

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2012] NZERA Auckland 30
5362015**

BETWEEN SPECTRUM CARE TRUST
 BOARD
 Applicant

AND PEPE HURIWAI
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Heather McGill for Applicant
 No appearance by, or for, the Respondent

Investigation Meeting: 19 January 2012 at Auckland

Determination: 20 January 2012

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Spectrum Care Trust Board (“Spectrum Care”) claims repayment of wages in the sum of \$12,683.83 in respect of hours claimed but not worked during the period 6 January 2008 to 31 July 2011 by the Respondent, Ms Pepe Huriwai.

[2] Ms Huriwai did not lodge a Statement in Reply and has not participated in the investigation.

Service of documents on the Respondent

[3] Ms Huriwai had been served with the Statement of Problem, service being effected on 3 November 2011 and signed for at her address by “L Huriwai”.

[4] Ms Huriwai was served with an invitation to attend a telephone conference by letter dated 30 November 2011 and signed for at her address by “JUDY HURIWAI”.

[5] Ms Huriwai was served with the Notice of Investigation on 19 December 2011, signed for at her address by "L Huriwai"

Failure of Respondent to attend or be represented

[6] Ms Huriwai did not attend and was not represented at the Investigation Meeting.

[7] For the reasons set out above I am satisfied that Ms Huriwai had notice of the application and the date of the Investigation Meeting. Ms Huriwai has not shown good cause for her failure to attend or to be represented.

[8] I have therefore proceeded pursuant to clause 12 Schedule 2 of the Employment Relations Act 2000 to act as fully as if Ms Huriwai had attended or been represented.

Issues

[9] The issue for determination is whether Spectrum Care is entitled to an order for payment of \$12,683.83 .

Background Facts

[10] Spectrum Care is an independent charitable trust providing services for children, young people and adults with disabilities.

[11] Ms Huriwai commenced employment with Spectrum Care on 30 November 2007 as a part-time employee working 4 hours per week. Ms Huriwai was employed to provide care and support to a young man with developmental disabilities via a government funded service.

[12] Ms Huriwai had become known to the family of the young man who attended a school at which Ms Huriwai had been working, and the family had nominated Ms Huriwai for appointment to work with their son.

[13] Ms Jing Yin, Service Co-ordinator, said that she had met the young man involved and his family in the family home on 12 November 2007, and that the mother, Mati, had nominated Ms Huriwai as her son's sole support worker.

[14] Ms Heather McGill, Service Manager Community Development, said that Spectrum Care had carried out a thorough recruitment process with Ms Huriwai, involving a two person interview, police and CYF checks, reference checks and an induction programme.

[15] Ms McGill explained that the procedures concerning the completion of timesheets are explained to all new employees during the induction process, and all employees sign a memorandum to indicate that they have understood and agreed with the procedures.

[16] It is a requirement of the procedure that the weekly timesheets are not only signed by the employee, but also countersigned by the relevant family.

[17] Ms Yin explained that she had been involved in the recruitment of Ms Huriwai, and had been the point of contact with the family, visiting the family at least annually, unless additional visits were indicated, and maintaining telephone contact with the family.

[18] Ms Yin said that she had met Mati again on 21 November 2008 and Mati had told her that she was happy with Ms Huriwai and the service which she was providing to their son.

[19] Ms Yin stated that she had also at some time in 2008 met Mati with the behaviour therapists from behaviour support team and on that occasion Mati had complimented Ms Huriwai's work and commented upon how much the family appreciated her.

[20] Ms Yin explained that in addition to these face-to-face contacts, she and another Service Co-ordinator had had several telephone contacts with the family during the period from November 2007 until 2010. Throughout this period the family had reported that all was well and that there were no problems with Ms Huriwai.

[21] Ms Padma Prasad, Administrator, said that she had joined Spectrum Care in April 2009, and because it was her responsibility to check the timesheets, she had contacted the family for whom Ms Huriwai was working. Ms Padma said that the family had told her that Ms Huriwai was taking good care of their son.

[22] Ms Prasad said that as the signature "*Mati*" on the timesheets in the place where the family member would countersign had not changed since 2007, she had no reason for suspecting that there had been any problem.

[23] In July 2011 Spectrum Care had received a cancellation of Home Support Services notification in respect of the young man to whom Ms Huriwai was providing care and support.

[24] The family had been contacted by Spectrum Care and informed of the cancellation. At this point in time the family had confirmed that Ms Huriwai had not worked for them since January 2008, nor had Mati signed any timesheets in relation to the hours Ms Huriwai had claimed during this period.

[25] On 10 August 2011 Ms McGill had written to Ms Huriwai inviting her to attend a disciplinary meeting on 22 August 2011. In the letter Ms McGill had written:

I have become aware of an issue relating to your employment with Spectrum Care. It is observed that you had forwarded time sheets for payment since January 2008 for no work done. According to the mother of the service user, Mati, she has not signed your time sheets from 6th January 2008 and confirmed that the signature appearing on the timesheets forwarded by you from January 2009 does not belong to her. Verification of our pay records indicates that you have been paid wages during this period by Spectrum Care amounting to \$12683.83.

[26] Ms Huriwai did not attend the disciplinary meeting and several attempts by Spectrum Care to contact Ms Huriwai by her mobile telephone were unsuccessful. Despite leaving messages on the mobile telephone there was no contact from Ms Huriwai.

[27] On 25 August 2011 Ms McGill wrote to Ms Huriwai asking Ms Huriwai to attend a meeting on 1 September 2011, warning Ms Huriwai in the letter that her failure to attend the meeting: “will lead to a decision being taken on this issue without your inputs”. This letter had been sent by courier post to Ms Huriwai.

[28] Ms Huriwai failed to attend the meeting on 1 September 2011 and Ms McGill said that she had decided to make a decision without Ms Huriwai’s input. Accordingly Ms McGill had met with a member of the Human Resources team on 5 September 2011 and the decision had been reached that Ms Huriwai had committed serious misconduct by submitting time sheets since 8 January 2008 which contained the forged signature of the parent of the service user

[29] On 6 September 2011 Ms McGill sent Ms Huriwai a letter confirming the termination of her employment and requesting repayment of the monies claimed and paid but not worked for the period from 6 January 2008 until 3 July 2011.

[30] On 12 September 2011 Ms McGill received a text message from Ms Huriwai apologising for what had happened and offering to repay the monies owed at the rate of

\$25.00 per week. Ms McGill said that she had tried to telephone Ms Huriwai to invite her to meet with her; however there was no response to her calls.

Determination

[31] I am satisfied that the amount claimed by Spectrum Care of \$12,683.83 is owed to it by Ms Huriwai.

[32] Ms Huriwai is ordered to make the following payment:

\$12,683.83 as reimbursement of the money paid to Ms Huriwai in respect of hours claimed but not worked by her during the period from 6 January 2008 until 3 July 2011

Recommendation

[33] This is a situation in which Spectrum Care had set up a system which relied to a considerable degree on both the support worker and the relevant family adhering to the time sheet completion rules. This did not happen in this case. I appreciate that funding restrictions limit what is possible in terms of physical visiting, but I recommend that a policy of contacting the support workers by telephone from time to time at the family home during the time when the service has been agreed to be provided is adopted to prevent any future abuse of the system.

Costs

[34] While costs are reserved, I note here that, subject to its submissions, Spectrum Care represented itself and, unless it incurred legal costs, it is therefore unlikely it has grounds to claim a contribution to any fair and reasonable costs.

Eleanor Robinson
Member of the Employment Relations Authority