

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 36/08
5049921

BETWEEN

JACQUIE BRADFORD
Applicant

AND

YELLOW ROCKET
NORTHLANDS LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: Kevin Murray, Advocate for Applicant
Ian Riach, Advocate for Respondent

Investigation Meeting: 29 January 2008 at Christchurch

Determination: 9 April 2008

DETERMINATION OF THE AUTHORITY

Identity of the respondent

[1] During a telephone conference with the Authority on 29 October 2007, it was agreed by Mr Murray and Mr Riach that by consent the respondent, originally cited as Yellow Rocket Bagel & Coffee Company, should be Yellow Rocket Northlands Limited.

Employment relationship problem

[2] The applicant, Jacquie Bradford, commenced her employment with the respondent as a café assistant at its café in Northlands Mall, Christchurch on 10 August 2006. Ms Bradford says that she was unjustifiably dismissed from her employment with the respondent two weeks after she commenced on 24 August 2006.

[3] Ms Bradford seeks compensation under s.123(1)(c)(i) of the Employment Relations Act 2000 in the sum of \$25,000, a penalty for breach of good faith under

s.4A of the Employment Relations Act 2000, a penalty for failing to provide wage records and costs. It was clarified during the Authority's investigation meeting that Ms Bradford had not received holiday pay.

[4] The respondent, Yellow Rocket Northlands Limited (Yellow Rocket), is a duly incorporated company that carries on its business as a café specialising in bagels and coffee. Deborah Riach is a director of Yellow Rocket and the café manager. Her husband, Ian Riach, is also a company director.

[5] Yellow Rocket does not accept that Ms Bradford was dismissed but says that she left the café on 24 August 2006 of her own accord. A few days after 24 August 2006, Ms Riach telephoned Ms Bradford and left a message along the lines that Ms Bradford should call her and have a chat. Ms Riach then sent Ms Bradford flowers and a card. On 7 September 2004, Ms Riach advised Mr Murray, who was acting at that time on Ms Bradford's behalf, that Ms Bradford had not been dismissed and that if she did not want to leave then she should return to work. Ms Riach heard nothing further about Ms Bradford's intentions with respect to returning to work.

[6] Yellow Rocket does not accept that Ms Bradford is entitled to the remedies she seeks.

[7] The parties did attend mediation but the matter was not resolved.

The issues

[8] The issues for determination are:

- Was Ms Bradford dismissed on 24 August 2006?
- If Ms Bradford was dismissed, then was the dismissal unjustified?
- If Ms Bradford was unjustifiably dismissed, then what remedies is she entitled to?
- Should penalties be awarded?
- Holiday pay.

The relevant events up to and including 24 August 2006***Commencement of employment***

[9] Ms Bradford was a regular customer at the Yellow Rocket Café before she started working there. Ms Riach began getting her nails done by Ms Bradford who was a nail technician. The evidence supports that Ms Bradford and Ms Riach became friends.

[10] Ms Riach became aware that Ms Bradford had had experience in the hospitality industry and was looking toward obtaining full time employment. Ms Riach spoke to Ms Bradford about a position undertaking some shifts at the Yellow Rocket. There was also a discussion about the possibility of a management role if Yellow Rocket opened another café the following year.

Employment agreement

[11] Ms Bradford signed a one page document headed *Individual Terms between Jacquie Bradford and Yellow Rocket Northlands* on 14 August 2006 after commencing on 10 August 2006.

[12] Paragraph 1 of the individual terms provided that Ms Bradford's individual employment agreement *is comprised of these Individual Terms, the Standard Terms and your job description*. Ms Bradford said that she never saw the standard terms.

[13] The individual terms provided that Ms Bradford was a part time employee and that her position was café assistant. It was recorded that Ms Bradford was to be paid an hourly rate of \$13.50 and one of the terms of employment was that she would generally work between 15 and 25 hours per week. Ms Bradford's notice period was one week.

[14] Ms Bradford did not ask for the standard terms during the time she was employed. Ms Riach said they would have been provided to Ms Bradford at the same time as the individual terms because that is her standard procedure.

