

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2013] NZERA Wellington 144  
5370968

BETWEEN TARA HANSEN  
Applicant

AND KC CONTRACTORS (HB)  
LIMITED  
Respondent

Member of Authority: P R Stapp

Representatives: David Oliver for applicant  
No appearance for the respondent

Investigation Meeting: 12 November 2013 at Napier

Determination: 12 November 2013

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] This is about a dismissal that occurred by text message during Tara Hansen's employment with KC Contractors (HB) Limited. Ms Hansen claims the dismissal was unjustified. Ms Hansen is seeking 13 weeks lost wages plus holiday pay, \$5,000 compensation for humiliation loss of dignity and injury to feelings and legal costs.

[2] There has been no reply from the respondent, KC Contractors (HB) Limited (KC). There is a member's minute that was issued on 11 October 2013 requiring the respondent to comply with case management of the Authority's investigation, a requirement to produce various documents necessary for the Authority's investigation and a request to provide reasons for not replying by that date. There has been nothing from the respondent. The directors of KC Contractors (HB) Limited are Mr Kyle Clay and Kylie Nichol.

[3] I am satisfied that the employment relationship problem application, the Authority's minute and the notice of investigation meeting have been properly served

on the respondent, and despite this, the directors and or anyone else associated with the running of the company have made no contact with the Authority. I delayed the start of the investigation meeting while the Authority's support officer attempted to make some contact with the respondent and its accountants. Although some contact was made with a person involved with the business, who indicated that someone else would ring the Authority back, this did not occur. Nothing more was heard from the respondent before the investigation meeting started. No proven good cause has been provided for the failure of the respondent to attend and/or be represented at the Authority's investigation meeting. I therefore decided to proceed with the investigation meeting as scheduled under clause 12 Schedule 2 of the Employment Relations Act as if the respondent had duly attended and or been represented.

### **Issues**

[4] Was Ms Tara Hansen's dismissal justified under s 103A of the Employment Relations Act 2000?

### **The facts**

[5] Ms Hansen commenced employment with KC on 31 October 2012 as a painter/decorator. There was an employment agreement signed off after Ms Hansen's employment had started, but Ms Hansen does not have a copy. She confirmed that to her knowledge there was no probation and/or trial clause contained in the agreement. She is from the USA and had originally a work visa from Immigration for one year under a Working Holiday Scheme. This excluded permanent employment at that time. Now her visa has been changed and enables her to have permanent full time work in New Zealand. She arrived in New Zealand in June 2012 for the visa to start. KC was asked to produce the individual employment agreement applying, and it has failed to do so.

[6] KC is a painting and decorating business and operates in the Hawkes Bay. It has a registered office address and an address for service of legal documents and separate personal addresses of the two named directors. It has at least paid taxes on the wages paid to Ms Hansen. In all other respects no details have been provided of the business's resources and wage and holiday pay calculations. I would have

reasonably expected to get this information in a statement in reply, but none has been provided by KC.

[7] Ms Hansen says her hours of work were 8.5 hours per day Monday, Tuesday, Wednesday and Thursday, and 8 hours on Friday. This is a total of 42 hours per week, at a minimum. The rate of pay was \$17 per hour.

[8] During the evening of 13 November 2012 Ms Hansen received a text message from Mr Clay. The message affectively ended the employment.

[9] Despite Ms Hansen asking Mr Clay to discuss the matter there were no more details provided from Mr Clay by text other than acknowledging her texts. Ms Hansen was able to contact Mr Clay by telephone on 14 November 2013 and she explained after being dismissed that she could answer improving her skills and speed of her work if they were issues. Ms Hansen claims that Mr Clay intentionally was working too slowly on 12 November before she was dismissed, and she says that he did not really seem to care about anything she was saying to him. Also, Ms Hansen asked for a copy of her employment agreement and time and wages record. Nothing was provided.

[10] A request was made by Ms Hansen's representative for a copy of the employment agreement and the wage time and holiday record. Nothing was provided. A personal grievance was raised on 17 December 2012 and sent to KC.

