

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 100
5333278

BETWEEN

CHANTELLE HALE
Applicant

AND

PROFESSIONAL PROPERTY
AND CLEANING SERVICES
LIMITED
Respondent

Member of Authority: Dzintra King

Representatives: Angela Hale, Advocate for Applicant
Richard Nathaniel, Advocate for Respondent

Investigation Meeting: 15 December 2011

Determination: 20 March 2012

DETERMINATION OF THE AUTHORITY

[1] The applicant, Ms Chantelle Hale, says she has been unjustifiably dismissed by the respondent, Professional Property & Cleaning Services Limited (“PPCS” or “the company”). Ms Hale seeks payment of six wages for stress leave and payment for the extra six months she was on maternity leave.

[2] Ms Hale seeks compensation of \$6,000, compensation for loss of wages of \$7,860 and reimbursement of money (\$370.88) paid to sort out the leave entitlement matter by using an independent business, BR Group.

[3] Ms Hale originally applied for six months’ parental leave which she had to extend for a further six months. She says this was as a result of the difficulties she experienced with her employer.

[4] After the hearing of this matter Ms Hale terminated her employment.

[5] Ms Hale was transferred from OCS, the previous cleaning company, to PPCS on 1 July 2010. She was employed as a cleaner at the Papamoa Library for six days a week, Monday to Saturday, for two and half hours per day.

[6] Employee induction was completed on 29 June prior to the commencement of employment in July.

[7] On 5 July 2010 Ms Cheryl Ngawati, the Area Manager for the Tauranga Office, met with the Contract Manager, Ms Veronique Abel, and indicated that staff at the Papamoa Library had been trained on the use of the Ezi Tracker time tracking system.

[8] This system requires staff to log in by phone using a pin number when the employee starts and finishes work. The employer calculates and pays wages using these log ins.

[9] Some issues arose regarding the standard of cleaning in the library and additional training was provided. A meeting was arranged with Ms Hale, Ms Abel and Ms Jampies on 25 August but was postponed till 2 September. The topic was the issues between Ms Hale and Ms Abel. It was agreed that training would be provided and they would move on. Ms Hale said Ms Jampies had not appreciated Mrs Hale calling and that Ms Hale hadn't seen her bad side. Ms Hale said she felt very intimidated.

[10] On 11 October Ms Hale returned to work after a week's leave. She was unable to clock in as her pin was not recognised. She texted Ms Abel to that effect. Nor was she able to clock out.

[11] On 14 October she was again unable to clock in or out and again texted Ms Abel. As nothing was being done she texted Ms Jampies asking her to call on her land line. Ms Jampies called her on the cell phone. Ms Hale said she could not receive calls on her mobile. She again texted Ms Jampies asking her to call the landline but did not receive a call.

[12] On 15 October Ms Hale experienced the same problems. Ms Abel called to say her pay had not gone through and Ms Hale said her pin was still not working. She again texted Ms Jampies.

[13] On 16 October she could not clock in or out and texted Ms Abel to say the pin was not working and she had only worked for one hour.

[14] That situation continued until 21 October. The following days Ms Hale was ill.

[15] On 26 she received a call from Ms Jampies. Ms Jampies said she was processing the wages and noticed that Ms Hale had not been clocking in or out. Ms Hale said Ms Jampies said she did not believe her and had said that if Ms Hale did not clock in correctly Ms Jampies would be arranging a disciplinary meeting and Ms Hale would be let go. Ms Jampies disputes that and I accept her evidence.

[16] On 28 October Ms Leata Hallo, the new Area Manager, contacted her saying Ms Abel had told her about the clocking in and out problems. Ms Jampies had been contacted as had the National Regional Manager; and Pantzell, the monitoring company had been contacted to investigate the matter. The outcome was that they could find no problems.

[17] On 28 October Ms Hale was only paid half her wages. She received the balance on 30 October.

[18] On 2 November Ms Hale received a fax from Ms Hallo regarding a meeting. Mrs Hale phoned Ms Hallo and said the proposed dates not suit. On 4 November Ms Hale received a fax confirming a new date for a meeting. Ms Hale did not go to the meeting advising she would not do so as she was on sick leave and she would be taking the matter further.

[19] Ms Hale said she felt very intimidated and uncomfortable and found the idea of continuing to work for PPCS stressful.

[20] Ms Jampies said that when she went through the Ezi Tracker records on 26 October 2010 it came to her attention that Ms Hale had not been clocking in and out for the previous fortnight. Ms Jampies phoned Ms Hale, raised the matter, reiterated the company policy and said no other staff were experiencing problems clocking in or out.

[21] On 26 October a medical certificate was received putting Ms Hale off work until 31 October 2010.

[22] On 28 October Ms Jampies received a call from Mrs Angela Hale, the applicant's mother, wanting information about her daughter's wages. Ms Jampies told her she could not give her any information without the applicant's written consent. This was provided and information was then faxed to Mrs Hale.

[23] A letter was also to Ms Hale asking for a further meeting regarding the Ezi Tracker problems being experienced by Ms Hale. Another letter was sent giving a breakdown of sick leave and Ms Jampies formally accepted Ms Hale's application for maternity leave.

[24] On 29 October 2010 Ms Jampies received a fax from Ms Hale saying she had been unable to clock in or out.

[25] Two further medical certificates were received, one with sick leave till 5 November and the second till 5 December 2010.

[26] On 4 November 2010 Ms Jampies received a letter from Mrs Hale saying a personal grievance would be lodged.

[27] I have looked at Ms Hale's claim as being a personal grievance for unjustified disadvantage.

[28] The respondent was reluctant to accept that there could be any problem with the system. This is understandable given that other staff working in the same location could use the system and other staff were able to use Ms Hale's id.

[29] Whatever the reason for the problems that arose – and it is unlikely Ms Hale was deliberately failing to clock in and out as that would not have benefited her - she notified her employer when she had problems and told them what hours she had worked.

[30] Ms Hale may have been making some sort of error in using the system or there may have been an intermittent problem with the system. The employer did carry out investigations; it did not simply ignore the matter. Ms Hale's concern was that it had not been addressed as quickly as she would have liked.

[31] While not being paid her wages on time constitutes a disadvantage it is not clear why this happened, apart from the fact that Ms Hale says she was unable to get the system to accept her pin. While there may have been a disadvantage, the action also needs to have been unjustifiable.

[32] The evidence is insufficient to show that was the case. Ms Hale does not have a personal grievance.

Costs

[33] If the parties are unable to agree the issue the costs, the respondent is to file a memorandum within 28 days of the date of this determination. The applicant is to file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King

Member of the Employment Relations Authority