

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 26  
5632369

BETWEEN            TRINA CRANSWICK  
                                 Applicant  
  
A N D                CHEVELLE MOTORS LIMITED  
                                 Respondent

Member of Authority:    Anna Fitzgibbon  
  
Representatives:        Raewyn Tretheway, Counsel for Applicant  
                                 No appearance by or for Respondent  
  
Investigation Meeting:    31 January 2017 at Gisborne  
  
Date of Determination:    31 January 2017  
Date of Written Record:    1 February 2017

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Non-appearance of Respondent**

[1]     Chevelle Motors Limited (Chevelle) failed to file a statement in reply to the statement of problem and also failed to attend the investigation meeting today. I am satisfied that Chevelle was properly served with the statement of problem and subsequent correspondence from the Employment Relations Authority together with a notice of the investigation meeting.

[2]     The applicant, Ms Trina Cranswick, attempted for a number of months in 2016 to have a mediation with Mr Kevin Johnstone who is the director of Chevelle but he failed to engage. Therefore, no mediation occurred.

[3]     A check of the Companies Office register confirms the company has not been struck-off and appears to be trading and that Mr Johnstone remains the director.

## **Investigation Meeting**

[4] Being satisfied that Chevelle was properly served with the proceedings and notice of investigation meeting, I proceeded to investigate the issue as to whether or not Ms Cranswick is owed holiday pay and whether she was unjustifiably constructively dismissed.

[5] I conducted my investigation in the absence of Mr Johnstone or any other representative from Chevelle as they failed to appear.

[6] Ms Cranswick filed a witness statement prior to the investigation meeting and she confirmed by way of affirmation that her evidence was true and correct.

[7] As allowed under s.174 of the Employment Relations Act 2000 (the Act), this determination does not set out all of the evidence. Relevant facts and legal issues are set out along with the Authority's conclusions.

## **Employment relationship problem**

[8] Ms Cranswick says she saw an advertisement in the *Gisborne Herald* by Chevelle seeking an office administrator in early 2016. She applied successfully for the job and was employed by Chevelle from 2 February 2016 until 25 May 2016. Ms Cranswick resigned in May 2016 following a series of incidents in which she says she was mistreated and bullied by Mr Johnstone. She says she had no option but to resign.

[9] Chevelle's business is in the motor vehicle industry carrying out vehicle repairs and arranging for the issuing of warrants of fitness. Mr Johnstone is the sole director of Chevelle, a company incorporated on 22 June 2000.

[10] Ms Cranswick says she was initially employed for 20 hours a week but her workload was such that she worked longer hours than that and her hourly rate was \$19 gross.

[11] Ms Cranswick's job was to do the office administration. She was given an employment agreement and signed it but despite requests Mr Johnstone has never provided her with a copy of it.

[12] Ms Cranswick's job was to do the office work and unfortunately she was not provided with any training in relation to the work systems at Chevelle's office and was not provided with any assistance by Mr Johnstone who Ms Cranswick says was unapproachable and on many occasions aggressive.

### **The issues**

[13] The issues for the Authority to determine are whether Ms Cranswick was unjustifiably constructively dismissed and whether she is owed holiday pay.

### **Was Ms Cranswick unjustifiably constructively dismissed?**

[14] Ms Cranswick says that Mr Johnstone was very unpleasant to work with and on a daily basis was rude to her. She provided the Authority with a number of incidents which she says ultimately led to her making the decision that she could no longer stay and had to resign.

[15] In one of the incidents, she described Mr Johnstone being aggressive and shouting at her when she asked for assistance with one of the tasks that she was asked to do by him. She was told to look for the information in a binder but the information did not assist with the task. On another occasion, she was asked to complete a report from the computer which Mr Johnstone was unable to assist her with. When she asked for the opportunity to contact the former employee who had done the office administration, Mr Johnstone's reaction was to aggressively refuse her request.

[16] The incidents escalated during the course of the 3½ months of Ms Cranswick's employment. On another occasion Mr Johnstone was aggressive about the fact that his wife's car had not been issued with a warrant of fitness and blamed Ms Cranswick.

[17] Ms Cranswick says that on a daily basis she was unsure how Mr Johnstone would treat her, whether he would be aggressive and angry or ignore her and the situation became increasingly intolerable.

[18] Approximately three weeks before her resignation, she visited her doctor who advised her not to return to work. However, Ms Cranswick was very concerned that she would be unable to afford her mortgage payments and so

decided to try and keep working. However, the treatment from Mr Johnstone continued and she paid another visit to her doctor the day before her resignation and he would not allow her to return to work because of the symptoms of stress she was exhibiting. The Authority has been provided with the medical certificate from Ms Cranswick's doctor verifying her visits and the results of the doctor's examination.

[19] It is my view that Ms Cranswick was entitled to resign and to treat her resignation as a constructive dismissal and that she was justified in law in doing so. It is my view that the resignation was a foreseeable consequence of the pattern of Mr Johnstone's behaviour over an extended period of 3½ months.

[20] The question now is whether or not the constructive dismissal was justified and that requires the application of the statutory tests under s.103A of the Act. The question is whether what Chevelle did and how it did it were what a fair and reasonable employer could have done in all the circumstances.

[21] I conclude Chevelle did not act in a fair and reasonable manner towards Ms Cranswick. Ms Cranswick was forced to resign and her resignation amounted to an unjustifiable constructive dismissal.

### **Is Ms Cranswick owed holiday pay?**

[22] Following her resignation, Ms Cranswick was not paid her holiday pay and despite requests over a number of months has still not been paid her holiday pay. Ms Cranswick is owed \$841.70 gross in holiday pay.

[23] I order Chevelle to pay Ms Cranswick the sum of \$841.70 gross holiday pay within 21 days of the date of this determination.

### **Remedies**

[24] Turning now to remedies in respect of the unjustifiable constructive dismissal, Ms Cranswick gave evidence of the stress that she suffered as a result of the actions taken which led to her resignation and to her feelings once she had resigned.

[25] Ms Cranswick is on her own, has significant concerns about her financial situation and is paying a mortgage. This all caused her stress over and above the stress that she had been under for the 3½ months of employment by Chevelle.

[26] I consider in the circumstances that compensation in the sum of \$4,000 pursuant to s.123(1)(c)(i) of the Act to be justified in respect of the unjustified constructive dismissal.

[27] I find that Ms Cranswick did not contribute to her dismissal and therefore there is to be no deduction from that amount under s.124 of the Act.

[28] Ms Cranswick has not been able to obtain another job although she has tried very hard to do so. She has applied for more than 40 jobs unsuccessfully since she was constructively dismissed in May 2016.

[29] In those circumstances, Chevelle is to pay Ms Cranswick lost remuneration under s.128 of the Act.

[30] I order Chevelle to pay Ms Cranswick the equivalent of three months' lost remuneration based on a weekly gross figure of \$646. This amounts to \$7,752 gross. Chevelle is to make that payment to Ms Cranswick within 21 days of the date of this determination.

### **Costs**

[31] Ms Cranswick was represented at the investigation meeting today. The investigation meeting took approximately 1½ hours. Based on the Authority's notional daily rate of \$3,500, I order Chevelle to pay Ms Cranswick's costs in the sum of \$650.

[32] All of the amounts of money that the Authority has ordered Chevelle to pay Ms Cranswick are to be paid within 21 days of the date of this determination.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**