

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 05/10
5272667

BETWEEN SHERIDAN WIPERI
 Applicant

AND PALMS PRIVATE LIMITED
 Respondent

Member of Authority: P R Stapp

Representatives: No appearance for the Applicant
 Karen Edwards and Joseph Anthony for the Respondent

Investigation Meeting: 14 January 2010 at Wellington

Determination: 14 January 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Sheridan Wiperi was employed as a *chef de partie*, at the Palms Malaysian bistro in Petone and operated by Palms Private Limited. She started work on 9 June 2009 and the restaurant opened to the public a week later. Sheridan Wiperi has complained that she was overworked and intimidated in her employment that caused her to resign from her job on 4 July 2009. She asked for the matter to be mediated and when attempts were made to arrange mediation she did not respond. There is no evidence of a personal grievance being properly raised other than her making the suggestion to be pardoned from the requirement to give 4 weeks notice and making a request to go to mediation. No other claims have been made to resolve the matter as a personal grievance.

[2] Palms Private Limited agreed to attend mediation. A statement in reply was lodged in the Authority on 27 August 2009. The applicant's claims have been denied.

Issues

[3] Was a personal grievance raised properly to put the employer on notice of any claims to resolve the matter? Did the applicant leave her work voluntarily or resign or was she constructively dismissed from her employment because of an unreasonable work load and intimidation at the initiative of her employer?

Failure of the applicant to attend or be represented

[4] Sheridan Wiperi's statement of problem provided an email address and a residential address for service. The support officer has had to rely on the email because it has not been possible to serve the applicant with the notice of investigation meeting at the residential address provided. Attempts were made to serve the applicant using a courier and a professional server, but without any success. I am satisfied that the applicant has been served by the email address as provided in the statement of problem.

[5] The Authority's file indicates numerous attempts have been made to contact the applicant by telephone, but without a response. The applicant has made no reasonable attempt to follow her application in the Authority. I decided not to direct the matter to mediation because attempts were previously made and the applicant did not respond. Also, given the failure of the applicant to respond to the attempts made to contact her, and the messages left, I considered mediation would not contribute to constructively resolving the matter and to dispose of it quickly and speedily. Thus, I instructed that the matter be set down for an investigation meeting. The notice of investigation meeting was served with a covering letter using the email address provided by the applicant. The email did not bounce back and I am satisfied the applicant has been served.

[6] The start to the investigation meeting was delayed at 9.00am to enable the applicant to be contacted by telephone to ascertain her whereabouts. A message was left on her voicemail but there has been no reply by 9.50am when a further message was left.

[7] There has been no good cause highlighted for the applicant's failure to attend the investigation meeting or be represented. Thus, I decided to proceed under clause 12 of Schedule 2 of the Employment Relations Act fully in the matter as if the applicant had attended or been represented.

Determination

[8] The applicant was employed by Palms Private Limited and both parties had entered into an employment agreement (produced by the applicant in the statement of problem). The applicant resigned on 4 July 2009, and when she lodged her application for an employment relationship problem in the Authority, stated that her resignation was due to overwork and intimidation. Palms Private Limited denied the allegations and stated that the applicant when she joined had no prior experience in a Malaysian restaurant and she later walked out when issues about her non compliance with operational policies and underperformance were raised at a meeting with the operations manager, Mr Joseph Anthony. There were also issues about the hours the applicant claimed she had to work but the respondent says that the applicant's claims for hours worked were inaccurate. It is claimed that when she walked out she used vulgarities at the operations manager and in front of other people. She did not return to work. The operations manager and chef attended the Authority's investigation meeting to support the company's response and reply. Ms Edwards produced a wage and time and holiday record as requested.

Determination of the Authority

[9] I have real doubts that the applicant has properly raised a personal grievance by putting the respondent on proper notice of any personal grievance claims. No issue has been raised about the operation of the Employment Relations Amendment Act 2008 No 106 15 December 2008 and the provisions of the parties' employment agreement clause 3.2 for "Probation". Ms Wiperi's statement of problem lodged in the Authority is the only document I have received that outlines her employment relationship problem and how she wants it resolved. The employer has no other correspondence to produce from the applicant. The statement of problem does not put the employer on any adequate notice of any claims for a personal grievance. The applicant's proposals to resolve her employment relationship problem in the statement

of problem were focussed on attending mediation and having an ongoing employment relationship, but time has meant that these are no longer appropriate. This is because the applicant is responsible for mediation not taking place and has apparently moved on to new employment.

[10] For the above reasons I do not intend to make any other findings and I cannot award the applicant any remedies for a personal grievance. I am supported in taking this approach because the applicant has failed without good cause to attend and to give evidence and has failed to properly respond to the Authority and the attempts to arrange mediation. Thus the investigation is closed.

[11] There are no costs to determine.

[12] The applicant can apply for the investigation meeting to be re-opened in the Authority, but will face some hurdles including a further filing fee. Consideration of any such request includes any miscarriage of justice and any other relevant considerations.

[13] The applicant has a right to challenge this determination in 28 days after the date of the determination of the Authority in the Employment Court. Should this happen I ask the Employment Court to consider requesting a good faith report under section 181 of the Act.

P R Stapp
Member of the Employment Relations Authority