

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Deborah Audrey Hankins (Applicant)

AND Gary Ashley (Respondent)

REPRESENTATIVES Deborah Audrey Hankins In person
No appearance by Respondent

MEMBER OF AUTHORITY Robin Arthur

INVESTIGATION MEETING 25 January 2006

DATE OF DETERMINATION 2 February 2006

DETERMINATION OF THE AUTHORITY

[1] The applicant seeks payment of three weeks holiday pay and wages in lieu of notice following her dismissal without notice.

[2] The respondent did not file a statement in reply although the Authority's records confirm that a copy of the statement of problem was delivered to and signed for at his home address. The Authority's records also confirm that a copy of the notice of the investigation meeting and an accompanying minute was delivered to and signed for at his home address. Using Companies Office records, the meeting notice and accompanying minute was also sent to the addresses for three companies of which the respondent is registered as the sole shareholder and director.

[3] The respondent did not attend the investigation meeting. I waited ten minutes beyond the scheduled time and then went on with the meeting.

Employment history

[4] The applicant's evidence was that she has worked for the respondent over two periods. From 2000 to 2003 she was managing editor of a publication called *Tourist Times* and responsible for all aspects of production from editorial and advertising to printing and distribution. She then had a break and returned to work for the respondent in September 2004, initially as an advertising sales representative working part-time. Later that year the manager was dismissed and the applicant was asked to take over the role.

[5] The applicant did not have a written employment agreement. She says the respondent had promised written agreements for her and other staff but these were not provided. Her terms and conditions of employment were agreed by discussion between her and the respondent. In her role as manager she was paid weekly on the basis of an annual salary of \$45,000 and provided with a car.

[6] The applicant says that she was employed directly by the respondent. She says there was nothing to indicate that she was employed by or on behalf of companies owned by the respondent. Her terms of employment were set by direct discussion with the respondent. She says that the publications on which she worked for were set up and operated by the respondent. All directions on what was required from her at work came directly from the respondent.

[7] The applicant provided copies of emails between her and the respondent in the period from 19 July to 29 September 2005. The applicant was pursuing payment of holiday pay and in lieu of notice of her dismissal. None of the replies from the respondent suggest that he considers he was not responsible for paying her. The most recent reply – on 29 September 2005 and the last that the applicant says she received from the respondent – includes the statement: “*I am getting there and I will pay yopu (sic) in due course*”.

[7] Copies of some of the applicant’s bank statements during 2005 – showing her salary payments – were the only other documentation of the employment relationship available to me. These showed payments identified by the payer as “TT wages” and “Trf from Mrs GJ Tourist Wages”. The applicant told me that she understood “Mrs GJ” referred to the respondent’s wife.

[8] On that basis, and in the absence of any contrary evidence from the respondent, I am satisfied that the respondent was the employer of the applicant.

Dismissal

[9] The applicant says that the respondent decided to close *Tourist Times* and start a new publication called *Outlook NZ*. The new publication was not successful in its first few months of operation. Two staff were laid off, leaving three others and the applicant.

[10] Shortly thereafter, despite repeated requests, the applicant says she was not paid for two weeks. When a promised payment was not made by a particular Friday, she did not go to work that day. The next Monday she went to work and was called to the respondent’s office. He told her that he could not afford her any more and needed to “call it quits here today”. Following further discussion the applicant volunteered to work until preparation of the current publication was complete. However, later that day, the respondent told the applicant that she had to finish work that day. He agreed she could keep her work car for a further week.

Determination

[11] The applicant was made redundant due to financial difficulties in the respondent’s business. She has not taken issue with the genuineness of the redundancy but the dismissal was made abruptly and without consultation.

[12] She has made a modest claim for her recovery of holiday pay and payment in lieu of notice. In an email to the respondent on 8 September 2005 the applicant told the respondent that she believed that she was due three weeks holiday pay and “*an amount for releasing me without notice*”. As noted earlier, the respondent has not denied an amount is owed to the applicant and that he will pay her “*in due course*”.

[13] The course has run and payment is more than due. The applicant is entitled to her holiday pay equivalent to three weeks salary. The Authority cannot award any compensation for the redundancy as there was no term of employment providing for such compensation for in the event of redundancy. However the applicant was entitled to a period of notice of her dismissal, and failing that, payment for that period of notice.

[14] In the absence of a written employment agreement, the notice period is what would be a reasonable period of notice. I find that a reasonable notice period, taking into account the applicant's role in the respondent's business and her length of service, is two weeks.

[15] The applicant is also entitled to be reimbursed by the respondent for the cost of filing her application with the authority.

[16] **The respondent is ordered to pay to the applicant the following sums:**

- (i) **\$2004.63 (nett), being three weeks holiday pay; and**
- (ii) **\$1336.42 (nett), being two weeks pay in lieu of notice; and**
- (iii) **\$70.00, being reimbursement of her filing fee.**

Robin Arthur
Member of Employment Relations Authority