

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2025] NZERA 71
3287759

BETWEEN	THI THANH TRANG NGUYEN Applicant
AND	NGOC TUYET UYEN HUYNH Respondent

Member of Authority:	Claire English
Representatives:	Dhilum Nightingale and Jordan Rennie, counsel for the Applicants Myles Norris and Ngoc Tuyet Uyen Huynh in person
Investigation Meeting:	9, 10, 11, and 12 September 2024 in Wellington
Submissions received:	7 October and 20 November 2024 from Applicant 6 November 2024 from Respondent
Determination:	14 February 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, who I will refer to as Ms Trang Nguyen, signed an employment agreement with the respondent Ms Huynh (known as Amy) to work at her nail salon in central Wellington. She and 6 other staff were all dismissed in late December 2023 on the basis of a 90-day trial period in their employment agreements.

[2] All of the affected staff including Ms Trang Nguyen were Vietnamese nationals, who had been recruited by Ms Huynh to come to New Zealand and work in her salon, and who raised complaints that they were required to work long hours, and once they

arrived in New Zealand, were required to perform additional tasks particularly massage, waxing, and preparatory work for haircuts including hair washing.

[3] Ms Trang Nguyen's situation differs from that of her colleagues, in that she resigned from her employment on 21 November 2023, and returned to Vietnam on 5 December 2023. Despite this, on 20 December 2023, Ms Huynh sent Ms Trang Nguyen a letter terminating her employment by reason of her 90-day trial period.

[4] Although Ms Trang Nguyen filed a statement of problem, she did not file any witness statement, nor did she attend the investigation meeting, despite the Authority having given permission for her to attend by way of AVL if needed.

[5] Counsel on behalf of Ms Trang Nguyen advised that she had not received any contact or instructions from Ms Trang Nguyen.

[6] Ms Huynh has asked that Ms Trang Nguyen's claims be dismissed for want of prosecution.

The Authority's investigation

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

[8] I am satisfied that Ms Trang Nguyen was aware of the scheduled investigation meeting, as she was represented by counsel at the case management conference where the date and venue for the investigation meeting were set. This was when application was made, and granted, allowing Ms Trang Nguyen to attend the investigation meeting by way of AVL. I am also satisfied that she was properly advised of the notice of investigation meeting, as it was sent to her counsel.

[9] Contained in the notice of investigation meeting is advice that if the applicant does not attend the investigation meeting the matter may be dismissed.¹

[10] Counsel advises that she received no contact or instructions from Ms Trang Nguyen, about either the filing of a witness statement, or attendance at the investigation

¹ Note 1 to Form 8 of the Employment Relations Authority Regulations 2000.

meeting. This may be contrasted with the seven other applicants who raised claims against Ms Huynh at the same time, who filed witness statements and attended the investigation meeting.

[11] Given that, the absence of either notification or explanation of Ms Trang Nguyen's absence, along with her resignation and return to Vietnam, I conclude it appropriate I apply the regulations and dismiss the application for lack of prosecution.

Conclusion

[12] For the above reasons, I dismiss Ms Thi Thanh Trang Nguyen's application.

[13] Given that Ms Trang Nguyen did not file a witness statement and it was reasonably apparent before the investigation meeting that she did not intend to appear, my view is that there is no issue as to costs. Accordingly, the parties are encouraged to resolve any issue of costs between themselves.

[14] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff.²

Claire English
Member of the Employment Relations Authority

² Please note the Authority's Practice Note on costs, effective from 2 May, available at <https://www.era.govt.nz/assets/Uploads/practice-note-2>