

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 40/09
5135236

BETWEEN SHELLEY HARWOOD
 Applicant

AND ECO TOURS LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: Shelley Harwood, the Applicant in person
 No appearance for the Respondent

Investigation Meeting: 1 April 2009 at Queenstown

Determination: 6 April 2009

DETERMINATION OF THE AUTHORITY

[1] Shelley Harwood worked for Eco Tours Limited based in Queenstown for several months as a bus driver before she was suspended and then dismissed. Ms Harwood was suspended by receiving a letter from her employer which also enclosed a copy of a written warning dated some months earlier. Ms Harwood says that this was the first time she was aware of this warning. In her statement of problem Ms Harwood describes her employment relationship problem as an unfair warning, an unfair suspension and dismissal, breaches of her employment agreement especially regarding wages and breaches of the Employment Relations Act 2000.

[2] Ms Harwood's statement of problem was lodged on 3 September 2008. The Authority served this on the respondent on 6 September 2008. When no statement in reply was received the support officer contacted Jurgen Abele who is the sole director and a substantial shareholder of the respondent company. Mr Abele gave an excuse for the delay in lodging a statement of problem but said it would be done shortly. The support officer sent Mr Abele an email confirming this arrangement on 24 September 2008 and received a system generated *read receipt* the same day. Having read the

support officer's email, Mr Abele replied by email on 27 September 2008 saying he would respond *next week*. However, nothing more was heard from Mr Abele so the support officer sent him a reminder. Later, arrangements were made with Ms Harwood and Mr Abele for a phone conference that was held on 10 February 2009. During that conference Mr Abele agreed to lodge a statement in reply by 13 February 2009. Directions were also made for both parties to lodge statements of evidence by 20 March 2009 in preparation for an investigation meeting that was scheduled for 1 April 2009. Nothing more was heard of or received from Mr Abele or Eco Tours Limited.

No appearance by the respondent

[3] There was no appearance by the respondent at the investigation meeting.

[4] I am satisfied that the respondent was aware of the arrangements for the investigation meeting to be convened at 9.30 am on 1 April 2009 in Queenstown because Mr Abele participated in the phone conference when these arrangements were made. I am also satisfied that the notice of directions from that conference and the notice of investigation meeting were served on the respondent at its address for service given by Mr Abele during the phone conference. There being no good reason for the respondent's non-appearance, I continued with the investigation meeting.

Employment relationship problem

[5] I accept Mr Harwood's evidence that she reported for work on Friday 6 June 2008 to find the bus yard open but the bus not there. That meant that Ms Harwood could not do any work. On 8 June 2008 Ms Harwood received a letter dated 4 June 2008 from Eco Tours Limited telling her that she was suspended from her employment because a *very serious complaint* had been received in respect of events on 24 May 2008. The letter also enclosed a copy of a written warning in respect of an incident on 17 April 2008. I accept Ms Harwood's evidence that she had not seen this warning letter or the suspension letter previously.

[6] Ms Harwood wrote to Mr Abele on 8 June 2008 but did not receive any response. Ms Harwood then arranged for the Dunedin Community Law Centre to write to Eco Tours on her behalf. A letter dated 4 July 2008 was sent and, in the absence of a response, it was resent on 21 July 2008. That drew a response by email from Mr Abele on 25 July 2008 in which says *I have emailed and mailed Shelley*

Harwood the Suspension and the Dismissal. ...Ms Harwood ...received an email at the 5/6 in which she was dismissed due to her gross misconduct. The Community Law Centre forwarded the email to Ms Harwood and I accept her evidence that this was her first news of the dismissal. The Community Law Centre replied on Ms Harwood's behalf and suggested mediation. No response was received from Eco Tours Limited or Mr Abele. These proceedings were then lodged.

[7] Eco Tours Limited decided to warn, suspend and dismiss Ms Harwood without any semblance of fair process. In particular, the manner in which the dismissal was communicated shows contempt for Ms Harwood and falls far below any standard of reasonable behaviour. Ms Harwood has personal grievances as a result.

