



New Zealand Employment Relations Authority Decisions

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Thirty30 Limited v Latu (Auckland) [2017] NZERA 2; [2017] NZERA Auckland 2 (4 January 2017)

Last Updated: 6 March 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2017] NZERA Auckland 2
5643866

BETWEEN THIRTY30 LIMITED Applicant

A N D CHRISTOPHER LATU Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person

K Smith, Advocate for Respondent

Investigation Meeting: 22 December 2016 at Paihia

Date of Oral Determination: 22 December 2016

Date of written determination: 4 January 2017

ORAL DETERMINATION OF THE AUTHORITY

A. The term for repayment of the COA course fee was never intended to be a term of this employment relationship and I decline to order any repayment.

B. Mr Latu has two weeks to locate and return the uniform and phone. If he is unable to do so, there will be an order that he pay Thirty30 Limited the sum of \$130.

C. Christopher Latu is to pay Thirty30 Limited the sum of \$179.70 for his unpaid bar tab inclusive of a 40% discount.

D. There is also an order that Mr Latu pay a contribution towards Thirty30 Limited's costs of \$71.56.

E. All amounts owed are to be repaid by Mr Latu to Thirty30 Limited at the rate of \$30 per week.

[1] Thirty30 Limited is seeking repayment of course fees, replacement of a work uniform and payment of a bar tab incurred by a former employee, Christopher Latu.

[2] Mr Latu was employed as a casual crowd control staff member on 4 April

2016 by Thirty30 Limited. Thirty30 Limited is a bar and restaurant located in Kings

Road, Paihia. Karen Smith is the company's owner and representative.

[3] The parties signed an offer of employment with an attached employment agreement on 14 April 2016. The alleged agreement contained the following:

(a) Mr Latu was required to complete a COA qualification within eight weeks;

(b) Thirty30 Limited would pay for the qualification on the provision

Mr Latu remained employed with the company for one year;

(c) If his employment terminated within one year, he would be required to repay the costs of the qualification.

[4] It is agreed on or about 30 July 2016, Mr Latu left his employment. He did not return his uniform or phone and did not pay for a bar tab which at the time had accumulated to the sum of \$299.50. Thirty30 Limited is seeking to recover those debts and his COA course cost.

Is Mr Latu liable to repay Thirty30 Limited for the course fee?

[5] The requirement Mr Latu undertake the COA course, remain employed with Thirty30 Limited for one year or repay the course fee is contained in the offer of employment. It is not in the written employment agreement.

[6] The individual employment agreement states Mr Latu was a casual employee. A casual employee does not have mutual employment related obligations between periods of work. If there are mutual obligations which continue between periods of work, there will be an ongoing employment relationship. The strongest indicator of ongoing employment will be that the employer has an obligation to offer the

employee further work which may become available and that the employee has an obligation to carry out that work.¹

[7] All the evidence of this employment indicates it was always intended to be casual. This business operates on a seasonal basis with the busiest times generally during the summer periods. Thirty30 Limited could not offer Mr Latu ongoing set hours of work, although it is conceded during his period of employment he was given up to 20 to 25 hours on a fairly regular basis. Thirty30 Limited paid his holiday pay on a pay as you go basis because they believed he was a casual employee.

[8] It is inconsistent with casual employment for Mr Latu to have a term of his employment that he be bonded to work for Thirty30 Limited for one year. This would be a mutual ongoing employment obligation because he would be obliged to accept employment offered by Thirty30 Limited for one year. This was clearly not the parties intention.

[9] Given both parties always intended this to be a casual employment agreement, the requirement Mr Latu be bonded to work for a year cannot have been intended by reasonable persons in the parties shoes to have been part of this employment relationship. As such I determine the term for repayment of the COA course fee was never intended to be a term of this employment relationship and I decline to order any repayment.

[10] Mr Latu has indicated that he feels some moral obligation to pay for the course. That is up to him. If he wishes to pay for it through a private agreement between himself and the company I shall leave that for them to determine amongst themselves.

Is Mr Latu liable to repay Thirty30 Limited for the work uniform?

[11] Mr Latu accepts he received a uniform and phone values at \$130. Although there was no express term for return of the uniform and phone at the end of the employment, both parties accept that it would have been an implied term for him to return Thirty30 Limited's property.

[12] Mr Latu has two weeks to locate and return the uniform and phone. If he is unable to do so, there will be an order that he pay Thirty30 Limited the sum of \$130.

¹ *Jinkinson v Oceana Gold (NZ) Ltd* [2009] ERNZ 225 at [40].

[13] There is again no express term in Mr Latu's employment agreement around food and beverages or incurring a bar tab at Thirty30 Limited's premises. The arrangement was somewhat loose. Ms Smith stated no one was allowed free food although she accepted that at the end of the day leftover food may be simply given to staff as opposed to being thrown out.

[14] Mr Latu was under the impression that he was entitled to receive some free food and beverages while working. This was relayed to him by other staff members not Ms Smith. It is accepted that there were certain things in the bills which I provided to him today that would be outside that agreement. For example, all alcohol and a meal that he put on the bar tab for his parents in July 2016.

[15] Ms Smith accepted under examination there was a staff discount for food and beverages applied at one period to Mr Latu's bill. She allows staff to bill food and beverages but applies a 40% discount.

[16] It seems reasonable to infer an agreement for Mr Latu to bill food and beverages but applying the staff discount of 40% to that bill.

[17] Accordingly, Christopher Latu is to pay Thirty30 Limited the sum of \$179.70 for his unpaid bar tab inclusive of a 40% discount.

Costs

[18] Thirty30 Limited has been successful. Neither party was represented so no legal fees are payable. Ms Smith seeks repayment of her filing fee of \$71.56. This seems reasonable. Accordingly, there is also an order that Mr Latu pay a contribution towards Thirty30 Limited's costs of \$71.56.

[19] All amounts owed are to be repaid by Mr Latu to Thirty30 Limited at the rate of \$30 per week.

T G Tetitaha

Member of the Employment Relations Authority

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