

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 123  
5548998

BETWEEN                      Shona Hinton  
   Applicant

A N D                              Zusu Limited  
   Respondent

Member of Authority:        Rachel Larmer

Representatives:              Robert Morgan Advocate for Applicant  
   No Appearance by Respondent

Investigation Meeting:        30 April 2015 at Auckland

Date of Determination:        01 May 2015

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     Ms Shona Hinton started work with Zusu Limited (Zusu) on a part time basis on 15 August 2014 but did not receive a written employment agreement contrary to the requirements of s.65 of the Employment Relations Act 2000 (the Act).

[2]     On 04 September Ms Hinton was offered and accepted full time employment with Zusu as a Provider Administrator. Ms Hope was handed a letter on 10 November 2014 in front of other staff terminating her employment immediately.

[3]     Ms Hinton claims her dismissal was unjustified. Ms Hinton also claims wage arrears consisting of unpaid wages and unpaid employer KiwiSaver contribution as she was not paid for the last four weeks of her employment. Nor did she receive notice or notice pay or holiday pay when her employment ended.

[4]     After accepting the offer of full time employment Ms Hinton was given a written employment agreement that contains a 90 day trial period provision clause. I find that clause cannot be relied upon by Zusu to prevent Ms Hinton from pursuing a dismissal grievance because Ms Hinton was already an employee, and had been employed for a number of weeks, before she was given a written employment

agreement. A trial period provision may only apply to new employees and I find Ms Hinton was not a new employee.

[5] Zusu was served with the Statement of Problem on 25 March 2015. When Zusu did not file a Statement in reply within 14 days of service it was advised by the Authority that it had to see leave to defend this matter. Zusu did not file a Statement in Reply and it did not apply for leave to do so out of time.

[6] Zusu was served with the Notice of Hearing on 20 April 2015 but did not attend the investigation meeting. Zusu has not had any contact with the Authority.

[7] I accept Ms Hinton's unchallenged evidence that Zusu failed to pay her for the last four weeks of her employment, it has failed to make its 3% employer KiwiSaver contribution and it did not paid her any holiday pay upon termination, despite Ms Hinton not taking any paid leave whilst employed.

[8] It also appears that Zusu has not remitted its employer KiwiSaver deductions or Ms Hinton's PAYE to Inland Revenue department despite these amounts having already been deducted from the wages she received whilst employed.

[9] Zusu is ordered to pay Ms Hinton wage arrears of:

- (a) \$4,384 unpaid wages (4 weeks x \$1,096 per week);
- (b) \$964.62 unpaid holiday pay (8% of total gross earnings of \$21,057.70);
- (c) \$131.54 unpaid employer KiwiSaver contribution (3% x 4 weeks @ \$1,096 per week).

[10] I also find that Ms Hinton's dismissal was unjustified. Zusu's actions and how it acted were not what a fair and reasonable could have done in all the circumstances, contrary to the requirements of the justification test in s.103A of the Employment Relations Act 2000 (the Act).

[[12] On 10 November 2014 Ms Hinton was handed a letter at a staff meeting (in front of other staff) which said she had been made redundant with immediate effect. She was not given notice or pay in lieu of notice and she was never paid her final pay or outstanding wages.

[13] Ms Hinton was upset about this as she needed ongoing employment and had only recently been employed. There was no prior discussion that redundancies were possible, no consultation process, no information given to Ms Hinton as to why she had been selected for redundancy.

[14] I find that Zusu breached its good faith obligations under s.4(1A) of the Act and it failed to comply with any of the four procedural fairness tests in s.103A(3) of the Act. These failures mean Zusu is unable to justify Ms Hinton's dismissal.

[15] Ms Hinton started looking for alternative work when her wages were not paid. She obtained a new short term job (which ends next month) two weeks after her employment with Zusu ended.

[16] Ms Hope claims \$2,199.31 lost remuneration (2 weeks x \$1,096 per week) and distress compensation of \$8,000.

[17] I am satisfied Ms Hinton mitigated her loss and that she has suffered emotional distress as a result of her unjustified dismissal. Ms Hinton was tearful during the Authority's investigation.

[18] Zusu is ordered to pay Ms Hinton;

- (a) \$2,199.31 being two weeks' lost remuneration under s.128(1) of the Act.
- (b) \$4,000 distress compensation under s.23(1)(c)(i) of the Act to compensate her for the humiliation loss of dignity and injury to feelings she has suffered.

[19] Zusu is ordered to pay Ms Hinton \$580 towards her actual legal costs plus \$71.56 to reimburse her filing fee.

[20] Zusu is ordered to pay Ms Hinton the full amount of what has been awarded under this determination within 28 days of the date of this determination.

**Rachel Larmer**  
**Member Employment Relations Authority**