Ms Ruffini within 14 days of the date of this determination the sum of \$605.14**, being \$750 less than the total of the following amounts:

- (i) \$540.00 as two weeks pay in lieu of notice; and
- (ii) \$518.40 as holiday pay on estimated total earnings of \$6480; and
- (iii) \$270.00 as wages for the last week of work; and
- (iv) \$26.74 as interest on these amounts for the period from 2 December 2007 to 5 May 2008.

[24] **The Respondent is to also pay to the Applicants the further sum of \$70 in reimbursement of their lodgement fee.**

Robin Arthur
Member of the Employment Relations Authority