

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 108/09  
5137144

BETWEEN                      SAHAR MAJEED  
   Applicant  
  
AND                                BENTLEY PROPERTY  
   DEVELOPMENTS LIMITED  
   Respondent

Member of Authority:        Marija Urlich  
  
Representatives:              In person, Applicant  
   No appearance for Respondent  
  
Investigation Meeting:        27 March 2009  
  
Determination:                6 April 2009

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**DETERMINATION OF THE AUTHORITY**

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[1]     Mrs Majeed was employed in the respondent's café. She says she was unjustifiably dismissed from her employment on Friday, 27 June 2008 for which she seeks remedies.

[2]     In its statement in reply the respondent says Mrs Majeed abandoned her employment. It says Mrs Majeed was repeatedly warned about her conduct in the workplace which, but for her abandoning her employment, would have been sufficient grounds for terminating her employment.

[3]     The statement in reply was filed by the respondent's then representative. Subsequent to the filing of that document the Authority was advised the representative no longer acted for the respondent. Other than an email address, the Authority has not been provided with any contact details for the director of the respondent.

[4] No representative from the respondent was present at the scheduled start of the investigation meeting. Shortly after the scheduled start time a support officer contacted David Masters, listed as a contact for the respondent, advising the investigation meeting was scheduled to commence and requesting a telephone number for the respondent's director. He advised he did not have a contact number for the director.

[5] I am satisfied that the respondent has been properly served with a copy of the notice of investigation meeting and has had a fair opportunity to attend the scheduled investigation meeting. It was on this basis that the meeting commenced.

[6] To determine this employment relationship problem I must rely solely on the material provided by Mrs Majeed.

#### **Did Mrs Majeed abandon her employment?**

[7] The respondent took over running of the café in question in early May 2008. Mrs Majeed had been employed there café for about two years. The parties entered a written employment agreement on 29 May the terms of which included that Mrs Majeed was a full time employee and her rate of pay was \$13.50 per hour.

[8] At 10am on Saturday, 14 June Mrs Majeed and David Masters, who she understood to be a co-owner of the business, were involved in a misunderstanding about the preparation of a wrap for a customer. Mr Masters became very angry with Mrs Majeed and screamed abuse at her.

[9] Mrs Majeed was very upset but continued her work until 11am when she approached the other owner, Katherine Masters, the sole director of the respondent company, to speak with her about the incident. Mrs Majeed told Mrs Masters she was not happy about the way Mr Masters had spoken to her, that she was not feeling well, had completed her preparation for the day and wished to go home. Mrs Masters shrugged her shoulders in response. She then approached Mr Masters who was at the till dealing with a customer. She told him she was going home because she was unwell. He replied "okay". Mrs Majeed then left the café.

[10] Mrs Majeed immediately went to the local Department of Labour office to seek advice about the work incident. At 4pm that day she telephoned Mr Masters and left a message. He did not return her call.

[11] The next day Mrs Majeed visited her doctor and received a medical certificate stating she was unfit to work for the next three days. She advised Mr Masters of this that evening.

[12] Monday of the following week Mrs Majeed contacted Mr Masters again and arranged a meeting at 5pm on Wednesday; she wanted to talk about the manner in which he had spoken to her the preceding Saturday. The meeting went ahead. Mr Masters told Mrs Majeed the kitchen was being renovated and she could take a paid holiday until the following Thursday. Mrs Majeed gave Mr Masters a copy of the medical certificate which she then watched him fold into a tiny square.

[13] Mrs Majeed received a text message from Mr Masters on Tuesday or Wednesday of the following week asking her to attend a meeting on Friday 27 June. The message said the meeting concerned Mrs Majeed's employment ending.

[14] Mrs Majeed attended the scheduled Friday meeting. Mr Masters told her she could not return to her employment because she was a disadvantage to the business. Mr Masters said he would provide Mrs Majeed with a reference and pay her what she was owed. No reference has been provided.

[15] Mrs Majeed did not abandon her employment. Her absence from the workplace was expressly authorised by the owners and she remained in regular contact with them during the period at issue.

### **Was Mrs Majeed dismissed?**

[16] I find Mrs Majeed's employment ended at the initiation of the respondent; she was dismissed.

## **Was the dismissal unjustified?**

[17] I find Mrs Majeed was unjustifiably dismissed; her dismissal was not, considered on an objective basis, fair and reasonable in all the circumstances<sup>1</sup>. No concerns were fairly put to Mrs Majeed to comment on prior to receiving notice of dismissal.

## **Remedies**

[18] Mrs Majeed seeks a compensatory sum to remedy hurt and humiliation consequent to her dismissal. She gave evidence in support of this claim. Having considered that evidence I set the appropriate level of compensation at \$2000.

[19] **Bentley Property Development Limited is ordered to pay Sahar Majeed \$2000 pursuant to section 123(1)(c)(i) of the Employment Relations Act.**

[20] Mrs Majeed seeks to be reimbursed lost wages consequent to her dismissal. The period of claim is 30 June to 30 September 2008<sup>2</sup>. I accept Mrs Majeed has made reasonable efforts to find alternative employment and that these efforts have been unsuccessful. I also accept that the income Mrs Majeed received during this period should not be off set against any reimbursement order because that employment was extant at the time of her dismissal.

[21] Mrs Majeed gave evidence that her usual hours of work were 7am to 2.30pm six days per week. I accept the calculation of lost wages should be made on that basis.

[22] **Bentley Property Development Limited is ordered to pay Sahar Majeed \$7,290(gross) pursuant to section 123(1)(b) of the Employment Relations Act.**

[23] After her dismissal the respondent made cash payments to Mrs Majeed totalling \$1186. She has not received a pay slip in relation to these payments and

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<sup>1</sup> Section 103A Employment Relations Act 2000

<sup>2</sup> Section 128(2) Employment Relations Act 2000

does not know what they refer to. There are no grounds to deduct these cash payments from the reimbursement order above.

[24] Mrs Majeed's holiday pay entitlement may remain outstanding. If she wishes to pursue this matter further the matter may be referred to the Labour Inspector.

### **Costs**

[25] Mrs Majeed is entitled to be reimbursed for the filing fee incurred in lodging this application.

[26] **Bentley Property Development Limited is ordered to pay Sahar Majeed \$70, to reimburse the cost of the filing fee.**

Marija Urlich

Member of the Employment Relations Authority