

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Dawn Lillian Lunam (Applicant)

**AND** Te Aratu Trust (Respondent)

**REPRESENTATIVES** Dawn Lillian Lunam - In person  
No Appearance for Respondent

**MEMBER OF AUTHORITY** Ken Anderson

**INVESTIGATION MEETING** 18 May 2005

**DATE OF DETERMINATION** 27 May 2005

**DETERMINATION OF THE AUTHORITY**

**The Employment Relationship Problem**

[1] On 8 July 2004, Ms Lunam was offered and accepted employment with the Te Aratu Trust ("the Trust"). The position was as a tutor working at the Te Aratu Training Centre ("the Training Centre"). Ms Lunam resigned from her existing employment, as a tutor, on 9 July 2004, in anticipation of taking up her duties with the Trust in early August 2004. But, before taking up her duties with the Trust, Ms Lunam was told that the position was no longer available. The result was that she became unemployed for a period of time. Ms Lunam says that she had an employment agreement with the Trust that was breached by a failure to carry it out and she seeks appropriate remedies accordingly.

[2] There was no appearance for the Trust nor has there been any statement in reply provided, but it is the understanding of the Authority, that the claims of Ms Lunam are not really disputed.

**The Failure of the Trust to Attend the Investigation Meeting**

[3] Unfortunately, there was no attendance at the investigation meeting that took place on 18 May 2005. I am satisfied that the notice of meeting was served appropriately according to the provisions of Clause 16(a)(iii) of the Employment Relations Authority Regulations 2000. Furthermore, on the morning of 18 May, I contacted the Manager of the Training Centre, Ms Joss Kiernan. She assured me that she would attend the investigation meeting but failed to arrive.

[4] Clause 12 of Schedule 2 to the Employment Relations Act 2000, allows the Authority to proceed if any party fails to attend. That provision of the Act is as follows:

"If without good cause shown, any party to a matter before the Authority fails to attend or be represented, the Authority may act as fully in the matter before it as if that party had duly attended or been represented."

- [5] As there appeared to be no good reason for the Respondent or a representative not to attend the investigation meeting, it proceeded accordingly.

## **Background to the Problem**

- [6] There were several discussions between Ms Lunam and Ms Kiernan, and two visits by Ms Lunam to the Training Centre. This included Ms Lunam being made familiar with the role of tutors at the centre and the plans and programming in place. On the evening of 8 July 2004, Ms Kiernan confirmed to Ms Lunam, that she would be employed as a tutor. In an earlier discussion it had been agreed that the annual salary would be \$45,000 and there would be seven weeks paid annual holidays.
- [7] Upon Ms Lunam enquiring as to if she should give notice to her current employer, this was confirmed by Ms Kiernan who also indicated that Ms Lunam would receive something "official" in the post the next day. There never was anything presented in writing, but I have no doubts that an oral agreement was reached between the two women and that Ms Lunam was entitled to act on that agreement.
- [8] Initially, Ms Lunam thought that she would be required to give her current employer two months notice but it transpired that this was not necessary and Ms Lunam ceased her employment there on 23 July 2004. She anticipated having a break for a week and then start working for the Trust on 2 August 2004.
- [9] However this was not to be. Sometime close to 23 July, Ms Lunam contacted Ms Kiernan to confirm that she would be able to start with the Trust on 2 August. She was informed by Ms Kiernan, that the starting date had been delayed. However, Ms Kiernan gave an assurance that the employment would still happen and that Ms Lunam should go ahead and obtain a passenger bus licence, as some transportation of clients would be required.
- [10] In the following weeks, Ms Lunam contacted Ms Kiernan at various times and at one point, because she had some reservations about the position with the Trust, Ms Lunam indicated to Ms Kiernan that perhaps she should look for another job elsewhere. However, Ms Kiernan reassured her that there was nothing to worry about and that employment with the Trust would still happen.
- [11] Sometime in September 2004, Ms Lunam made arrangements to meet with Ms Kiernan at the Training Centre, in order to ascertain exactly what was happening in regard to the proposed employment. Ms Lunam says that she was kept waiting for two hours before Ms Kiernan eventually met with her. Upon meeting with Ms Kiernan, Ms Lunam made it clear that she was unhappy about the turn of events and the financial difficulties she was now experiencing due to being unemployed. It appears that Ms Kiernan then indicated that the Trust was having financial difficulties. Ms Lunam says it also became clear to her that Ms Kiernan had not previously been honest with her and that employment with the Trust was not going to eventuate.
- [12] Ms Lunam pursued a personal grievance and the basis of an agreement was reached in mediation but this agreement (the detail of which, appropriately, I am not aware of), was not fulfilled by the Trust. Unfortunately, this agreement was not recorded in writing.

## Determination

- [13] I have not been able to obtain any evidence from the Trust regarding this matter, but I have found Ms Lunam to be an honest person and I have no hesitation in concluding that the substance of everything that she has conveyed, in some detail, is correct. It is established to my satisfaction that an employment agreement was arrived at between Ms Lunam and Ms Kiernan and that the latter had authority to act on behalf of the Trust.
- [14] The effect of the employment agreement reached with the Trust, is that Ms Lunam comes within the definition of section 5 of the Employment Relations Act 2000 (“the Act”), in that she was a person intending to work because she had “been offered, and accepted, work as an employee” with the Trust. Ms Lunam, reasonably, acted upon that agreement and resigned from her previous employment and was subsequently financially disadvantaged because of the refusal on the part of the Trust to meet its obligations.
- [15] Therefore, Ms Lunam is a person that is entitled to pursue a personal grievance under the Act. It is also established that the Trust failed to honour the agreement reached with Ms Lunam. I find that she has a personal grievance and is entitled to remedies accordingly.

## Remedies

### (a) *Reimbursement of Wages*

- [16] Ms Lunam was largely unemployed until 21 September 2004. The length of time that Ms Lunam was unemployed was largely due to false assurances on the part of Ms Kiernan. Had Ms Kiernan been more honest about the true situation in regard to the overall position of the Trust, Ms Lunam may well have obtained alternative employment sooner and the liability of the Trust would have been less. Ms Lunam was able to obtain a small amount of temporary work and I have assessed her loss of income to 21 September 2004 at the gross sum of \$865.38 per week (\$45,000 x 52), for seven weeks - \$6,057.66. Under the provisions of section 123(b) of the Act, the Te Aratu Trust is ordered to pay to Ms Lunam the gross sum of **\$6,057.66**.

### (b) *Compensation*

- [17] The evidence of Ms Lunam is that she was embarrassed and humiliated by manner in which she was treated by Ms Kiernan, and the financial consequences arising from the failure on the part of the Trust to meet its obligations. I accept that this is so, but I must also take into account the nature of the Trust in regard to its funding sources and ability to pay. Taking all the circumstances into account, under the provisions of section 123(c)(i) of the Act, the Te Aratu Trust is ordered to pay to Ms Lunam the sum of **\$2,500**.

## Costs

- [18] The Te Aratu Trust is ordered to pay to Ms Lunam the application fee paid to the Authority, the sum of **\$70.00**.

**Ken Anderson**  
**Member**  
**Employment Relations Authority**