



New Zealand Employment Relations Authority Decisions

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Gibbons v Fritzams Ltd (Wellington) [2016] NZERA 587; [2016] NZERA Wellington 145 (1 December 2016)

Last Updated: 13 December 2016

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2016] NZERA Wellington 145
5636018

BETWEEN TANIA LEE GIBBONS Applicant

AND FRITZAMS LTD Respondent

Member of Authority: Trish MacKinnon

Representatives: Applicant in person

No attendance by Respondent

Investigation Meeting: 1 December 2016

Determination: 1 December 2016

ORAL DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Tania Lee Gibbons was made redundant from her employment as Party Manager for FritzAMS Limited (FritzAMS) by letter dated 21 June 2016. She had been employed by FritzAMS since 1 September 2015 when that company purchased the assets of the company for which she previously worked. Ms Gibbons claims she is owed outstanding wages and holiday pay as well as the eight week notice period she is entitled to under the terms of her employment agreement.

[2] FritzAMS is a duly registered company which, according to the information provided voluntarily on the New Zealand Companies Office register, is an adult shop operator. FritzAMS has one director, Fritz Edmond Petersen. The company's registered address is an apartment in Paraparaumu Beach.

[3] FritzAMS has not responded to any documentation served on it by the

Authority. A note on the companies office register records that the company is

overdue in filing an annual return and the Registrar intends to initiate action to remove it.

The Authority's investigation

[4] The respondent did not attend the Authority's investigation meeting. I am satisfied documents relating to this matter were correctly served on the respondent. An Authority Officer contacted Mr Peterson by telephone shortly after 9.30 a.m. on the day of the investigation meeting to inquire whether he intended to attend and he confirmed he did not intend to do so. I commenced the investigation meeting without the respondent in accordance with clause 12 of Schedule 2 to the [Employment](#)

Evidence of Ms Gibbons

[5] Ms Gibbons said she had been employed by the previous owners of the business as a Party Manager. When FritzAMS purchased the business she was asked by Fritz Petersen, sole Director of that company, to stay on as an employee of FritzAMS.

[6] She agreed and moved from Wanganui, where she was previously based, to take up the role in Wellington where the company's head office and warehouse were located. Ms Gibbons signed an individual employment agreement (IEA) on 1 September 2015. She provided a copy of that IEA, the terms of which included the following termination clause:

..Employment may be terminated by either party giving **eight weeks notice**. The employer may, at its discretion, pay wages in lieu of some or all of the notice period. [Bolding as in IEA]

[7] The redundancy provisions of the IEA provided that the employer would follow a fair procedure in which consultation and exploration of alternative options was to occur before Ms Gibbons' employment was terminated. It also provided that, if her employment was terminated on the grounds of redundancy, she would be given not less than the eight weeks' notice provided for in the termination clause. The employer could, at its discretion, pay wages in lieu of some or all of that notice period.

[8] Ms Gibbons was a salaried employee with an annual salary of \$44,000. Her usual hours of work are recorded in the IEA as 32 per week although her evidence is that she frequently worked in excess of that. She worked from the company's shop in Manners Street, Wellington.

[9] On Monday 20 June 2016 Ms Gibbons says she was contacted by text message by a former owner of the business advising her to contact that person before she went to work that day. Ms Gibbons did, and was informed the previous owner had seized all assets including stock. Ms Gibbons was further advised she could not sell any stock with the D.VICE branding.

[10] On contacting Mr Petersen, Ms Gibbons was told to continue working in the shop until something could be worked out. She found she was unable to operate the shop as, in addition to the stock being seized, the booking system and laptops with all the company's processes on it had been seized by the former owner. Ms Gibbons was, in her words, left with seven staff who were contracted to FritzAMS with stock they were not permitted to sell and no jobs.

[11] Ms Gibbons informed Mr Petersen this meant her position was disestablished and redundant and asked him to write her a letter to that effect. She says he agreed and informed her his accountant would do that. However, when no letter was forthcoming, Ms Gibbons drafted a letter herself, at Mr Petersen's suggestion, which he signed.

[12] The letter was headed "Termination of your employment by reason of redundancy" and stated, amongst other matters, her position of Party Manager was no longer needed as a result of conflict between the former and current owners of the business which had resulted in the former owners seizing property.

[13] The letter noted there were no other positions available and Ms Gibbons' employment would end immediately. It stated that, based on her notice period of eight weeks, she would be paid the sum of \$6,769.28 (before tax) \$5,370.64 after tax. She would also be paid her "*accrued entitlements and any outstanding pay, this including annual leave currently standing at 100.40 hours, up to and including your last day of employment*".

[14] Ms Gibbons remained working until 29 June 2016, and received her final pay on 30 June. This was for the period ending Friday 24 June 2016 and did not include

the three days' pay for the current week Monday 27 to Wednesday 29 June inclusive. However, as those 3 days form part of the notice period, I need make no orders regarding payment for them.

[15] I am satisfied Ms Gibbons is owed salary in lieu of eight weeks' notice from

21 June 2016 and holiday and her accrued holiday pay. As she was paid for the days from 21 to 24 June 2016, those days will be deducted from the amount FritzAMS is order to pay her.

Determination

[16] FritzAMS Limited is ordered to pay Ms Gibbons:

- a. the sum of \$6,094.79 gross, being the eight week contractual notice period to which she is entitled, less the four days paid in her final pay of 30 June 2016; and
- b. the sum of \$3,727.77, being outstanding holiday pay.

Costs

[17] As Ms Gibbons represented herself there is no issue as to legal costs. However she is entitled to the payment of the Authority's filing fee. FritzAMS Limited is ordered to reimburse Ms Gibbons \$71.56.

Trish MacKinnon

Member of the Employment Relations Authority

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