

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 202/09  
5277282

BETWEEN ERIN MARIE GOURDIE  
Applicant

AND HAIRSTYLE MANAGEMENT  
RICCARTON LIMITED  
Respondent

Member of Authority: James Crichton

Representatives: Georgina Burness, Advocate for Applicant  
No appearance for Respondent

Investigation Meeting: 17 November 2009 at Christchurch

Determination: 26 November 2009

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1] The applicant (Ms Gourdie) alleges that she was unjustifiably dismissed by the respondent employer (Hairstyle Management) on 1 August 2009, that she is owed unpaid holiday pay and wages and that she suffered disadvantage as a consequence of unjustified actions of the employer.

[2] Hairstyle Management has failed to engage with the Authority's process, has failed to file a statement in reply and failed to take any steps in relation to the matter. Notwithstanding that, I am satisfied that Hairstyle Management was fully apprised of the claim made by Ms Gourdie, that it received the documentation relating to her claim in a timely manner and that it simply chose not to engage. That does it little credit and is clearly a breach of the good faith obligation imposed on parties to the employment relationship by the Employment Relations Act 2000.

[3] If this matter were to come before the Employment Court by way of a *de novo* challenge to the Authority's determination, I should have no hesitation in certifying for the Court that Hairstyle Management has effectively obstructed the Authority's

investigation by failing to engage in the process at all, and in consequence had failed to act in good faith towards Ms Gourdie as s.181 of the Employment Relations Act 2000 sets out.

[4] Notwithstanding the failure of Hairstyle Management to engage, and its absence from the investigation meeting, I determined that it had every opportunity to be involved and had chosen not to engage. That being my considered decision, I elected to proceed at the appointed time after an appropriate delay to allow the possibility that Hairstyle Management was simply delayed.

[5] Ms Gourdie approached Hairstyle Management at its Riccarton Mall premises on 15 June 2009 and sought employment as a receptionist. She is an impressive and well presented young woman and would, I have no doubt, have made a good impression with the employer. Certainly, she was offered a trial on 19 June and having successfully negotiated that, commenced employment as a receptionist for two businesses adjoining each other, a hair salon and a beauty salon. Both were owned and operated by Hairstyle Management.

[6] There were discussions about the basis of the employment, including an agreement about hourly rates and an agreement about hours of work. Notwithstanding those agreements, however, there was never an employment agreement offered in respect of the engagement, and Ms Gourdie was given no opportunity to join the Kiwisaver scheme either.

[7] Five days after she commenced employment, there was a discussion with Mark Wilenthal who was effectively the director of the employer about the prospect that Ms Gourdie might be trained as a manager in one of his other shops. It seems that in the recent past, Hairstyle Management has established new premises in two other Christchurch shopping malls. However, Ms Gourdie's evidence is that that discussion (about her becoming trained as a manager) went nowhere and was never taken any further by the employer.

[8] At the end of July 2009, there was a period of several days where Ms Gourdie was rung by the employer and told not to come into work because work was *quiet*. Previously, on 24 July and 26 July, Ms Gourdie had been sent home early because it was quiet and on 29 July she was told not to come in at all. On 30 July she had been asked to come in late and she worked only three hours before being sent home early

again. She was reassured by the manager (Karen) that her job was not in jeopardy and it was *just quiet*. Then, Karen rang Ms Gourdie again on 31 July, before she had left home for work, and told her not to bother coming in that day or the next day and possibly not even the day after, but she was to ring to establish the position.

[9] The effect of these instructions not to attend at work was that Ms Gourdie received three hours pay for that whole week and she could not live on that limited amount of money. She was unsure about her rights and she consulted the Department of Labour's help line which suggested mediation. Ms Gourdie attempted to interest the employer in mediation, but the manager (Karen) was difficult to engage with but eventually indicated that as Ms Gourdie had not been working, Hairstyle Management had no intention of paying her.

[10] Ms Gourdie decided to raise a personal grievance because she thought it was unfair that she was ready, willing and able to work but not being offered any hours and thus apparently denied payment. To formalise matters, Ms Gourdie attended at the workplace on 1 August 2009 and gave Karen an envelope in which she raised her personal grievance. Ms Gourdie says that Karen responded by saying Ms Gourdie knew she was on a trial (which Ms Gourdie accepted but she said it was a three month trial), that the cut in Ms Gourdie's hours was a function of the slow down in business and was temporary (which Ms Gourdie understood, but she expected that she would be paid when she was ready, willing and able to work). Karen then said to Ms Gourdie that Hairstyle Management had created the position of receptionist for her when she (Ms Gourdie) approached it for a job, and that the position was now being *uncreated*.

[11] Ms Gourdie then asked for a letter explaining why she was being dismissed and Karen responded by asking what she needed that for. Ms Gourdie said she was legally entitled to it and Karen then made a crack about Ms Gourdie doing everything legally and said something to the effect that *everything had to be legal with you didn't it*. At that point, Ms Gourdie terminated the conversation and left the premises.

## **Issues**

[12] The Authority needs to investigate the following issues:

- (a) Was Ms Gourdie unjustifiably dismissed?

- (b) Was Ms Gourdie disadvantaged by unjustified actions of the employer?
- (c) Is Ms Gourdie owed wages?