[8] There is a written employment agreement. It says at clause 21.1 *The Employer may suspend the Employee with pay while the Employer conducts and (sic) investigation into any alleged misconduct.* Ms Harwood received her last pay on 4 June 2008 and did not receive any pay during the period of the suspension

Remedies

[9] The warning issue related to exchanges between Ms Harwood and another employee. There was a discussion between Mr Abele and Ms Harwood about it in April but she was not told at the time that the discussion was a warning. Understandably Ms Harwood was affronted in June 2008 when she saw the supposed letter of warning for the first time. I also accept Ms Harwood's evidence about feeling very distressed at being suspended and dismissed without any opportunity to defend herself.

[10] The suspension letter contains allegations of Ms Harwood using *foul language* that was overheard by customers causing a loss of a potential contract. Ms Harwood wrote and asked for details but did not receive a reply. The Community Law Centre wrote and asked for details. In his email of 25 July 2008 Mr Abele listed some words allegedly used by Ms Harwood and claimed to have numerous letters from staff, colleagues, customers and business partners outlining the language used by Ms Harwood in front of customers. The Community Law Centre asked for Mr Abele to provide these letters but never received any response. The Authority directed that relevant documents be provided with the statements of evidence but received nothing.

As a result there is no evidence of Ms Harwood's supposed *foul language* so I cannot say that she contributed in any blameworthy way to the situation giving rise to her suspension and dismissal grievances.

[11] Assessing Ms Harwood's evidence about her distress at how she was treated over the suspension and the dismissal I find that she is entitled to compensation of \$7,500.00.

[12] Ms Harwood lost remuneration as a result of her grievances. She should have been paid during the suspension but was not. Ms Harwood also lost remuneration following the dismissal since it took her a month or so to find other work and she was employed on fewer hours and a temporary basis from July until early November 2008. That marks the end of the period for which I will assess lost remuneration because Ms Harwood then commenced self employment. There are 22 weeks from the week ending 8 June 2008 to the week ending 2 November 2008. Ms Harwood would have earned \$11,452.32 (net) during that time. Her earnings from other employment over the same time amounted to \$5,626.52 (net) so Eco Tours Limited must pay Ms Harwood \$5,825.80 (net) to reimburse her for lost remuneration.

Summary of orders

[13] Ms Harwood has personal grievances against Eco Tours Limited.

[14] To remedy the grievances, Eco Tours Limited must pay to Ms Harwood without deduction:

i.\$7,500.00 compensation pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000;

ii.\$5,825.80 (net) reimbursement pursuant to s.123(1)(b) and s.128(3) of the Employment Relations Act 2000.

[15] Eco Tours Limited must reimburse Ms Harwood \$70.00 for her lodgement fee.

Good faith

[16] Eco Tours Limited did not lodge a statement in reply, did not comply with directions for statements of evidence and relevant documents to be provided and did not appear.

[17] I have taken time to explain the background to the respondent's non appearance and non compliance because after the meeting had concluded I received a message to ring Mr Abele on a cell phone number. When I rang him he claimed to have been told by Court staff at the Nelson District Court that he would be able to participate in the Authority's investigation meeting by phone conference and he had been waiting at the District Court in Nelson to receive the call. All that I can say about this is that Mr Abele knew that these proceedings were before the Employment Relations Authority, he did not ask during the directions conference on 10 February 2009 if he could participate in the investigation meeting by phone, he was served with the notice of meeting and the notice of directions and he never contacted the Authority thereafter.

[18] During my phone call with Mr Abele he claimed not to know how to contact the Authority having received only one page of material from the Authority. However, Mr Abele has been involved in previous unrelated proceedings in the Authority on behalf of Eco Tours Limited (then known as Active Planet Limited). His only initiative in the present proceedings was to send an email to the Authority's support officer to which he received a reply. He also received other emails from the support officer. I note that the support officer's emails to Mr Abele include the Authority's name, postal address, phone number, fax number and the support officer's email address. Given this, I cannot accept that Mr Abele genuinely thought he could deal with the District Court about this matter or that he did not know how to contact the Authority.

[19] I consider that Eco Tours Limited through Mr Abele obstructed rather than facilitated the Authority's investigation.

Philip Cheyne
Member of the Employment Relations Authority