

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 452  
5479408

BETWEEN                      MAGGIE CALKA  
Applicant

A N D                              KARP HOLDINGS LIMITED  
Respondent

Member of Authority:      James Crichton

Representatives:            Applicant in person  
No appearance for Respondent

Investigation Meeting:     4 November 2014 at Auckland

Submissions Received:     from the Applicant  
from the Respondent

Date of Determination:     5 November 2014

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant (Ms Calka) alleges that she was unjustifiably dismissed by the respondent employer (Karp). Karp resists that claim and alleges that the dismissal relied on the existence of a trial period.

[2]     Karp through its Governing Director, Mr Kim Pickard, had a sporadic involvement with the Authority's investigatory process. A statement in reply was filed within time but there was not attendance on behalf of Karp at the mediation. Mr Pickard then attended the Authority's telephone conference and despite my encouragement at the telephone conference, Mr Pickard did not appear at my investigation meeting.

[3] Accordingly, I am left to guess at Karp's position in relation to Ms Calka's claim but I am satisfied that Karp have had every reasonable opportunity to engage in the Authority's process and have simply decided not to participate at key points.

[4] I did make clear at the telephone conference I convened with the parties that the reliance Karp placed on the trial period was misplaced as it was common ground between the parties that there was no written employment agreement and on that footing alone, there cannot be an operative trial period pursuant to s.67A of the Employment Relations Act 2000 (the Act).

[5] Ms Calka told me on oath about her employment with Karp. This was secondary employment for Ms Calka, which she undertook specifically to help fund her overseas trip.

[6] By common consent, there was no written employment agreement. Ms Calka understood that she was being engaged on a permanent basis to work on the bar of a club facility operated by Karp between the hours of 7pm and 9am the following morning.

[7] Initially, Ms Calka was employed on Friday nights alone and her first night's work was Friday 30 May 2014 but within three weeks of her commencement, she was offered Saturdays nights as well on the same hours.

[8] Until the final weekend before the dismissal, Ms Calka's evidence is that she enjoyed the work and that no disciplinary issues were raised with her by Karp. On Friday 4 July 2014, Ms Calka attended at work at the usual time but was told that instead of working on the bar, she would be manning the front desk as the Manager had called in sick. This necessitated Ms Calka effectively being the *temporary* Bar Manager notwithstanding that she did not have the requisite bar manager's licence.

[9] Although Ms Calka found the night stressful she felt that she coped well enough although she did not finish her work shift until 10.30am on the Saturday morning having commenced work the previous Friday night at 7pm. Not surprisingly, she reported feeling very tired and was still tired when she commenced her Saturday shift at 6.30pm on Saturday 5 July 2014.

[10] On the Saturday shift, she was working the bar rather than the front desk as manager and although she was told that another staff member would be on from

10pm, that person did not show up and accordingly, Ms Calka was again in a sole charge role for the second night in a row.

[11] On this Saturday night occasion, Mr Pickard was at the bar drinking.

[12] Far from assisting Ms Calka in her sole charge role, he complained to Ms Calka about her slowness in attending to customers, pointing out on occasion that there were customers waiting for a drink.

[13] The bar was supposed to close at 4am but Ms Calka says that one of Mr Pickard's friends took over as a de facto barman and started handling out drinks from 4am and when she complained about that to the duty manager, Ms Calka was ignored.

[14] She also says that she was sexually harassed by Mr Pickard's friend and later in the night, Ms Calka was chastised by the Duty Manager for allegedly being unfriendly and not taking a joke.

[15] Ms Calka says that one of the jokes that she allegedly did not get was of a male patron saying that he liked her so much that he wanted to rape her.

[16] At 9am Ms Calka was due to finish her shift and indicated that she was leaving apparently with the disapproval of the Duty Manager who thought that she should stay on beyond the end of her shift to assist.

[17] In the result, those events turned out to be Ms Calka's last day of employment by Karp. When she turned up for her Friday shift six days later on 11 July 2014, she was met by Mr Pickard in the car park and told that she was *no longer required*.

### **Determination**

[18] This is an unjustified dismissal. Ms Calka considers that the reason she was dismissed was because she was assertive the previous Saturday and/or because she complained about the behaviour of Mr Pickard's friend.

[19] Whatever the explanation, a dismissal in a car park without warning, without any opportunity on the part of the employee to address any concerns that the employer might have, without any evidence of any measured approach by the employer is an unjustified dismissal.

[20] A dismissal on this basis is not a dismissal that a fair and reasonable employer could undertake in the particular circumstances of the time. The impression given by the evidence before me is that Mr Pickard simply imagined that he could dispose of his employment relationship with Ms Calka without explanation and that view of matters is supported by his reliance on the 90 trial period which, as I have already noted is a reliance which is completely misplaced.

[21] Ms Calka told me that she had sought out this employment, which was secondary employment, in order to assist her to fund an overseas holiday, that she intended and made clear to Karp that her engagement be a permanent one for some 18 months until she had saved sufficient to fund her travels, and the termination of the employment so suddenly and without any adequate explanation not only ruined her travel plans but also caused her great distress especially as she did not consider that she had done anything wrongly, and in any event was never given an opportunity to provide any explanation to the employer even if the employer thought she had.

[22] On that basis then, I am satisfied that Ms Calka has a personal grievance for unjustified dismissal and that she is entitled to the consideration of remedies. Given the immediate circumstances of the dismissal, and the complete absence of any process from the employer, I am satisfied that Ms Calka has done nothing to contribute to the circumstances giving rise to her personal grievance.

[23] I direct that Karp is to pay Ms Calka the following sums:

- (a) Compensation under s.123(1)(c)(i) of the Employment Relations Act 2000 in the sum of \$4,000;
- (b) Reimbursement of the Authority's filing fee in the sum of \$71.56.

[24] Those payments are to be made to Ms Calka within 28 days of the date of this determination.

[25] For enforcement purposes, I direct that a certificate of determination is to issue with this determination.

## **Costs**

[26] There is no issue as to costs as Ms Calka acted for herself.

James Crichton  
Member of the Employment Relations Authority