[11] The Authority's involvement is outlined in the minute dated 11 October 2013. Mediation was considered by me, but the behaviour of the respondent led me to the conclusion that mediation would not be constructive. It now falls to the Authority to make a determination on the matter.

### **Determination**

[12] First there has been no defence provided by the respondent to the claim of unjustified dismissal. The respondent has failed to provide a copy of Ms Hansen's individual employment agreement and her wage time and holiday records requested by Ms Hansen, her representative and the Authority. KC failed to seek leave to reply and respond after failing to provide a statement in reply in the required time under the

regulations<sup>1</sup>. It was informed of its obligations and rights in this regard, by email from the Authority's support officer, and in a member's minute<sup>2</sup>. This may be a matter for a good faith report.

[13] Second Ms Hansen reasonably concluded that her employment ended when she received the text message from Mr Clay saying that 13 November 2012 had to be her last day. Mr Clay's action has been exacerbated by his failure to properly reply to Ms Hansen's texts and to meet with her. In their telephone discussion Ms Hansen tried to initiate a discussion about improving her speed and meeting the employer's standards if there was a problem with these, and which was not replied to by Mr Clay.

[14] Third I hold that the respondent has failed to justify its actions (see s 103A of the Employment Relations Act). First a fair and reasonable employer could not act in such a way because there was no discussion before the dismissal occurred. Second the employer has: (i) failed to properly investigate any concerns with Ms Hansen, (ii) failed to properly raise any concerns with Ms Hansen, (iii) failed to give Ms Hansen the opportunity to comment on any concerns, and (iv) failed to genuinely consider any explanation from Ms Hansen before making a final decision on her employment. A fair and reasonable employer must meet all these requirements<sup>3</sup>. The seriousness of the employer's inadequacies and omissions means that the breaches are not minor or technical<sup>4</sup>. KC has failed to indicate what it did at the time and its reasons for dismissal and has acted unfairly.

## **Conclusion**

[15] Ms Hansen has a personal grievance for unjustified dismissal. She has not contributed to the situation giving rise to the personal grievance (applying s 124 of the Act). Ms Hansen cannot be blamed for the wholly inadequate actions and omissions of her employer and its directors and anyone else running the business. Ms Hansen is entitled to remedies without deduction for contribution, I hold.

[16] Ms Hansen has claimed 13 weeks (a quarter of the year) lost wages. I am satisfied that she attempted to obtain new work and another job. She applied for jobs and has now obtained casual employment elsewhere. There is no entitlement to

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<sup>1</sup> Employment Relations Authority Regulations 2000

<sup>2</sup> Minute dated 11 October 2013

<sup>3</sup> S 103 A (3) (a)-(d) of the Employment Relations Act 2000

<sup>4</sup> S 103 A (5) of the Employment Relations Act 2000

holiday pay on lost wages as claimed because the weeks have not actually been worked. The details do not identify if any holiday pay on Ms Hansen's total gross wages have been paid at the end of her employment. That is another matter. Ms Hansen is entitled to 42 hours per week, which amounts to \$714 gross per week. For thirteen weeks (a quarter of the year) this amounts to \$9,282.

[17] I accept the evidence given of humiliation, loss of dignity and injury to feelings by Ms Hansen and her supporting witness. She was distraught when she received the text. Her mood and confidence were seen to change for a time by her fiancé. She became homesick. There was also stress caused by the loss of her wages. She is entitled to her full claim of \$5,000 compensation.

### **Orders of the Authority**

[18] KC Contractors (HB) Limited is to pay Tara Hansen:

- (i) \$9,282 gross lost wages under s 123 (1) (b) of the Act; and
- (ii) \$5,000 net compensation under s 123 (1) (c) (i) of the Act.

[19] In addition the applicant's costs to be recovered amount to approximately \$1,695, on the basis of the notional daily tariff applied by the Authority. Also the applicant is on legal aid. She has been successful with her claims and has been represented. KC Contractors (HB) Limited is to pay Tara Hansen \$1,695 costs. Any other issues as to costs I have reserved.

P R Stapp

Member of the Employment Relations Authority