

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 154
5421016

BETWEEN SHARRON THERESA
 COURTNEY
 Applicant

AND SS COORAY & SONS
 LIMITED
 Respondent

Member of Authority: R A Monaghan

Representatives: N Geiger, counsel for applicant
 S Cooray, advocate for respondent

Investigation meeting: 23 January 2014

Submissions received: 30 January 2014 from applicant
 3 February 2014 from respondent

Determination: 24 April 2014

DETERMINATION OF THE AUTHORITY

- A. SS Cooray & Sons Limited does not owe Sharron Courtney any unpaid wages.**
- B. Ms Courtney did not raise a personal grievance within the 90-day period required under s 114 of the Employment Relations Act.**
- C. Leave to raise a grievance is declined.**

[1] SS Cooray & Sons Ltd (SSC) operates a floristry outlet in a shopping centre in Pakuranga, Auckland. Ms Courtney is an experienced florist. SSC employed her in a part time florist's position, for up to 12 hours per week, commencing in November 2012.

[2] The parties entered into a written employment agreement. Relevant provisions included:

- Clause 2.1, which cited the position description ‘florist’, and referred to a list of duties which was attached to the agreement;
- Clause 2.2, which provided that the duties could be modified and updated by agreement, and that Ms Courtney would ‘*perform all other reasonable duties and comply with reasonable instructions issued by the employer*’;
- Clause 7.1, which provided that Ms Courtney be paid at:
 - an hourly rate of \$18 per hour, or
 - an hourly rate of \$25 per hour ‘*if required to work for weddings and events*’.

[3] In material she lodged before the investigation meeting Ms Courtney said that, from November 2012 to April 2013, most of the duties she performed on a day to day basis were outside her job description. These duties included the training and supervision of junior employees, co-ordinating the workload, and dealing with enquiries from customers and staff. Such duties required her to draw on her additional experience and expertise as a senior florist. She made it clear when she was recruited that, if her expertise was to be used for the benefit of the business, she should be paid at a rate of \$25 per hour. She agreed to payment at the rate of \$18 per hour on the basis that she would perform only the basic duties of a florist, without being expected to provide her additional expertise.

[4] Ms Courtney’s claims that she did provide that expertise, and she seeks payment at the rate of \$25 per hour for all hours worked during her employment. SSC says Ms Courtney was paid at \$18 per hour, correctly under the terms of the employment agreement, and adds that she was paid correctly at the rate of \$25 per hour when she was required to work for weddings and events.

[5] Ms Courtney has also attempted to raise personal grievances. These appeared to arise out of her concern about her rate of pay, as well as from discussions in April 2013. These discussions occurred when SSC sought to open a second floristry outlet in another Auckland shopping centre.

[6] This determination addresses:

- (i) whether Ms Courtney is owed unpaid wages; and
- (ii) whether she has a personal grievance.

Is Ms Courtney owed unpaid wages

[7] To succeed in her claim that she was paid at the wrong rate of pay, Ms Courtney must show she was not paid in accordance with the employment agreement. If she seeks payment at a rate of \$25 per hour, then with reference to cl 7.1 of the employment agreement she must show she was required to do work for weddings and events but was not paid at \$25 per hour when she did that work.

[8] Although some difficulties arose on occasions when Ms Courtney had been required to do work for weddings and events, those were resolved at the time and there is no outstanding claim for payment in respect of those occasions. Beyond that, it transpired during the investigation meeting that Ms Courtney's claim for payment relied on her generalised statements that, when other staff members were working on weddings or events, they would come to her for assistance. She would provide input into matters such as the makeup of bouquets or flower arrangements. She believed this meant she, too, was required to do work which qualified her for payment at the rate of \$25 per hour.

[9] With reference to the terms of the agreement, Ms Courtney's claim for payment fails because:

- such assistance as she gave was provided in response to requests from colleagues, and did not mean her employer was requiring her to work for a wedding or an event or that she qualified for payment at \$25 per hour; and
- even if these activities qualified her for payment at \$25 per hour she was not engaged in such work during every hour worked over the period of her employment, and her account of when she did such work was too vague to allow any finding in her favour.