**Was Ms Gourdie unjustifiably dismissed?**

[13] I am absolutely satisfied that Ms Gourdie was unjustifiably dismissed by Karen on 1 August 2009. Ms Gourdie attended at the salon to meet with Karen and hand her Ms Gourdie's letter raising a personal grievance. She did this because she could not accept the fairness of earning only three hours wages for that week and she not unreasonably sought an explanation. Karen declined to give Ms Gourdie the answer that Ms Gourdie sought and also declined to deal with the matter in any appropriate way. Karen then went on to say that the position of receptionist (which Ms Gourdie had occupied) was created for Ms Gourdie ... *but it was now being uncreated*. In my considered view, this statement is a *sending away* in the sense that Karen is making it abundantly clear to Ms Gourdie that her employment as receptionist at the business had come to an end.

[14] That view of matters is supported by the subsequent exchange between the two women when Ms Gourdie sought a letter of explanation as to why she had been dismissed and Karen gave a frivolous response but, on Ms Gourdie's evidence (which I accept), did not quarrel with the description that Ms Gourdie had used of *dismissal*.

[15] Having reached the conclusion that Karen had terminated the employment relationship by a *sending away*, it is now necessary to consider whether this was done fairly. I have no hesitation in concluding that there was a complete absence of a proper process in the termination of the employment. Karen clearly responded instantly to the notification that a personal grievance was being raised and it is difficult not to conclude that she saw Ms Gourdie as troublesome and sought to get rid of her.

[16] I am satisfied that these actions constitute a personal grievance by reason of an unjustified dismissal.

**Was Ms Gourdie disadvantaged by unjustifiable actions of Hairstyle Management?**

[17] I am not satisfied that there was any evidence that Hairstyle Management disadvantaged Ms Gourdie by unjustified actions. I am satisfied with my conclusion that Ms Gourdie was unjustifiably dismissed but I do not think the evidence supports any conclusion that she was also disadvantaged by unjustified actions of the employer. Certainly it is true that Ms Gourdie was not paid for the hours that she would normally have worked in the last week in July, but it seems to me likely that the nature of the informal agreement between the parties (which of course was not reduced to writing) proceeded on the basis that if there was no work because of customer demand, then there was no obligation on the employer to pay.

[18] Ms Gourdie's own evidence tends to support that conclusion. She reported a conversation she had with the director of the business in which he offered her additional hours to those previously agreed and Ms Gourdie's evidence is that he said something to the effect that she could perhaps do 10am to 4pm on Wednesdays ... *or perhaps 3pm depending on how busy the day is*. This phrase suggests to me that Hairstyle Management first of all contemplated flexible working hours based on customer demand and secondly discussed that with Ms Gourdie at the time. Certainly the implication from this conversation anyway is that Ms Gourdie would not be paid for the hours that she was not actually working, because the whole point of this conversation was that she felt she was not getting enough hours and the director of Hairstyle Management offered her additional hours, but on this explicit basis.

[19] Accordingly, my conclusion is that Ms Gourdie has not suffered a disadvantage as a consequence of unjustified actions of the employer. However, the fact that the employer has persevered with an employment relationship without a proper employment agreement which at the very least has caused confusion to the parties, is a matter that I will revisit shortly.

**Is Ms Gourdie owed wages?**

[20] I am satisfied that Ms Gourdie is owed wages, but only in respect of unpaid holiday pay. It is perfectly clear that holiday pay was not paid when her employment came to an end and she is entitled to that sum calculated in the normal way.

[21] I have already found that Ms Gourdie is not entitled to be paid for the hours that she was ready, willing and able to work but was told not to work by the employer because of reduced customer demand. However, the fact that the employer failed to provide a written employment agreement is a breach of s.65 of the Act and a breach of s.63A(2)(a) of the Act. In terms of s.63A(3), an employer who fails to comply with the obligation to inter alia provide a copy of the intended employment agreement, is liable to a penalty. Pursuant to s.135(2)(b) of the Act, I impose a penalty on Hairstyle Management in the sum of \$1,000 and direct that, pursuant to s.136(2) of the Employment Relations Act 2000, that sum be paid to Ms Gourdie.

### **Determination**

[22] I am satisfied that Ms Gourdie has proved her claim of having been unjustifiably dismissed from her employment and she is entitled to remedies. I have reflected on whether Ms Gourdie has contributed in any way to the circumstances giving rise to her personal grievance, and reach the conclusion that she has not: s.124 applied.

[23] To remedy Ms Gourdie's grievance, I award her the sum of \$2,500 as compensation under s.123(1)(c)(i) of the Employment Relations Act 2000.

[24] Ms Gourdie has lost wages as a consequence of the dismissal and I consider that, looking at the matter in the round, she has lost in the order of \$100 per week once she obtained new employment, but in addition, was out of work completely for three weeks after the dismissal. Accordingly, Ms Gourdie is entitled to \$1,200 for the three weeks she was out of work completely and a further \$1,300 for the three months thereafter being the shortfall of \$100 per week between her current position and her original position. The total sum owed to Ms Gourdie by Hairstyle Management as a contribution to her lost wages is a total of \$2,700 gross.

[25] Ms Gourdie is entitled to her holiday pay on the period of her employment down to the date of dismissal and this is to be calculated in the way required by the Holidays Act 2003 and paid to her immediately.

[26] Ms Gourdie is to receive payment of the penalty I ordered in the sum of \$1,000.

[27] Finally, Hairstyle Management is to pay Ms Gourdie the \$70 filing fee to bring the matter before the Authority.

**Costs**

[28] Hairstyle Management is to pay to Ms Gourdie the sum of \$1,000 as a contribution to her costs.

James Crichton  
Member of the Employment Relations Authority