

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2014] NZERA Auckland 325
5444081**

BETWEEN PETA COSTELLO
 Applicant

AND LOGANS CATERING LIMITED
 Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in Person
 James Logan Representative for Respondent

Investigation Meeting: 29 July 2014 at Auckland

Submissions received: 29 & 30 July 2014 from Applicant
 29 July 2014 from Respondent

Determination: 1 August 2014

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Ms Peta Costello, claims that she resigned from her employment with the Respondent, Logans Catering Limited (Logans), on 30 August 2013 providing the contractual 4 weeks' notice.

[2] Ms Costello claims that Logans owes her an amount equal to 3 weeks payment in respect of notice not worked after her employment was abruptly terminated by Logans on 7 September 2013.

[3] Logans denies that Ms Costello resigned on 30 August 2013 and claims that she terminated her employment voluntarily on 7 September 2013 without providing 4 weeks' notice as contractually required thus that no monies are due and owing to her.

Issues

[4] The issue for determination is whether or not Ms Costello is owed any monies in respect of a notice period following the termination of her employment with Logans.

Background Facts

[5] Logans is a catering business providing café services (the Café) and catering for external events.

[6] Ms Costello was previously employed by the Café's previous owners and her employment transferred to Logans with effect from 16 April 2012.

[7] Ms Costello was employed as a Chef at the Café and said that prior to August 2013 she had been the senior or Head Chef sharing responsibility for the cooking with Mr James Logan, Owner and Director, and Mr Brett Radcliffe, Junior Commis Chef.

[8] Ms Costello had been issued with an individual employment agreement by Logans dated April 2012 (the Employment Agreement) which set out the notice requirements at clause 13.1:

13.1 General Termination

*The Employer may terminate this agreement for cause, by providing **4 weeks** notice in writing to the Employee. Likewise the Employee is required to give **4 weeks** notice of resignation.*

[9] Prior to Ms Costello taking annual leave in August 2013, there had been a discussion between her and Mr Logan about Ms Costello relinquishing her responsibilities as Head Chef due to her other commitments.

[10] Mr Logan said it had been discussed and agreed at that time that Ms Costello's hours would be reduced as a result.

[11] Following her return from annual leave Ms Costello said that she had decided to resign from her employment, which she had done verbally by informing Mr Logan of her resignation on 30 August 2013. She had not provided her notice in writing since she did not consider that the Employment Agreement required her to do so, and Mr Logan had not requested that she did so.

[12] Mr Logan denied receiving notice verbally from Ms Costello and said that if she had resigned he would have followed his usual course of action in such situations and advised the other employees of the resignation and organised a leaving collection for her.

[13] Ms Glenys Adlington, a front of house waitress at the Café and a friend of Ms Costello, said that Ms Costello had advised her at some time prior to 7 September 2013 that she had resigned verbally from her employment at the Café.

[14] Mr Radcliffe said that he had been employed in a trainee position at the Café, receiving training from Mr Logan, and when Mr Logan was not available, from Ms Costello. Prior to 7 September 2013 he said he and Ms Costello had enjoyed a good relationship in which there had been no animosity between them.

[15] He said he had not been aware that Ms Costello had tendered her resignation and was in the process of working her notice period on 7 September 2013.

Events 7 September 2013

[16] On 7 September 2013 Mr Radcliffe said he and Mr Logan had been in the Café kitchen when Ms Costello arrived for work. Prior to 10 o'clock when Mr Logan had left the Café kitchen to go to a meeting, there had been a good atmosphere; however after Mr Logan had left the atmosphere had changed and he said that Ms Costello had become malicious towards him.

[17] Ms Costello had asked him questions about the stock ordering which he had not been able to answer as he was not responsible for stock ordering. She had become angry and critical of him and he had felt that his work ethic was being criticised and he was being blamed for matters over which he had no control being a trainee.

[18] The situation had upset him and he had left the Café kitchen to try to speak to Mr Logan about the situation, however due to Mr Logan's attendance at a meeting he had been unavailable to discuss the matter at that time, and he (Mr Radcliffe) had returned to the Café kitchen to continue with the lunch service.

[19] Mr Logan said that around mid-morning there had been a break during the meeting he had been involved in and Mr Radcliffe had spoken to him at that time. Mr Logan said that Mr Radcliffe had been very upset, and told him that Ms Costello had been rude and bullying.

[20] Mr Logan said that as he had to resume the meeting, he had asked Mr Radcliffe if he could cope until the close of the lunch service, and they would discuss it more fully at that time. This had been agreed and Mr Radcliffe had returned to the Café kitchen.

[21] Ms Adlington said that at approximately 11.00 a.m. Ms Costello had asked where Mr Logan was as she wanted to see him, and stated that: "*I've had enough, I'm out of here.*". Ms Adlington said that Ms Costello had her rolled up chef's knives with her.

[22] Ms Adlington explained that Mr Logan was in a meeting and Ms Costello had returned to the Café kitchen to continue with the lunch service.

[23] Mr Radcliffe said that after he had returned to the Café kitchen, Ms Costello criticised some pastry which he had made, and complained about what she had considered to be out of date food supplies and the cleanliness of the Café kitchen and utensils. She had been angry, swearing and throwing pots and pans onto the floor.