[15] I accept that the standard terms were not in Ms Bradford's possession for whatever reason, but were requested and subsequently provided by Mr Riach to Mr Murray. In this case, I do not find that anything further turns on whether or not the standard terms of agreement were provided to Ms Bradford.

[16] From 10 August until 23 August 2006, Ms Bradford mainly worked with Ms Riach in the café. The work went well and there were no issues during that period. Ms Bradford said in her evidence at the Authority investigation meeting that she enjoyed her work.

[17] There is a difference in the evidence about what was happening over that initial two week period. Ms Riach said that she was conducting training with Ms Bradford over that period. Ms Bradford said in her evidence that there was no formal training and that she was not buddied for the initial period.

[18] Ms Bradford was working most of the initial period from commencement until 23 August 2006 with Ms Riach who was there to assist and answer questions when required. I accept Ms Riach's evidence that she viewed that period as training. I accept Ms Riach's evidence on that basis, that the shift that Ms Bradford was to be undertaking on 23 August 2006 was Ms Bradford's first unassisted shift.

23 August 2006

[19] Ms Bradford arrived early to the café on Wednesday, 23 August to start her 7.30am shift. She was present at about 7.15am and recalled it was a cold day with frost on the ground. Ms Bradford was concerned to find the shop locked up.

[20] Another employee, Sarah, was supposed to have opened the shop at 7am that morning. She arrived about 15 minutes late. Sarah had not worked at the Yellow Rocket during the previous two weeks and therefore had not met Ms Bradford. Sarah, seeing Ms Bradford wearing a Yellow Rocket t-shirt, apologised to her for being late and introduced herself. Sarah said in her evidence that Ms Bradford did not tell her her name. Sarah realised when she went to open the shop that she did not have the key.

[21] I find it likely that Ms Bradford clearly expressed her disapproval of the situation to Sarah. Sarah apologised again and advised that she would telephone Ms Riach and tell her that she was responsible for the shop opening later than usual. Ms Bradford returned to her car to wait until Sarah returned with the key.

[22] Ms Riach then received a telephone call from Sarah who was at that stage in tears. Ms Riach said Sarah told her that Ms Bradford had *torn strips off her*. Sarah told Ms Riach that she was worried Ms Bradford may not come back to open with her.

Ms Riach told Sarah to get the key and advised that she would telephone Ms Bradford. Ms Riach telephoned Ms Bradford who expressed that she was still upset about Sarah being late and forgetting her key. Ms Bradford agreed to go and open the shop with Sarah.

[23] Ms Riach attended the café that morning on her way to an appointment to check on how things were. The time of her visit was about 9.15am. I am satisfied that both Ms Bradford and Sarah indicated to Ms Riach that everything was all right. Ms Riach concluded, in my view not unreasonably, that that was the end of the early morning issue and went on her way.

[24] Things did not, however, go particularly well at the café that day. I heard a good deal of evidence from Ms Bradford about her interactions and discussions that day with Sarah. I also heard evidence from Sarah about her interactions and discussions with Ms Bradford. Each said in their evidence that the behaviour of the other was the main cause of the difficulties that day.

[25] Ms Bradford said that her conversation with Sarah that day was terse in nature. She said that Sarah was short with her and slammed things around the kitchen.

[26] Sarah said that Ms Bradford did not like being given direction and was sarcastic. Both Sarah and Ms Bradford referred in their evidence to issues that arose about making the potato salad so I will set that matter out.

[27] Ms Bradford said that Sarah approached her and told her, as she was making the potato salad, that *we don't make them like that*. Ms Bradford said she told Sarah that Ms Riach had told her she could make the salad her own way and tomorrow they would do it Sarah's way.

[28] Sarah said that she suggested very tactfully a different way of doing the salad. She said that Ms Bradford yelled at her and told her that she didn't need to be told how to do it. Sarah said Ms Bradford threw down her knife and peeler and told her to make the salad herself. Sarah said there were customers in the shop who could hear the exchange and she attempted to take the tension out of the situation by taking over the task.

[29] The evidence is clear that the relationship between Ms Bradford and Sarah remained difficult until the shift finished and Ms Bradford left the store.

[30] Ms Riach spoke to Sarah that day by telephone and was told that things had not gone well and that the way Ms Bradford acted was unreasonable. Ms Riach also spoke to another employee, Fiona, who was on the front-of-house during that day that evening. Ms Riach said that she tried to telephone Ms Bradford but she was not at home. Ms Bradford did not accept there had been a call but in any event Ms Riach approached Ms Bradford in person on 24 August 2006 to talk about the events of 23 August 2006.

[31] What is important for the purposes of my determination is how Ms Riach dealt with the situation between the two employees. I am not required, therefore, to make a finding as to who was responsible for the difficulties at the café on 23 August 2006. Often in these situations there is some fault on both sides.

24 August 2006

[32] On 24 August 2006, Ms Bradford attended at work for her shift. Ms Riach came in and asked if she could speak to her. The two of them sat in the café with a coffee. There was an issue raised by Ms Bradford about the discussions taking place in a public area in the café. Ms Bradford said that customers and staff could hear what was being said and the discussion should have taken place in a more private area. I am satisfied that the staff who gave evidence at the Authority investigation meeting did not hear the discussion. The evidence was that there were not too many customers present at the time the discussion took place. Although having a discussion in the café may not have been ideal there was no private place for the discussion to have taken place within the café area itself.

[33] Ms Bradford knew from Ms Riach that she wanted to talk about the shift the previous day and that Ms Riach had talked to Sarah who was upset. Ms Bradford said in her evidence she also wanted to talk about her concerns with the shift. I find it likely that Ms Bradford was able to make her concerns about Sarah known to Ms Riach. I find that Ms Riach was aware that Ms Bradford felt Sarah had picked on her, ordered her about and made her shift difficult.

[34] It is more likely than not that it was not until Ms Bradford had made comments about Sarah that Ms Riach explained that the Yellow Rocket worked on an empowerment principle which meant all staff were able to train and that possibly Sarah was only trying to guide Ms Bradford.

[35] Ms Bradford was quite adamant that Sarah had been nasty toward her and I find it likely at this point in the discussion that Ms Riach said she had known Sarah for over a year and that she had never previously seen her act disrespectfully toward other staff. Ms Bradford made it clear to Ms Riach that she thought Ms Riach was taking Sarah's side.

[36] At or about this time, Ms Bradford asked Ms Riach if she wanted her to leave. Ms Bradford said in her evidence that there was only one exchange of this nature. Ms Bradford said that she asked if Ms Riach wanted her to leave and that Ms Riach said *if you want* and Ms Bradford asked *now* and that Ms Riach replied *that would be best all around*.

[37] Ms Bradford said that it was at that point that she got up to go and she felt that she had been dismissed.

[38] Ms Riach's evidence about that matter is that there were two points during the conversation at which Ms Bradford asked her this question. Ms Riach's diary notes, that I accept she took after the conversation with Ms Bradford on 24 August 2006, reflect that after Ms Bradford suggested she was taking Sarah's side, Ms Bradford then asked if Ms Riach wanted her to leave. Ms Riach said in her evidence that she was surprised by this statement. Her diary entry reflects that she advised Ms Bradford that she did not want her to leave but that she was free to go if that was what she wanted. The diary entry shows that Ms Bradford said that what she wanted was a job and that Ms Riach explained that she wasn't taking sides but that it was unacceptable to treat other staff disrespectfully.

[39] The diary entry reflects that Ms Bradford said again that she would go.

[40] I prefer Ms Riach's evidence as to the discussion about leaving. I have placed reliance on the diary entry which I accept was written shortly after the discussion. I find it unlikely that Ms Riach, who wanted to talk to Ms Bradford about issues the previous day, would have said *that would be best all around* to the suggestion from Ms Bradford that she leave.

[41] It is common ground that Ms Bradford got up from the table and she went to the back of the shop to get her belongings from the kitchen area. Ms Bradford removed her t-shirt.

[42] It is necessary in this case to make some findings about the circumstances leading to the removal by Ms Bradford of the Yellow Rocket t-shirt that she was wearing. This was because there is a serious allegation made in the statement of problem, and in Ms Bradford's written evidence, that she was required to remove her t-shirt leaving her wearing only undergarments and a cardigan and that this was done in a public area.

