

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Kathryn Williamson
AND RJI Pacific International Limited
REPRESENTATIVES Kathryn Williamson in person
Anthony Harris, advocate for the respondent
MEMBER OF AUTHORITY Rosemary Monaghan
DATE OF DETERMINATION 8 December 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Kathryn Williamson, by her then-advocate, filed a statement of problem dated 6 November 2006 in which several claims were made against her former employer, RJI Pacific International Limited ("RJI" or "the company"). They included allegations of unjustified dismissal arising from her redundancy and generalised allegations of unjustified disadvantage. She sought a number of remedies, including payment of one month's salary in lieu of notice.

[2] A statement in reply filed on behalf of RJI attached a letter summarising the circumstances of Ms Williamson's redundancy, and a further letter advising the company's business had been sold and the company had ceased to trade. It also advised that a creditor had petitioned the High Court to have the company placed in liquidation. The application was to be heard on 11 December 2006, and the expectation was that the company would be placed in liquidation on that date. At the Authority's request the advocate provided further information confirming that state of affairs.

[3] Ms Williamson then contacted the Authority on her own behalf, and advised that she now sought only payment in lieu of notice of the termination of her employment. She was not seeking to pursue the remainder of her claims.

The amended claim and the pending liquidation

[4] By message dated 1 December 2006 the Authority advised the company's advocate of the amendment to Ms Williamson's claim, and her statement that on the termination of her employment she was paid one week's pay outstanding plus holiday pay. It advised the matter had been granted urgency, and sought a response by the close of business on Wednesday 6 December 2006 to:

- (a) whether Ms Williamson's account of what she was paid was correct; and
- (b) whether the company disputed that Ms Williams was owed a further 4 weeks' pay in lieu of notice, and if so, on what grounds.

[5] The company responded through its advocate on 5 December 2006 saying it should be given an adequate time to respond, and if necessary be heard. It also said it had located Ms Williamson's employment file, and commented on the circumstances of the staff member who handled the termination of her employment. On Wednesday 6 December 2006 it contacted

the Authority again, to say the advocate was meeting his client the following day and would respond thereafter. It enquired about what opportunity it would have to be heard.

[6] The Authority responded by advising that an extension of time to reply would be given until midday on Friday 8 December, and attaching further details of the final payment Ms Williamson said she received. It also advised that it considered a claim as specific and limited as Ms Williamson's now was could be heard on the papers in the absence of good reason to the contrary.

[7] The advocate responded at 12.43 pm on 8 December 2006 saying:

My discussion with Rodd Jacques yesterday served to highlight that, if we were to seek to more substantively respond on this matter, we need constructive input from [the former employee]. Consequently the Company is unable to respond within the deadline you have set."

[8] That response does not adequately identify the difficulty in responding to the two simple questions set out earlier in this determination. The company's records must show the amount Ms Williamson was paid in her final pay, so the company could at least advise whether or not Ms Williamson's information is correct in that respect. Nor have I been given a reasonable indication of why the company cannot explain why Ms Williamson received no payment in lieu of notice, if that was the case. While I acknowledge the employee directly involved may be ill, I have no indication of why the question is not, nevertheless, a simple one.

[9] Accordingly I consider that the company has been given an opportunity to be heard, and has chosen not to take the opportunity any further than I have set out. As I advised I would, I now determine this matter in the absence of any further reference to it.

Ms Williamson's final pay

[10] Ms Williamson's employment ended by reason of redundancy on 14 July 2006. The total net final pay she received, by cheque of the same date, was \$887.58. She says that figure comprises one week's outstanding salary, plus holiday pay at 6% of her earnings to date.

[11] The parties' written employment agreement contained a commencement date of 1 May 2006, and a salary provision under which Ms Williamson was to be paid at a rate of \$35,000 per annum for the first three months of her employment. Salary was payable in arrears in fortnightly instalments. Ms Williamson said she had received her last regular fortnightly salary payment in the week before the week in which her employment was terminated.

[12] If that is the case, then the gross amounts payable a week later were:

- (a) $\$35,000/52 = \673.10 as one week's salary; plus
- (b) $(10 \text{ weeks} \times \$673.10) \times 6\% = \$403.86$ as holiday pay.

[13] It is apparent from those figures that Ms Williamson did not receive payment in lieu of notice. The amount of Ms Williamson's final pay, and the obvious absence of payment in lieu of notice, should have been readily identifiable by the company when its response was sought.

[14] The employment agreement also contained a redundancy provision which made no mention of notice of termination, and a termination provision which read in part:

"18.1 The Employee or the Company may terminate this agreement by one months prior written notice or, at the Company's discretion, by a payment in lieu of such notice. ...

...

18.4 If the Employee's position under this agreement becomes redundant, the Employer may terminate this agreement in the manner specified in clause 18.1, in which event the Employee shall not be entitled to any compensation of any type other than a period of notice and/or a payment in lieu of notice."

[15] On the face of the matter Ms Williamson was entitled to one month's payment in lieu of notice on the termination of her employment. I have not been provided with any indication of

any reason why that should not be the case. Bearing in mind that the company's advocate advised he had located Ms Williamson's employment file, if there was any such reason there should have been some indication of its nature on the file and the Authority could have been advised of it.

Determination

[16] RJI is therefore ordered to pay to Ms Williamson the sum of \$2,916.66 (gross) as one month's payment in lieu of notice of the termination of her employment.

Costs

[17] RJI is further ordered to reimburse Ms Williamson for the filing fee of \$70.

Rosemary Monaghan
Member of Employment Relations Authority