[24] Mr Radcliffe said he had not experienced this type of behaviour from Ms Costello previously, and he had been reduced to tears at what he perceived to be her bullying behaviour, not only of himself, but also of a young waitress. As a result following the lunch service he had spoken to Mr Logan, who had said that they would discuss the situation with Ms Costello.

[25] Ms Costello said she had expected Mr Radcliffe to be performing better in his role and agreed that she may have been rude to him several times during the morning of 7 September 2013, however she had not realised that he had been upset, although she had been aware of him leaving the Café kitchen.

[26] She said that she had become angry at the state of the Café kitchen and utensils which she perceived to be dirty, and she had considered some of the food to be out of date. At the Investigation Meeting she agreed that she had become really very cross during the morning, however she denied throwing pots and pans onto the floor, saying that she had only thrown one pan into the sink.

[27] Following the conclusion of the meeting and the lunch service, Mr Logan said he had met with Ms Costello and Mr Radcliffe to discuss the situation. He said he had felt upset about the way in which Ms Costello had spoken to Mr Radcliffe, but when he had tried to discuss what had occurred, Ms Costello had become abusive about the state of the Café kitchen, about him, and also about Mr Radcliffe.

[28] He agreed that he had been upset by the comments Ms Costello had been making about the cleanliness of the kitchen and the out of date food as he considered these to be completely unjustified, however he denied that he had asked her to leave her employment at Logans.

[29] Ms Costello said that the discussion had commenced with Mr Logan asking her what problem she had with Mr Radcliffe and she had replied that it had been the state of the kitchen. She said she had tried to discuss the situation with him; however Mr Logan had shouted at her, becoming verbally and physically threatening.

[30] She had decided it was safest if she left the Café and moved to the Café kitchen to retrieve her personal belongings, however Mr Logan had accompanied her and prevented her getting some shot glasses which belonged to her, saying he would send those and any other personal items to her.

[31] Ms Costello said that Mr Logan had told her that she was finished and that she would: *“never get another job around here”*.

[32] Mr Radcliffe stated that the discussion between Ms Costello and Mr Logan had become heated; however he had not heard or seen Mr Logan threaten Ms Costello verbally or physically, or do anything to make her feel that she had to leave the Café for her own personal safety.

[33] He had not heard Mr Logan tell Ms Costello that ‘she was finished’, however he had heard Ms Costello, who was being very abusive and swearing about the Café, its employees and Mr Logan, say that she was: *“out of here”*. Given the abusive comments and statements she had been making, he had understood that Ms Costello had no intention of returning to work at the Café.

[34] Ms Adlington said she had been aware of the meeting between Ms Costello and Mr Logan, however she had been unable to hear what had been being discussed, but as Ms Costello returned to the Café kitchen following the meeting she had heard her say: *“I am out of here”*.

[35] Mr Logan denied that he had asked Ms Costello to leave her employment at the Café. He said that he had accompanied Ms Costello to collect her belongings as he had been concerned at how abusive she had been and he had not wanted her to upset the other employees. During that time she had told him: *“I’ll never be back in this f...g shithole”*

[36] After she had left the Café, Ms Costello had made a complaint to the Police that Mr Logan had been threatening towards her, however there had subsequently been no action taken against Mr Logan.

[37] Ms Adlington said that Ms Costello had telephoned her on 8 September 2013 to ask her if she would sign a form stating that she (Ms Costello) had been asked to leave the Café, however she had refused to do so as she had not believed this to be true.

Determination

[38] Whilst Mr Logan disputes that Ms Costello verbally resigned from her employment on or about 30 August 2013 I find that, based on the evidence of Ms Adlington, she had done so, and at that time her intention was to work out her 4 week notice period pursuant to clause 13.1 of the Employment Agreement.

[39] Ms Costello's evidence was that she had other commitments which meant she had been very busy outside of her employment at Logans and which had led to her stepping down as Head Chef at the Café and subsequently to her resignation on 30 August 2013..

[40] On the morning of 7 September 2013 it is clear from the evidence that Ms Costello had become very unhappy at the situation in the Café kitchen. Her behaviour towards Mr Radcliffe had become abusive, which had not previously been the case, she had admitted to being angry, and Mr Radcliffe's evidence had been that she had been swearing and throwing pots and pans onto the floor.

[41] I find from the evidence that Ms Costello had formed the intention to leave her employment at the Café by approximately 11.00 a.m. when she had approached Ms Adlington carrying her chef's knives, asked where Mr Logan was and commented that: "*I've had enough, I'm out of here.*".

[42] In this situation I find it more likely than not, as confirmed by the evidence of Mr Radcliffe and Ms Adlington, that Ms Costello had made clear her intention of not working out the remaining period of her notice period at the Café before, during, and subsequent to the discussion between her and Mr Logan on 7 September 2013 rather than Mr Logan dismissing her.

[43] Accordingly I determine that Logans does not owe Ms Costello any monies in respect of the unexpired term of her contractual notice period.

Costs

[44] While costs are reserved, I note here that, subject to his submissions, Mr Logan represented Logans and, unless he incurred legal costs, it is therefore unlikely he has grounds to claim a contribution to any fair and reasonable costs..

Eleanor Robinson
Member of the Employment Relations Authority