

Law Centre also attended as an observer having spoken with Ms Hopkinson about the proceedings when they were initiated.

Holiday Pay

[4] There is no dispute that the relevant sum is \$991.90 gross covering proportionate holiday pay and statutory holiday pay as calculated by the Labour Inspector.

[5] Now somewhat faintly, Ms Hopkinson is still saying that there was an agreement to build holiday pay into the weekly wage. I heard no evidence to support that this was agreed with Mr Galbraith and he denies that it was ever agreed, evidence which there is no reason to doubt. In addition, the circumstances of the employment were not such as would allow a valid agreement. It follows that the holiday pay is owed to Mr Galbraith.

[6] The day before the investigation meeting Mr Galbraith received a \$50.00 cheque from Ms Hopkinson together with a proposal to pay \$50.00 a month but Mr Galbraith does not accept the proposed instalment payments. The other point that should be mentioned is that I am told that Ms Hopkinson has made an application to be adjudicated bankrupt. If that happens it would affect any debt and instalment payments.

[7] I order Ms Hopkinson to pay Mr Galbraith holiday pay of \$991.90 (gross). If the cheque for \$50.00 is presented and honoured, that will represent part payment of this obligation.

Grievance

[8] From Mr Burger's evidence it is clear that the strawberry farm business in which Ms Hopkinson engaged Mr Galbraith was financially unsuccessful. That led to Ms Hopkinson sending a text message to Mr Galbraith on Monday 7 January 2008 as follows:

Hi strawbs r sending me broke u have to find another job will check contract 4 legalities have to chat with u tom sorry

[9] The next day Mr Burger rather than Ms Hopkinson spoke to Mr Galbraith. Mr Burger told me that he could not clearly recall the details of the discussion except he

did tell Mr Galbraith that Ms Hopkinson could no longer afford to pay him. Mr Galbraith was given a cheque for wages for work up to that point. There was also an exchange about holiday pay. I find that the totality of these communications amounted to a sending away of Mr Galbraith at Ms Hopkinson's initiative, in other words a dismissal.

[10] The dismissal was unjustified because the employer fell short of what a fair and reasonable employer would have done and how they would have acted in the circumstances. Mr Galbraith was not given notice or paid in lieu, as Mr Burger acknowledged in evidence. Ms Hopkinson's communication to him about the financial situation and its effect on his continued employment should also have been better handled. As a result I find that Mr Galbraith has a personal grievance.

Remedies

[11] Mr Galbraith did not contribute in a blameworthy manner to the situation giving rise to the grievance.

[12] It is clear that this was a genuine redundancy situation where Ms Hopkinson simply could no longer afford to continue Mr Galbraith's employment. For that reason, there can be no recovery of lost wages arising from the grievance even though Mr Galbraith did not find alternative employment until February 2008. However, Mr Galbraith is entitled to payment in lieu of notice of dismissal. There was no written employment agreement but there is an acceptance between the parties that two week's notice should have been given. I order Ms Hopkinson to pay Mr Galbraith \$900.00 in lieu of notice.

[13] After the dismissal Mr Galbraith initially seemed content with simply recovering his holiday pay and the prospect of a grievance was raised to try and encourage prompt payment. It was only after things became contentious that he decided to raise the grievance. I take from this that he did not experience any significant hurt or humiliation because of the grievance. The genuineness of the redundancy situation also means that there cannot be an award to cover any distress arising from the loss of the employment. However there is some evidence that Mr Galbraith was (and is) annoyed by the circumstances of the dismissal for which there should be a small award. The other factor that impels a low award is Ms Hopkinson's

financial situation. Assessing this, I find that Ms Hopkinson should pay Mr Galbraith compensation of \$1,000.00.

Summary

[14] Ms Hopkinson is to pay Mr Galbraith holiday pay of \$991.90 gross.

[15] Mr Galbraith has a personal grievance. To remedy the grievance, Ms Hopkinson is to pay Mr Galbraith two week's wages in lieu of notice amounting to \$900.00 gross; and \$1,000.00 compensation for hurt and humiliation pursuant to section 123(1)(c)(i) of the Employment Relations Act 2000.

[16] Finally, Ms Hopkinson must reimburse Mr Galbraith the lodgement fee of \$70.00.

Philip Cheyne
Member of the Employment Relations Authority