[10] Ms Courtney sought to go behind the terms of the agreement to argue that she was in any event entitled to payment at \$25 per hour. It was not open to her to do this because the clear and unambiguous terms of the employment agreement prevail, and because the Authority has no power to amend those terms.

[11] Ms Courtney's reason for proceeding with her claim was that she considered she had been expected to carry out duties beyond those which she had agreed to, and

were listed in the employment agreement. When she was recruited she had made a point of saying she would carry out shop duties, but would not provide SSC with the benefit of her true level of experience unless she was paid accordingly. On the evidence, such discussions underpinned the provisions in cl 7.1 regarding payment at \$25 per hour.

[12] I accept that the written duties did not include training and supervising junior employees, or co-ordinating workloads. I do not accept that Ms Courtney carried out duties of that kind. Her account of the assistance she gave junior employees was consistent with responding to requests for advice or assistance which any junior employee might make of a senior employee. Some of this assistance amounted to no more than responding to questions about prices – answers which the employees could have identified for themselves from a standard price list. Some amounted to discussion about the proposed makeup of a bouquet or arrangement. Although she said she felt like the ‘go to’ person, I do not accept this means Ms Courtney was required to train or supervise those employees. I note, too, that Ms Courtney was not the only experienced employee.

[13] Secondly I do not accept Ms Courtney was responsible for co-ordinating workloads. She was not responsible for preparing rosters, for example. Nothing in the evidence suggested that any co-ordination in which she was involved amounted to more than the co-operation to be expected between colleagues, possibly coupled with an acknowledgement of or even deference to her level of experience. Moreover, even that evidence was limited to activities in respect of weddings or events.

[14] Thirdly, the written duties included responding to enquiries from customers. As an experienced florist Ms Courtney may have been able to provide a better level of response than a more junior staff member, but I do not accept that anything in this amounted to a requirement that Ms Courtney exceed the duties in her job description.

[15] I conclude that Ms Courtney’s activities amounted to the performance of ‘all other reasonable duties’ in terms of cl 2.2. They did not exceed the scope of Ms Courtney’s job description and SSC has not breached any obligation to Ms Courtney.

[16] For these reasons I find there was no underpayment of wages and there will be no order for payment.

Does Ms Courtney have a personal grievance

[17] Ms Courtney used the term ‘personal grievance’ in statements of problem lodged in the Authority in July and August 2013, but she did not otherwise raise a grievance with her employer. Moreover, it was difficult to identify from the statements of problem precisely what grievance was being raised in terms of the definitions in s 103 of the Employment Relations Act 2000. While a personal grievance is capable of being raised with an employer by way of a statement of problem lodged in the Authority, the lack of clarity in the grievance(s) being asserted meant any purported raising of them did not meet the tests in *Creedy v Commissioner of Police*.¹

[18] When I asked Ms Courtney to explain the nature of her grievance(s) during a teleconference in September 2013, she said she felt she had been offered but not been allocated certain hours of work during discussions in April 2013 concerning the opening of a second floristry outlet. She also said her resignation, contained in an emailed message dated 2 May 2013, embodied a constructive dismissal. In general the 2 May message expressed dissatisfaction with aspects of the discussions concerning the second outlet, and demanded a rate of pay of \$25 per hour.

[19] Ms Courtney instructed counsel. In response to queries about whether any grievance had been raised within the 90 day period in s 114 of the Act, he sought leave to raise Ms Courtenay’s grievances out of time. However he was unable to point to any exceptional circumstances warranting a grant of leave to raise the grievance under s 114(4). I confirm my oral order declining leave.

Costs

[20] Costs are reserved.

[21] The parties are invited to resolve the matter. If either party seeks an order from the Authority the party shall have 28 days from the date of this determination in which to file and serve a written account of what is sought and why. The other party

¹ [2006] ERNZ 517

shall have a further 14 days from the date of receipt of that account in which to file and serve a written reply.

R A Monaghan

Member of the Employment Relations Authority