

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2024] NZERA 746
3284899

BETWEEN LITA MAIAVA-PEREZ
Applicant

AND JASMINE TANGOHAU
Respondent

Member of Authority: Geoff O’Sullivan

Representatives: Claudia Serra, advocate for the Applicant
No appearance for the Respondent

Investigation Meeting: 17 September 2024 in Napier

Submissions and Other Information Received: Up to and including 17 September 2024

Determination: 16 December 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Ms Perez, says she was employed by Jasmine Tangohau trading as Jazzys Hair and Beauty from 17 July 2023 until she was advised on 4 January 2024 her employment would end and she would be paid two weeks’ notice. Ms Perez was employed during that time as a senior hairstylist and salon manager. Ms Perez says that although she was given an employment agreement to look over, Ms Tangohau put it on her desk and it was never again spoken about or signed.

[2] There has been limited engagement from Ms Tangohau. A statement in reply was filed on behalf of Jazzys Hair and Beauty Limited. It further provided “The respondent accepts the behaviour culminating in the termination of employment fell short of accepted employment process and acknowledged this to the applicant’s

advocate.”¹ The statement in reply also contained a statement “The applicant was employed by Jazzys Hair and Beauty Limited”.

[3] As a result of what she says was an unjustified dismissal, Ms Perez claims:

- Compensation of \$30,000.00 under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act) “or such other sum, greater or lesser, as the Authority considers appropriate”;
- Unpaid wages of approximately \$2,100.00;
- Unpaid KiwiSaver contributions of approximately \$756.00;
- Unpaid PAYE of approximately \$2,910.00;
- Unpaid holiday pay of approximately \$2,000.00;
- Lost wages of \$13,650.00;
- Penalty pursuant to a breach of s 130 of the Act.

[4] Despite an indication that Ms Tangohau would attend the investigation meeting, this did not happen. This non-attendance raised the question of whether or not I should proceed in her absence. The commencement of the investigation meeting was adjourned for 15 minutes in case either Ms Tangohau or a representative of the company intended coming but were running late. No-one appeared and accordingly I decided to proceed on the basis that as Ms Tangohau was aware of the time and place of the investigation meeting and had decided not to attend for her own reasons.

[5] Ms Perez gave evidence to the Authority on affirmation. Notwithstanding the absence of Ms Tangohau, the following issues were identified:

- (a) Was Ms Tangohau Ms Perez’s employer?
- (b) If so, did Ms Tangohau unjustifiably dismiss Ms Perez and if so what remedies should flow?

¹ In paragraph 1.2 of the statement in reply.

Background

[6] Ms Perez commenced employment on 17 July 2023. She was employed as a senior stylist and salon manager. The employment agreement which was not signed named the employer as Jazzys Hair and Beauty Limited. The agreement however was not signed by either party, with Ms Perez saying although she had received an agreement to look over, Ms Tangohau put it on her desk because she had clients waiting to see Ms Perez and accordingly it was never talked about again, nor was it signed.

[7] The salon operated two separate shops and although Ms Perez was not told specifically what her role was, she had responsibility for managing one of the shops and she worked in the other as a senior stylist. On average she worked 35 hours per week.

[8] Jazzys Hair and Beauty Limited was an incorporated company. However, a search of the Companies Office shows it appears it has never traded. Certainly, at the time of Ms Perez's employment although the company existed, it was not active.

[9] Ms Perez was paid wages, not from a company account but from Ms Tangohau's private account.

[10] On the odd occasion when Ms Perez was required to pay moneys received from clients into the salon's account, she was instructed to pay them into Ms Tangohau's account.

[11] On 4 January 2024, Ms Tangohau confronted Ms Perez with accusations that she was speaking negatively about the salon in front of colleagues. Criticisms were also made about her performance in so far as it related to attracting clients. The conversation ended with Ms Tangohau telling Ms Perez it would be simpler to let her go because she had not signed the employment agreement which meant there was no agreement in place and accordingly Ms Tangohau was entitled to end the employment on the payment of two weeks' notice.