[43] Ms Bradford was observed removing her t-shirt and getting her belongings by two staff in the back area. One of the staff members was Fiona. Fiona was firm and unshaken in her evidence, including when questioned by Mr Murray, that Ms Bradford removed her t-shirt behind a cupboard door in the back kitchen area.

[44] The other staff member, Christine, who does not live in Christchurch, was contacted during the Authority's investigation meeting by telephone. Christine confirmed during the telephone discussion that Ms Bradford opened the door of the cupboard before she took her top off and that nobody would have been able to see her.

[45] I conclude from the evidence that I heard that Ms Bradford did not take her t-shirt off in a public area. The evidence supports that she was standing in a position in the kitchen which would have meant that she would not have been seen by customers when she removed her t-shirt.

[46] That then leaves the issue as to whether Ms Bradford was in fact asked to remove her t-shirt. Ms Riach was quite firm in her evidence that the t-shirt was not important to her and she did not ask Ms Bradford to remove it. It was something, she said, that Ms Bradford did when she was getting her personal items from her locker but not because she was asked to.

[47] Ms Bradford did not go so far in her evidence at the Authority investigation meeting as to say that she was forced to take her t-shirt off. Ms Bradford said that when she went out the back to get her things, Ms Riach followed her and asked if she was alright. Ms Bradford said that it would have been obvious to Ms Riach that she was not all right and that she felt that Ms Riach wanted her to leave.

[48] Ms Bradford said in her evidence at the Authority investigation meeting that she took her shirt off because she did not want to leave with Yellow Rocket property. She said that she *thought* that she asked Ms Riach if she wanted her t-shirt now.

[49] I conclude that Ms Riach did not ask Ms Bradford to remove her t-shirt and that Ms Bradford's account of the event in her written evidence is inconsistent with what actually occurred.

[50] Ms Bradford said in her written evidence that she was directed to leave the café. Whilst Ms Bradford certainly left the café after removing her personal items from her locker, I do not find that the evidence supports that she was directed to leave.

[51] I accept Ms Riach's evidence that she had been *caught off guard* by the way the conversation with Ms Bradford had gone. She believed that she needed to talk to Ms Bradford about whether Ms Bradford actually wanted to leave. Mr Murray was very critical of the way in which Ms Riach had called to Ms Bradford and followed her outside to a water feature. I consider, though, in the circumstances it was not unfair or unreasonable for Ms Riach to attempt some further dialogue.

[52] There was some discussion outside by a water feature. Ms Bradford advised Ms Riach that she did not feel believed and that Ms Riach only believed Sarah. Ms Riach, I find, responded that she was not taking sides. Ms Bradford accepted that Ms Riach had asked her if they could resolve the issue. Ms Bradford said she responded they could not if Ms Riach was not prepared to listen to her and had already made up her mind.

[53] I find it likely that Ms Riach said to Ms Bradford something along the lines of *if she really did want to go I respected that that was her decision to make, but that if she wanted to stay I would respect that too*. Ms Bradford accepted that she responded *I will leave it thanks*. Ms Bradford then left and went home.

[54] I was asked to telephone a milkman, Vance, who observed part of the conversation between Ms Riach and Ms Bradford by the water feature. Vance did not observe the discussion to be aggressive or in the nature of an argument. Ms Bradford recalled the milkman making a comment about her shoes.

[55] In my view, the evidence I heard from Ms Riach and Ms Bradford does not support, as stated by Ms Bradford in her written evidence, that Ms Riach walked close to Ms Bradford and escorted her from the premises. I find that Ms Riach called out to Ms Bradford and then followed her outside because she had been surprised by what had occurred and wanted to talk about it further. I do not find she did it for the purpose of escorting Ms Bradford off the premises.

[56] Ms Riach telephoned Ms Bradford on or about 1 September 2006 and left a message saying she was concerned about her and could she catch up and have a chat. Ms Bradford did not return the call. She said that Ms Riach did not mention in the message the Yellow Rocket. Ms Bradford said that she felt upset and did not want to talk to Ms Riach about *being fired*.

