

telephone conference which set the matter down for an investigation meeting nor did he appear or cause himself to be represented at the investigation meeting.

[5] Despite Mr Parsons's lack of engagement in the Authority's process, I am satisfied that all proper efforts were made to notify him of the claim made against him by Regent Night'n'Day and that he had every reasonable opportunity to engage with Regent Night'n'Day and to be involved with the Authority's process.

[6] The evidence before the Authority indicates that Mr Parsons commenced employment on 1 April 2007 when he executed a document styled individual agreement on letterhead with Night'n'Day Food Stores as a masthead.

[7] Paragraph 9(c) of that individual agreement is in the following terms:

I do hereby accept the offer of employment made to me by the company and agree to abide by the conditions of employment set out in this agreement and employee handbook.

[8] The employee handbook is a detailed document covering a variety of matters including the terms and conditions of employment. For our purposes, the significance of the employee handbook is to be found in a clause entitled *Termination of Employment* which reads as follows:

Not less than four weeks notice shall be given by either party of the termination of employment, where the employee fails to work any part of any notice, and where the employment is terminated without the requisite notice, four weeks wages shall be paid or forfeited by the party who fails to give notice, or an amount equivalent to the employee's wages for four weeks in the event of default but nothing in this clause shall prevent the summary termination of the employment for serious misconduct. The period of notice in either case shall be exclusive of the whole or any part of the annual holiday required to be given in pursuant [sic] of an employment agreement. Notice shall be paid or worked at the discretion of the employer.

[9] Regent Night'n'Day relies on this provision to recover from Mr Parsons the money value of the four weeks notice that, by that clause, he ought to have given or suffer the forfeiture of the relevant sum. The amount claimed is \$1,920 together with the cost of the uniform not returned to the value of \$73.25 and the cost of the filing fee of \$70.

[10] In the absence of hearing anything from Mr Parsons, it is difficult to make any conclusion as to his position. However, I am satisfied on the basis of the evidence before me that Mr Parsons left Regent Night'n'Day's employment without giving the

requisite notice and that in consequence he falls within the terms of the provision I have just referred to.

[11] I am further satisfied that Mr Parsons had a proper opportunity to consider the meaning of this provision in that he was advised when he joined Regent Night'n'Day of his right to obtain independent legal advice and I am satisfied that he had the effect of this particular provision specifically drawn to his attention by the clear words in the declaration which Mr Parsons signed when accepting the terms and conditions of employment.

Determination

[12] I direct that Mr Parsons is to pay to Regent Night'n'Day the sum of \$1,920.00 in lieu of notice. That is required to be paid by Mr Parsons in reliance on the forfeiture of notice provision in the employee handbook which forms part of Mr Parsons's employment agreement.

[13] Mr Parsons is also to reimburse Regent Night'n'Day for the \$70.00 filing fee.

[14] Mr Parsons is also required to pay to Regent Night'n'Day the sum of \$73.25 for the cost of the uniform belonging to Regent Night'n'Day which he failed to return and he is required to make that payment to Regent Night'n'Day as a consequence of the effect of clause 5 of the individual agreement between him and Regent Night'n'Day.

[15] It follows that the total amount owing by Mr Parsons to Regent Night'n'Day is \$2,063.25 made up as follows:

- \$1920.00 in lieu of notice
- \$70.00 filing fee
- \$73.25 cost of uniform

Costs

[16] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority