

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 110
5443508

BETWEEN

DINAH ATKINS
Applicant

A N D

COLLEEN CONNOLLY
Respondent

Member of Authority: Anna Fitzgibbon
Representatives: Applicant in person
No appearance for Respondent
Investigation Meeting: 25 March 2014 at Rotorua
Date of Determination: 25 March 2014

ORAL DETERMINATION OF THE AUTHORITY

- A. The respondent, Ms Colleen Connolly, is ordered to pay the applicant, Ms Dinah Atkins, wages for work performed by her but not paid, during her employment by Ms Connolly from 7-17 August 2013 totalling \$1,155 gross. This sum is to be paid within 14 days of the date of this determination.**
- B. An order is made that interest be paid on the above judgment sum of \$1,155 gross by Ms Connolly at the rate of 5% per annum from 17 August 2013 until the date of payment pursuant to clause 11 Schedule 2 of the Employment Relations Act 2000 (the Act).**
- C. Ms Atkins was unjustifiably dismissed by Ms Connolly on 17 August 2013. Ms Connolly is to pay Ms Atkins lost remuneration of \$5,400 gross within 14 days of the date of this determination pursuant to s.123(b) and s.128 of the Act.**

- D. Ms Connolly is to pay to Ms Atkins compensation of \$4,500 within 14 days pursuant to s.123(1)(c)(i) of the Act for hurt and humiliation suffered by her.**
- E. Ms Atkins' behaviour was not blameworthy requiring the reduction of any remedies otherwise payable under s.124 of the Act.**
- F. Ms Connolly is to pay Ms Atkins the cost of the \$71.56 filing fee within 14 days of this determination.**

Employment relationship problem

[1] Ms Atkins and her husband, Mr Bradley Atkins, agreed to employment on Ms Connolly's farm in Mangakino in late May/June 2013. Mr Atkins was to be employed and was employed as the farm manager from late May and Ms Atkins as the calf rearer from August 2013. Mr and Ms Atkins provided Ms Connolly with their IRD, KiwiSaver and bank account details when their employment was agreed. A house was provided by Ms Connolly at a rent of \$50 per week.

[2] On 7 August, Ms Connolly and Ms Atkins agreed that Ms Atkins would be paid \$15 gross per hour to work for five hours a day. Ms Atkins worked as a calf rearer and when needed as a relief milker.

[3] Ms Atkins was not provided with an employment agreement. Ms Atkins requested an employment agreement on a number of occasions but never received one. On 17 August, Ms Atkins raised this and some other matters concerning her employment with Ms Connolly and was told to "*fuck off my farm*". An argument ensued. Ms Atkins tried to sort problems out but was unsuccessful and was subsequently told she was no longer to work on the farm. This was the dismissal.

[4] On 27 August 2013, Ms Atkins was told she could no longer remain in the farmhouse. Ms Atkins moved in with her daughter and three children. Her husband remained in the farmhouse for some time until his employment was terminated. The whole incident put Ms Atkins' marriage under stress and was a factor in her and her husband's later separation.

[5] Section 103A of the Act requires a dismissal to be justified. It is my finding that a fair and reasonable employer would not have dismissed Ms Atkins in the circumstances.

[6] Ms Atkins has tried to find another job but has been unsuccessful. Ms Atkins has tried obtaining work through Find Employment, The Warehouse and a number of supermarkets but has not been successful.

[7] Ms Atkins was unjustifiably dismissed. I make an order that Ms Atkins be paid \$4,500 compensation for hurt and humiliation she has suffered as a result of her unjustified dismissal on 17 August 2013. This amount is to be paid within 14 days of the date of this determination.

[8] I make an order that Ms Atkins is entitled to lost remuneration of \$5,400 gross for three months loss of wages from the date of termination pursuant to s.123(b) and s.128 of the Act. I also order wage arrears in the sum of \$1,155 gross for work performed whilst employed but not paid by Ms Connolly.

[9] I also make an order that interest be paid at the rate of 5% per annum on the sum of \$1,155 gross from the date it was due on 17 August 2013 down to the date of payment.

[10] The filing fee cost of \$71.56 is to be paid by Ms Connolly within 14 days of the date of this determination.

Non-appearance of respondent

[11] I note the respondent, Ms Connolly, failed to file a statement in reply and failed to attend the investigation meeting today. I am satisfied that Ms Connolly was properly served with the statement of problem and subsequent correspondence from the Authority together with a notice of the investigation meeting. In those circumstances, it was appropriate that I proceed to investigate the matter in the absence of Ms Connolly.

Costs

[12] Ms Atkins was not represented and so I do not make an order as to costs.

Anna Fitzgibbon
Member of the Employment Relations Authority