[57] On 4 September 2006, Mr Murray telephoned Ms Riach and said that he was coming to collect some of Ms Bradford's property, being some CDs. Ms Riach left the CDs out and they were subsequently collected. Ms Riach said that she took from that conversation with Mr Murray that her friendship with Ms Bradford was over so the next day she sent some flowers and a card to Ms Bradford expressing her disappointment.

[58] On 7 September 2006, Ms Riach spoke to Mr Murray by telephone and said that Ms Bradford had not been dismissed and that she was welcome to return to work at the café. Ms Bradford said she was advised about the discussion but she was too humiliated and embarrassed to return to work at the café. I am satisfied that Mr Murray did not respond directly to Ms Riach about whether or not Ms Bradford would return.

Determination

Was Ms Bradford dismissed from her employment?

[59] In his submissions, Mr Murray said that the process of investigating what had taken place with respect to the events of 23 August 2006 was unfair and led to Ms Bradford believing that she was dismissed. Mr Murray submitted that dealing with the issue in the shop face-to-face was not a good option, that no one else had been spoken to about the matter and that as a result of the way it was dealt with, things escalated. Mr Murray submitted that it was evident the relationship of trust and confidence had eroded during the discussion at the café table and that it was inappropriate for Ms Riach to then persist and take matters outside.

[60] Mr Riach, in his closing submissions, said that he and his wife had agonised over the matter and tried to evaluate Ms Riach's actions that day. Mr Riach said that they believed they had done their best to resolve the issue in the café but they could not force Ms Bradford to stay.

[61] I find that Ms Riach was entitled to raise the matter, that Sarah had raised with her, with Ms Bradford. I do not find that the meeting was in the nature of a disciplinary meeting. I accept Ms Bradford became very upset because she felt Ms Riach was taking Sarah's side. The conversation then swung around from talking about the events of 23 August 2006 to a question as to whether Ms Riach wanted Ms Bradford to leave. I do not find the evidence supports that that was ever Ms Riach's intention. Nevertheless, Ms Bradford stood up and removed her personal belongings and left the café.

[62] On careful analysis of the conversation, I do not find that Ms Riach dismissed Ms Bradford by word or by her conduct.

[63] It was sensible for Ms Riach to appreciate that Ms Bradford may have made a decision *in the heat of the moment*. In those circumstances, I do not find it was inappropriate for Ms Riach to have followed Ms Bradford outside to the water feature because I accept that Ms Riach was genuinely surprised and concerned by the turn of events and wanted to talk further. The duty of good faith requiring that parties to an employment relationship be active and constructive in establishing a productive employment relationship. That means they shall communicate with each other. I find that was what Ms Riach was trying to do.

[64] Ms Riach left a message a few days later on Ms Bradford's telephone suggesting they talk and then made it clear that Ms Bradford's position was still available on 7 September 2006.

[65] From time to time, an employer will have to talk about issues with an employee. There will be times when an employer will hold a different view from an employee, and this may cause an employee to feel upset. I accept that Ms Bradford was upset. In conclusion, for the reasons set out above, I do not find that Ms Bradford has made out her claim that she was dismissed. I accept Ms Bradford was upset and most unhappy to have left her employment but I do not find Ms Bradford has a personal grievance.

Penalties

[66] I do not find that the grounds have been made out to award a penalty for breach of good faith.

[67] There is a penalty sought for failing to provide wage records. I accept there may have been some confusion in terms of where the wage records were sent to. I am satisfied, however, that there was an attempt to provide the wage records to Ms Bradford as requested, and in those circumstances I am not satisfied that there should be a penalty awarded.

[68] I also note that Mr Murray confirmed that there were no outstanding issues with the pay records.

Holiday pay

[69] Mr Riach confirmed that he would attend to payment of Ms Bradford's holiday pay. If there are any issues outstanding in relation to that matter then I reserve leave for either party to return to the Authority.

Costs

[70] The company was represented in this case by one of its directors, Ian Riach. This may not be a situation where Mr Riach is entitled to costs. However, in the event that he wishes to have the Authority consider the matter, I will reserve leave for Yellow Rocket to make any submissions as to costs by 9 May 2008. Mr Murray will then have until 30 May 2008 to respond.

Helen Doyle
Member of the Employment Relations Authority