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Chang v Timeforall International Group Limited (Auckland) [2007] NZERA 103 (3 April 2007)

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 99/07 5040435

BETWEEN SHUO (GRACE) CHANG

Applicant

AND

TIMEFORALL INTERNATIONAL GROUP LIMITED

Respondent

Member of Authority: Representatives:

Determination:

Leon Robinson

Applicant In Person

No appearance by Respondent

3 April 2007

DETERMINATION OF THE AUTHORITY

[1] The applicant Ms Shuo (Grace) Chang ("Ms Chang") asks the Authority to investigate her claim that she was unjustifiably dismissed from her employment with the respondent Timeforall International Group Limited ("Timeforall"). She also claims holiday pay as arrears of wages.

[2] Timeforall lodged a statement in reply on 9 June 2006. It has taken no further steps since then. Initially I directed the matter proceed to investigation meeting on 8 February 2007. Ms Chang "forgot" to attend. Nor was there any appearance for Timeforall. By memorandum of 9 February 2007, I rescheduled the investigation meeting to 22 March 2007. I directed Ms Chang to serve the memorandum and a notice of investigation meeting on Timeforall.

[3] Timeforall did not appear at the investigation meeting on 22 March 2007. Ms Chang gave sworn evidence that she and her friend Kiko served the memorandum and notice of investigation meeting on Timeforall leaving the said documents with one "Sabrina" at Timeforall's registered office.

[4] I attempted unsuccessfully to contact Timeforall by telephone. I was not aware Timeforall had good cause not to attend the investigation meeting. I proceeded to act as fully as if it had attended.

The facts

[5] Ms Chang commenced employment with Timeforall in November 2005. On 24 April 2006, she was presented with a document entitled "Notice Letter". The notice letter stated:-

I am writing to tell you that (Timeforall International Group Ltd) is considering changing your work position in graphic design department from part-time sales to another position described as below:.

This action is being considered with regard to the following circumstances:

There is not enough income in graphic design department

There are limited business opportunities in Auckland market for graphic design department

You are entitled, if you wish, to be a casual staff whose work depends on company's calling when necessary from 8th of May in 2006.

Yours sincerely

Director of Timeforall International Group Mingda Shi Date: 24/4/06

[6] The author of the notice Mr Mingda Shi ("Mr Shi") was Ms Chang's superior. When he gave Ms Chang the notice she rejected the advice and made it clear to Mr Shi she did not accept it. She told him "No."

[7] In the two weeks following, Mr Shi persisted in offering Ms Chang wages in lieu of notice in consideration of her departure. Each time he did so she rejected his offer. Finally on 8 May 2006, Mr Shi phoned Ms Chang and offered her two weeks wages to leave. She told him "No". Later that evening he asked her again and she told him "No" again. It was plain to Ms Chang however, that Mr Shi wished her gone. The next day she did not return. Despite the notice letter, Ms Chang was never contacted again.

[8] I accept Ms Chang's unchallenged evidence and find that she was dismissed. The Notice Letter constituted a sending away. It was not an invitation for discussion and the advice that she was entitled to be a casual employee evidences a termination of her existing employment. But Ms Chang rejected this repudiatory conduct. She continued to tell Mr Shi "No" on the subsequent occasions when he sought to have her leave.

[9] But on 8 May 2006 when Mr Shi asked her again to leave, while she told him "No" she did not return to work. I find that she accepted Mr Shi did not wish to continue her employment. She

accepted that fact and did not return to the employment, even though she told him she would not accept wages in lieu of notice.

[10] The advice of 24 April 2006 was accompanied by subsequent inducements that she leave. Although she did not initially accept the repudiatory conduct, I find that when she did not return to work on 9 May 2006 she did. The employment came to an end at the employer's initiative and she did not consent to it. She had no option but to regard her employment at an end at her employer's initiative. Accordingly, I find that Ms Chang was dismissed.

[11] There was no fair process or any substantive justification for the dismissal. Timeforall does not co-operate to inform the Authority otherwise. **The Authority concludes Ms Chang was unjustifiably dismissed. She has a personal grievance and she is entitled to remedies in settlement of that grievance.**

[12] Having made these findings and in considering both the nature and the extent of the remedies to be provided, I am bound by [section 124](#) of the [Employment Relations Act 2000](#) to consider the extent to which Ms Chang's actions contributed towards the situation that gave rise to the personal grievance, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly. I find there was no blameworthy conduct on her part and there is no basis to reduce the remedies available to her.

[13] Ms Chang did not find alternative work until early August 2006. I award her three months wages being 12 weeks @ \$380.00 in the gross sum of \$4,560.00. **Timeforall International Group Limited is ordered to pay to Shuo (Grace) Chang the gross sum of \$4,560.00 as reimbursement.**

[14] I accept that Ms Chang suffered hurt and humiliation as a result of the personal grievance. Having regard to her evidence and the nature of the grievance, she shall have a modest award. **Timeforall International Group Limited is ordered to pay to Shuo (Grace) Chang the sum of \$5,000.00 as compensation.**

[15] Ms Chang claims arrears of wages in respect of holiday pay due to her at termination. I accept her unchallenged evidence of her total gross wages in the sum of \$8,513.06. The holiday pay due to her on that sum is \$510.78. **Timeforall International Group Limited is ordered to pay to Shuo (Grace) Chang the gross sum of \$510.06 as arrears of wages.**

[16] As Ms Chang was not represented by professional advocate, there will be no award of costs.

[17] I direct that any Certificate of Determination issued under Regulation 26 of the [Employment Relations Authority Regulations 2000](#) is to be immediately served on the respondent company.

Leon Robinson