[12] It appears this is indeed what happened. Ms Perez says that she was completely blindsided by what had happened and left feeling deeply hurt and disappointed. She says she has struggled to come to terms with the sudden end of her employment and the reasons for it. She became anxious which led to negative thoughts about her own ability. She said she lost confidence and ambition.

[13] Matters became worse when it transpired that Ms Tangohau had not paid Ms Perez the notice that she had promised. Following the termination of her employment on 9 February 2024, Ms Tangohau made a public Facebook post stating that she and Ms Perez were going to war.

[14] On 28 February 2024, she received a call from Police saying they needed to come and see her as they needed to give her a trespass notice. The Police duly turned up at her house giving her the trespass notice which was signed by Senior Constable D. Coffin and purported to trespass her from the personal address of Ms Tangohau. Why Police thought that the trespass was appropriate was not explained. Ms Perez's evidence was that she had not been near either of the places mentioned in the trespass notice since she had been dismissed almost two months previously.

[15] Since her dismissal, Ms Perez has discovered no income tax was paid, nor was any contribution to her KiwiSaver made. She did not receive her final pay including the promised two week's notice and her holiday pay entitlements.

Analysis

[16] Ms Tangohau was Ms Perez's employer at the relevant time. Although the company existed, the evidence suggests the business was not run through the company but was run through Ms Tangohau's personal accounts. This is evidenced by the fact that all wages paid came from Ms Tangohau's account and to the extent it can be established, payments from clients did not go into the company's account but went into Ms Tangohau's personal account. Further, it seems that the company did not trade. The company did not pay any PAYE.

[17] In the statement in reply, Ms Tangohau seems to accept that the dismissal was not procedurally fair. She seems to blame this on inexperience. Nonetheless, summarily dismissing Ms Perez apparently on the basis she did not have a binding employment agreement, is unjustified. It does not meet the test set out in s 103A of the Act and was not the action of a fair and reasonable employer. It follows therefore that Ms Perez was unjustifiably dismissed and is entitled to remedies. Her evidence is she worked a 35 hour week at a rate of \$30.00 an hour. In the absence of evidence to the contrary I accept her claims in respect of unpaid wages, unpaid KiwiSaver contributions, unpaid PAYE, and unpaid holiday pay.

[18] Further, I accept that it took Ms Perez more than three months to find alternative work and accordingly I accept her claim of lost wages totalling \$13,650.00.

[19] The effect of the dismissal and post-dismissal conduct by Ms Tangohau had a very negative effect on Ms Perez. I accept that the level of humiliation, loss of dignity and injury to feelings suffered by Ms Perez was significant and I consider an appropriate award under this heading of \$25,000.00 appropriate.

Summary of orders

[20] Jasmine Tangohau is ordered to pay Lita Maiava-Perez the following:

- (a) Unpaid wages covering the unpaid notice period of \$2,100.00;
- (b) Unpaid KiwiSaver contributions of \$756.00;
- (c) Unpaid holiday pay of \$2,000.00;
- (d) Lost wages of \$13,650.00;
- (e) Compensation of \$25,000.00 for humiliation, loss of dignity, and injury to feelings.

[21] The above payments are to be made within 28 days from the date of this determination. I have not dealt with unpaid PAYE of approximately \$2,910.00, however, within 28 days of the date of this determination Ms Tangohau is to pay either that sum to Inland Revenue against Ms Perez's account or alternatively account to her for that sum.

[22] Although I considered whether or not under these circumstances a penalty was appropriate, I have decided not to award a penalty in this situation.

Costs

[23] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[24] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Perez may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Ms Tangohau will then have 14 days to lodge any reply memorandum.

On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[25] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.²

Geoff O’Sullivan
Member of the Employment Relations Authority

² For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1