

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Char Ah Chee (Applicant)  
**AND** Panda Catering Ltd. (Respondent)  
**REPRESENTATIVES** Dean Organ, Advocate for Applicant  
Marrian Leca, Advocate for Respondent  
**MEMBER OF AUTHORITY** Marija Urlich  
**INVESTIGATION MEETING** 6 December 2005  
**DATE OF DETERMINATION** 8 February 2006

**DETERMINATION OF THE AUTHORITY**

**Employment relationship problem**

[1] Panda Catering Limited operates a catering business from premises located within the Eden Park complex. Ms Ah Chee worked for Panda Catering for approximately 30 years until her dismissal for redundancy in December 2004. Panda Catering was owned by Ms Ah Chee's brothers, Mervyn and Rae Ah Chee, until December 2004 when they sold their shares in the business to Michael O'Brien Catering Pty Limited, an Australian based catering business. Ms Ah Chee's employer did not change as a result of this share transfer.

[2] Ms Ah Chee says she was dismissed by reason of redundancy at a meeting on 29 December 2004 and that her dismissal was unjustified because the process used was unfair and unreasonable. Ms Ah Chee does not dispute that her dismissal was for genuine commercial reasons.

[3] Panda Catering says Ms Ah Chee was not dismissed at the meeting on 29 December 2004 but that she was given notice of her dismissal. It says further that Ms Ah Chee received reasonable notice of the restructuring and was aware her position would be made redundant as a consequence of that process. Panda Catering says the meeting on 29 December 2004 was conducted fairly and sensitively and that Ms Ah Chee declined the offer to work out her notice period and chose to leave the premises at the conclusion of that meeting.

**Was a fair process used?**

[4] It is clear from the evidence received by the Authority that the process used by Panda Catering to implement Ms Ah Chee's redundancy fell well below the accepted standard. There was no evidence Ms Ah Chee was consulted about the new structure or how this might effect her position before the decision was made to begin the process of implementing that new structure. The 5 December 2004 memorandum Panda Catering seeks to rely on as notice of the restructuring cannot be read as notice of such. It is not addressed to Ms Ah Chee or particularised to her. It does

not deal with her position or how she or her position may be affected by any new structure.

[5] The 29 December 2004 meeting was convened by Craig Wergs, Panda Catering's newly appointed executive chef having just come out of a meeting with Michael O'Brien, the owner of the business and another senior staff member. The purpose of the meeting was to discuss possible roles for Ms Ah Chee in the new structure. When the parties to this meeting decided there were no suitable alternative roles Mr Wergs was directed to advise Ms Ah Chee her employment would be terminated by reason of redundancy. Mr Wergs then immediately convened a meeting with Ms Ah Chee.

[6] Ms Ah Chee was not given fair notice of the 29 December dismissal meeting or given an opportunity to seek advice or have a representative present. Panda Catering provided no explanation as to why it failed to comply with these basic elements of a fair process.

[7] Panda Catering Limited says Ms Ah Chee was told at the meeting on 29 December 2004 that she could work out her notice period. I do not accept this occurred. Mr Ah Chee was not provided with a letter confirming Mr Wergs' advice. I received no evidence that Panda Catering prepared any work options for Ms Ah Chee to perform during the notice period. At the investigation meeting Mr Wergs said that casual work would have been available to Ms Ah Chee during her notice period. There was no evidence the detail of this casual work was discussed with Ms Ah Chee and Panda Catering's witnesses were unable to tell me what casual work would have been available to Ms Ah Chee. That Panda Catering says casual work would be available strongly supports Ms Ah Chee's evidence that she was told there was no longer any work available to her because her position no longer existed from that date.

[8] Notwithstanding my finding that Ms Ah Chee was told on 29 December 2004 her employment was terminated with immediate effect, in the circumstances of a meeting convened without notice, by Mr Wergs, whom Ms Ah Chee had only meet once in passing and to whom she did not directly report, and which had not been preceded by any prior consultation as to how any proposed changes may impact on her, it is little wonder Ms Ah Chee understood Panda Catering wanted her out immediately.

## **Remedies**

[9] Panda Catering's primary submission in relation to remedies is that its legal obligations to Ms Ah Chee are subordinate to what it submits are moral obligations owed to Ms Ah Chee by her brothers to protect her from the possible consequences of any future redundancy after they sold their shares in Panda catering. At the investigation meeting Rae Ah Chee said Ms Ah Chee had received a gift from her brothers on the sale of their shares. Panda Catering has requested that the details of this gift be advised to the Authority and weighed in any consideration of remedies.

[10] The Authority deals with legal obligations which fall within the ambit of its jurisdiction. There is no evidence the gift was made by Panda Catering Limited to Ms Ah Chee. Panda Catering stands as a legal entity with full legal personality. It employed Ms Ah Chee for 30 years until it dismissed her for redundancy and those actions are now under scrutiny. What occurred between Ms Ah Chee and her brothers on the sale of their shares is a private matter which falls outside the scope of this investigation.

[11] Ms Ah Chee has established her dismissal for redundancy was unjustified and she is entitled to a consideration of the remedies sought. I accept that the loss of her position with Panda Catering and the manner in which her dismissal was effected has had a devastating impact on Ms Ah Chee and came as a terrible shock. As an employee of 30 years standing Ms Ah Chee had a reasonable

expectation that she would be treated fairly and reasonably. In the circumstance of her redundancy she was not.

[12] Ms Ah Chee is entitled to compensation to the sum of \$12,000 pursuant to section 123(c)(i) for hurt and humiliation caused as a consequence of her dismissal.

**Costs**

[13] The issue of costs is reserved. The parties are invited to try to resolve this issue themselves. If they are unable to do so the parties may request the Authority determine this matter by filing memoranda as to costs.

Marija Urlich  
Member of Employment Relations Authority