

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 150/10  
5145902

BETWEEN                      LORRAINE TAUTARI  
   Applicant  
  
AND                                BADGERS RUN LIMITED  
   Respondent

Member of Authority:      K J Anderson  
  
Representatives:            B Nabney, Counsel for the Applicant  
   A Brennan, Advocate for the Respondent  
  
Investigation Meeting:     8 February 2010 at Tauranga  
  
Determination:              30 March 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Ms Tautari claims that she was unjustifiably dismissed on 11<sup>th</sup> November 2008. She asks the Authority to find that she has a personal grievance and award her the remedies of reimbursement of wages and compensation of \$10,000. Badgers Run Limited refutes the claim and says that Ms Tautari chose of her own accord to resign from her employment.

**Failure of the applicant to attend investigation meeting**

[2] While Ms Tautari was ably represented at the investigation meeting by Mr Nabney, she failed to arrive or make any contact with Mr Nabney or the Authority, despite the Authority delaying the proceedings for a short while. Ms Tautari has provided a witness statement. There is a conflict between her written evidence and the overall evidence for the respondent. I found the evidence of Mr Brennan (who did

attend the investigation meeting), to be most credible and in the absence of Ms Tautari, I have preferred the evidence of Mr Brennan which is supported by other collaborative material evidence.

### **Background Facts and Evidence**

[3] Ms Tautari was employed as a bar person at the Te Puna Tavern, which is now owned by the respondent, Badgers Run Limited (“the Company”). She commenced her employment on 13<sup>th</sup> August 2008. In September 2008, the lease of the tavern was then taken over by Mr Tony Brennan, the Managing Director of the Company, and Ms Tautari’s employment continued, having signed an employment agreement on or about 2<sup>nd</sup> October 2008. The commencement of her employment with the new owner was effective from 29<sup>th</sup> September 2008. Ms Tautari held a bar manager’s certificate under the Sale of Liquor Act and was expected to take some responsibility as the bar manager when she was on duty.

[4] It seems that Ms Tautari became dissatisfied with the wages she was being paid and had a perception that another employee, Ms Tasha Ohio, was being paid more than her. To verify this, on 5<sup>th</sup> November 2008, Ms Tautari, without permission or authority, opened Ms Ohio’s payslip, apparently to ascertain what pay rate she was receiving as compared with Ms Tautari. It seems that Ms Tautari also showed the details of Ms Ohio’s payslip to another employee, Ms Julia Saunders.

[5] The following day, 6<sup>th</sup> November 2008, Ms Jodi Mackie, the acting manager in the absence of Mr Brennan, had occasion to speak to Ms Tautari about an incident that arose the evening before, whereby it appears that Ms Tautari had a tantrum in view of patrons and had removed her bar certificate from the wall of the bar, presumably in response to discovering the pay details of Ms Ohio. During this discussion, Ms Tautari acknowledged that she had opened Ms Ohio’s payslip and was informed by Ms Mackie that this was considered to be a breach of confidentiality.

[6] Ms Mackie contacted Mr Brennan and advised him of the matter involving the opening of the payslip. The evidence of Mr Brennan is that, as he was unsure what to do about the matter, he contacted several sources for advice, including the Hospitality Association of New Zealand (HANZ) and the Department of Labour. Mr

Brennan was advised by Mr Alan Sciascia, HANZ Lower North Island Regional Manager, that as apparently it was the second time Ms Tautari had opened the payslip of another person, this could be treated as serious misconduct, but dismissal was not advisable; rather a written warning would be appropriate. Mr Brennan was advised to have a formal disciplinary meeting with Ms Tautari.

[7] On 7<sup>th</sup> November 2008 at about 4:00p.m, Mr Brennan met with Ms Tautari and informed of the issues pertaining to unauthorised opening of Ms Ohio's pay slip. As I understand Mr Brennan's evidence, he informed Ms Tautari that he wanted to have a further meeting to discuss the matter and that she should bring a friend, a lawyer or a work mate. Mr Brennan says that Ms Tautari responded that she wasn't worried about that. A further meeting was set for 10<sup>th</sup> November but due to Ms Tautari's grandson being admitted to hospital the night before, she was unable to attend. Mr Brennan spoke to Ms Tautari and it was agreed they would meet the next day. He says that he once again advised Ms Tautari to bring a support person with her.

[8] On 11<sup>th</sup> November 2008, a meeting took place in Mr Brennan's office. Also present was Ms Mackie. The evidence of Mr Brennan is that he asked Ms Tautari to give her version of what had happened with the pay slip and she acknowledged that this had happened and that she had showed the content to Ms Sanders. Ms Tautari also acknowledged that she was being paid the same rate as Ms Ohio. At some point in the proceedings, Mr Brennan asked Ms Tautari if she enjoyed working at the tavern. His evidence is that she just shrugged her shoulders. The oral evidence of Mr Brennan is that then, Ms Tautari: "Just went dog and had her head down then said she was going to leave." In the *Statement in Reply*, Mr Brennan records that: "*I asked her what we should do. She said she was leaving.*" However, Mr Brennan attests that he was conscious of a two week notice provision in the employment agreement and asked Ms Tautari if she wanted to work out the notice period to which she responded in the affirmative. The general tenor of Mr Brennan's evidence is collaborated by the written statement of Ms Mackie. She adds that there was also some discussion about; the WINZ subsidy, Ms Tautari removing her bar certificates and appropriate communication between staff (no texting). It is the evidence of Mr Brennan (confirmed by Ms Mackie) that when Ms Tautari left the meeting, it was understood that she was resigning and would work out two weeks' notice.

[9] At the conclusion of the meeting, Ms Mackie typed a letter to Ms Tautari. Rather oddly, given that Ms Tautari had resigned, the letter contains a “*written warning*” with a further proviso that Ms Tautari’s performance would be reviewed in six weeks time. However, Mr Brennan says that he wasn’t sure that Ms Tautari intended to leave and it had not been his intention that she should do so, hence he exercised some caution by ensuring there was a record of what would occur in future.

[10] In the event, Ms Tautari thought about things and decided that she did not want to work out the two weeks’ notice and texted Mr Brennan accordingly. Effectively, Ms Tautari ceased her employment on 12<sup>th</sup> November 2008.

### **Determination**

[11] While it has been argued for Ms Tautari that she was unjustifiably dismissed, this contention is not supported by the overall evidence. I find that it is more probable than not that Ms Tautari decided to resign from her employment on 11<sup>th</sup> November 2008 but agreed to work out two weeks’ notice. She then had second thoughts about working out the notice, decided not to and then notified Mr Brennan on 12<sup>th</sup> November 2008 accordingly, thereby voluntarily terminating her employment from that date.

[12] I conclude that Ms Tautari was not dismissed; summarily, on notice or constructively. She does not have a personal grievance and the matter is dismissed.

### **Costs**

[13] As Mr Brennan represented himself (Badgers Run Limited) there are no legal costs involved hence the issue of costs does not arise. In any event, I understand that Ms Tautari was in receipt of legal aid so any costs award would be minimal.

**K J Anderson**  
**Member of the Employment Relations Authority**