

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 19
5312608

BETWEEN	VICKI TE HUIA Applicant
AND	DON BURTON t/a NOT RUB CLEANERS Respondent

Member of Authority: G J Wood

Representatives: Ray Hickey, for the Applicant
No appearance for the Respondent

Investigation Meeting: 3 February 2011 at Napier

Determination: 4 February 2011

DETERMINATION OF THE AUTHORITY

[1] Mr Burton did not attend and was not represented at the investigation meeting. This was consistent with his failure to provide a statement in reply and attend on the conference call, despite agreeing to do so. Furthermore, service had to be arranged on him through a process server. I accept the affidavit from the process server that notice of this investigation meeting was served on Mr Burton. An Authority support officer tried to contact Mr Burton on his business phone (and left him a message informing him of the investigation meeting), but there was no response. This is despite Mr Burton being on notice of the implications under ss.181&182 of the Employment Relations Act 2000 of not facilitating the Authority's investigation.

[2] As no good cause for Mr Burton's non-attendance has been shown, I decided to act as fully in the matter as if Mr Burton had duly attended or been represented, pursuant to clause 12 of Schedule 2 of the Act.

[3] My determination is based on the evidence of the sole witness, the applicant, Ms Vicki Te Huia. She provided a written statement and was questioned by me on

the circumstances of the dismissal, whether she had mitigated her loss and the consequences for her of losing her job. I am satisfied with the veracity of Ms Te Huia, especially as she freely made concessions about her failure to mitigate her loss. I therefore rely on it in making the following determination.

[4] The respondent, Mr Don Burton, runs a cleaning contracting business named Not Rub Cleaners. Ms Te Huia was employed as a part-time cleaner for 15 hours a week between 23 May 2009 and 6 April 2010. When first employed, she had 10 hours a week cleaning at a commercial premises and another five hours a week at a local school. She was paid \$14.62 gross per hour.

[5] On 3 March 2010, Mr Burton came to Ms Te Huia's home and told her that Not Rub Cleaners had lost the contract at the commercial premises that she was cleaning. She was therefore told that she would have to finish up two days later. Although Ms Te Huia was *a bit gobsmacked*, she accepted it at the time, feeling that nothing could be done if the contract had been lost. She still kept on working her five hours a week at the local school.

[6] It was some two weeks later that Ms Te Huia discovered from staff she knew at the commercial premises that Mr Burton had in fact simply replaced her with a new employee. She approached Mr Burton about this and he was somewhat evasive about the situation. However, he was clear that her hours were no longer available to her. When asked why, he responded that he had had complaints about the standard of her work. Ms Te Huia was quite shocked about this, because she had never received any complaints and had indeed done extra tasks beyond the scope of her normal duties when requested by management on site. Mr Burton had told her at the time, however, that these tasks were outside the terms of the contract and not to do them any more. After that she never heard anything else by way of customer concerns. When she told Mr Burton that she had received no complaints, he did not respond.

[7] Later that month, Ms Te Huia went on holiday. On her return, she texted Mr Burton to check that the school contract was still available to her, as she knew Mr Burton had been having problems with the caretaker. He texted back in the negative. She then rang him and he told her that he had had an argument with the caretaker, so the contract was over and she had no work. He came around to collect her cleaning materials from her two days later and gave no further reasons for the termination of her work. Ms Te Huia later discovered that she had been replaced on

that cleaning round as well. Indeed, as at the end of 2010, Mr Burton still held both cleaning contracts.

[8] Ms Te Huia sought assistance from an advocate who spoke to Mr Burton, who suggested certain terms of settlement. Thereafter, however, he has avoided contact with the representative, consistent with his lack of contact with the Authority.

[9] Ms Te Huia was very upset about losing her job with Mr Burton. Her *heart was quite shattered* because in her opinion there was no reason for her dismissal and she had done a good job. Furthermore, she felt ashamed because she did not think she had done anything wrong and yet she had lost her job.

[10] Ms Te Huia's family was negatively impacted by the lack of a second income, particularly her children. She stated that this was quite devastating for her. Her hours of work with Mr Burton were very convenient for her family and as a result of that (and the way she felt) she did not look for another job.

[11] I am satisfied that Mr Burton unjustifiably dismissed Ms Te Huia. If there were performance concerns about the standard of her cleaning, then these should have been put to her, but they were not. Mr Burton did not confront Ms Te Huia about her supposed shortcomings, if they existed, but instead (for whatever reason) simply pretended that he had lost the contracts that she worked on. These are not the actions of a fair and reasonable employer.

[12] In effect, Mr Burton was pretending that Ms Te Huia's employment was being ended by way of redundancy, whereas in fact this was not the case. Where there are no genuine reasons for redundancy, dismissal on those grounds can never be justifiable. Furthermore, Mr Burton's actions came out of the blue. It therefore follows that Mr Burton's actions and how he acted were not what a fair and reasonable employer would have done in all the circumstances at the time of the dismissal.

[13] As noted above, Ms Te Huia has been significantly affected by the loss of her job, even though it was not a full time one. Given that evidence, I accept that compensation in the sum of \$4000 is appropriate. At the very least, Ms Te Huia would have been entitled to a week's notice from Mr Burton and that is irrespective of her failure to mitigate her loss by looking for a new job, which means that she can not be compensated otherwise for lost remuneration. One week's pay is \$219.30 gross

and should be paid to Ms Te Huia accordingly. There is no evidence to support any finding of contributory actions by Ms Te Huia.

[14] Ms Te Huia has incurred \$600 in costs and \$70 in expenses. Given the failure of Mr Burton to facilitate the Authority's investigation and to act in good faith towards Ms Te Huia and her representative, I accept that \$600 is a reasonable sum in costs.

[15] I therefore order the respondent, Mr Don Burton, to pay to the applicant, Ms Vicki Te Huia, \$4000 in compensation, \$219.30 gross in unpaid wages, \$600 in costs and \$70 in expenses.

G J Wood
Member of the Employment Relations Authority