

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2016] NZERA Christchurch 136
5620209

BETWEEN KATE SNOW
 Applicant

A N D KEVIN JOHNSON
 First Respondent

 JAGGER & CO LTD
 Second Respondent

Member of Authority: Peter van Keulen

Representatives: Suzanne Snow, Advocate for Applicant
 No appearance by or for first or second Respondent

Investigation Meeting: 19 August 2016 at Christchurch

Oral Determination
issued: 19 August 2016

Written Determination
issued: 19 August 2016

ORAL DETERMINATION OF THE AUTHORITY

This determination is a written record of an oral determination delivered on 19 August 2016.

Employment relationship problem

[1] The applicant, Kate Snow, was employed by the second respondent, Jagger & Co Ltd (Jagger), from September 2014 until 18 March 2016 in Jagger's bar and restaurant. Jagger closed its bar and restaurant on 18 March 2016, effectively terminating Ms Snow's employment. Ms Snow has not been paid accrued holiday pay or notice pay she says was due to her at the termination of her employment and

she has made an application for payment of arrears of salary and holiday pursuant to s 131 of the Employment Relations Act 2000.

Preliminary matters

[2] Ms Snow issued her statement of problem against Mr Johnson in the hope that the Authority might be able make an order against him personally for the wage arrears and holiday pay she seeks.

[3] Mr Johnson was served with the statement of problem and responded by way of email on 8 June 2016. In this email Mr Johnson stated, amongst other things, that: (i) he was not the employer of Ms Snow but rather that was Jagger; (ii) he was only a 25% shareholder in Jagger and not responsible for its debts; and (iii) Jagger was insolvent but was endeavouring to pay off the debts that it owed.

[4] The Authority advised Mr Johnson that a telephone conference would be scheduled to progress this matter. On 11 July 2016, Mr Johnson advised the Authority that he had made the only comments on this matter that he could and he would not participate any further in the process.

[5] A telephone conference was held on 5 August 2016 and Mr Johnson did not participate.

[6] In that telephone conference, I determined that Jagger was the likely employer of Ms Snow and not Mr Johnson. As a result, I joined Jagger as the second respondent. I also set this matter down for today's investigation meeting.

[7] Both Mr Johnson and Jagger were served with the notice of direction which recorded the directions I had made in the telephone conference and with a notice of investigation meeting confirming the date, time and venue for today's investigation meeting.

[8] In response to this, Mr Johnson sent an email to the Authority with a copy of Ms Snow's employment agreement, which shows that Jagger was her employer, and a breakdown of all the holiday pay owed to Jagger's employees, which confirms that Ms Snow is owed \$1,600.01 in holiday pay.

[9] Neither Mr Johnson nor a representative for Jagger appeared at today's investigation meeting.

[10] In all of the circumstances, it is safe for me to proceed without Mr Johnson or Jagger being present at the investigation meeting as I am satisfied they are both on notice of the claim being made against them and that this matter was proceeding whether they appeared or not.

Events giving rise to the employment relationship problem

[11] Jagger employed Ms Snow from September 2014 until 18 March 2016. She was initially hired to work as “front of house” and was paid \$15.50 per hour. At the end of her employment Ms Snow was working as the duty manager and was paid \$17.50 per hour.

[12] Due to financial difficulties, Jagger closed its business on 18 March 2016 and terminated Ms Snow’s employment. At the start of the week on 14 March 2016 Ms Snow was told the business might be closing and she was not to come to work that week. On 18 March 2016 a notice was put on the door of the restaurant stating the business was closed. Ms Snow was asked to hand in her key and told by Mr Johnson that he was sorting out her money.

[13] At the time of termination, Ms Snow had accrued holiday pay of \$1,600.01. Jagger has not paid this holiday pay to Ms Snow.

[14] Ms Snow was also entitled to four weeks’ notice pursuant to clause 12.1 of her employment agreement. Ms Snow did not work her notice period nor did she receive any payment in lieu. Four weeks’ notice for Ms Snow, based on average weekly pay, is \$2,681.48.

Determination

[15] I make an order that Jagger is to pay arrears of wages to Ms Snow of \$2,681.48 (gross) and holiday pay of \$1,600.01 (gross).

[16] I also award interest on these sums at the current rate of 5% (under the Judicature Act) from 18 March 2016 until payment is made in full.

[17] I make no orders against Mr Johnson, as there is no basis for me to do so. He was not Ms Snow’s employer nor is there any evidence before me to suggest there is some other basis on which he can be held responsible for the payment of the outstanding amounts.

Costs

[18] Ms Snow is entitled to the filing fee on the statement of problem. I order that Jagger pay Ms Snow the sum of \$71.56.

Peter van Keulen
Member of the Employment Relations Authority