

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 511/10
5291338

BETWEEN VAINÉ CHARLOTTE
 MARSTERS
 Applicant

AND EVENTS SECURITY
 SERVICES LTD (IN
 LIQUIDATION) Respondent

Member of Authority: James Wilson

Representatives: Johan Niemand for the applicant
 No appearance for the respondent

Investigation Meeting: 6 September 2010 at Hamilton

Determination: 14 December 2010

DETERMINATION OF THE AUTHORITY

Vainé Marsters employment relationship problem

[1] In a statement of problem filed in the Authority in December 2009 Ms Vainé Charlotte Marsters (“Ms Marsters”) said that she had been unjustifiably disadvantaged and unjustifiably dismissed by her employer, Events Security Services Ltd. (“Events Security”). In that statement Ms Marsters said that she had been unable to contact her employer, despite a number of attempts to do so, and requested that the Authority direct that the parties attend mediation.

[2] After a number of unsuccessful attempts by the Authority Support Officer to contact the Managing Director of Events Security, Mr Vincent Low, I directed, in mid-February 2010 that an investigation meeting the schedule for April or May 2010. In a minute sitting out this direction I said:

Events Security are urged to supply, to the Authority and to Ms Marsters, a properly completed statement in reply and any other statements or documents relevant to Ms Marsters claims, not later than two weeks prior to the date set for the investigation meeting and to be represented at the Authority's investigation meeting.

I also directed that a copy of that minute, the notice of meeting and a further copy of the statement of problem be served in person on Mr Low.

[3] On 24 March 2010 the Authority received a letter from Mr Niemand advising that it had not been possible to serve the notice of meeting and seeking an adjournment of the Authority's investigation. At about the same time a check of the companies register revealed that Events Security had been placed into liquidation on 22 March 2010. On 9 April 2010, in terms of section 248 of the Companies Act I adjourned my investigation pending advice from Ms Marsters that the Liquidator had granted approval for the investigation to continue.

[4] By way of an e-mail dated 7 May 2010, forwarded by Mr Nieman the liquidator advised:

We can agree to the case continuing provided Counsel notify the Court (sic) of our approval and that the company does not have the resources to present its defence.

[5] In the light of the liquidator's approval an investigation meeting was set down for 6 September 2010. Ms Marsters attended that meeting, but Events Security was not represented. At that meeting I reviewed the information provided by Ms Marsters and questioned her, under oath, regarding the history of her employment with Events Security. In the absence of any contrary evidence from Events Security, I am satisfied that Ms Marsters' evidence is both credible and accurate.

Ms Marsters employment and dismissal

[6] Ms Marsters commenced employment with Events Security as a security guard at the Tokoroa Wananga ("the Wananga") in June 2005. The individual employment agreement she signed at that time indicated that she was employed on a casual "as required" basis. However it is Ms Marsters' evidence that from that date she was employed on a regular basis for 32.5 hours per week.

[7] Although the exact date is not clear, in April 2009 Ms Marsters was advised, without consultation, that her hours of work were to be reduced “due to the recession”. From that time she consistently worked 25 hours per week.

[8] In July 2009 Ms Marsters contacted Events Security advising that she was having difficulty in meeting her financial commitments since her hours had been reduced and further noted that she was having some problems with the Wananga site coordinator. Later that month she contacted Events Security by fax and again informed them of the difficulties she was having with the Wananga coordinator. In this fax she informed Events Security that she *was thinking of taking a personal grievance against one of the Tokoroa site coordinators*. Despite several phone calls, a written report and further faxes Ms Marsters says that Events Security did nothing to address the issues she had raised. After several attempts to persuade Events Security to address her concerns, on or about 16 September she advised a Mr Scully, a Manager at Events Security, that she intended taking her concerns “to the Labour Department”

[9] On 21 September Mr Scully advised Ms Marsters that she was no longer to work at the Wananga and that her last day would be 24 September 2009. Despite being advised that she had not been dismissed Ms Marsters was not allocated any further work and received no further wages.

[10] On 27 October 2009, by way of a letter from her then representative, Ms Marsters raised a personal grievance with Events Security. This letter advised that Ms Marsters considered that she had been a permanent employee, had being unjustifiably disadvantaged by the reduction in her hours and unjustifiably dismissed. She sought reimbursement for the wages she had lost due to the reduction in hours and compensation for the hurt and humiliation the unjustifiable dismissal had caused her. Despite several reminders from Ms Marsters representative Events Security never replied to this letter.

[11] On 18 November 2009 the Managing Director of Events Security, Mr Vince Low, wrote to Ms Marsters advising her that Events Security had lost the tender to provide security services to the Wananga. This letter stated, rather ambiguously, that this did not necessarily mean that Ms Marsters had lost her position as a security

guard but went on to thank her for her services with Events Security. Despite numerous attempts to contact Mr Low, neither Ms Marsters or her representatives have had any further communication with him or any other representative of Events Security.

Discussion

What was Ms Marsters employment status?

[12] I am satisfied that **Ms Marsters was a permanent, part time, employee of Events Security Limited.** Despite the wording of the employment agreement I accept Ms Marsters evidence that from the time of her employment in 2005 until they were unilaterally reduced in April 2009 her hours were consistently 32.5 hours per week and were on a fixed roster. Given the passage of time and the consistency of her rostered hours, **she was employed to work 32.5 hours per week on a permanent basis.**

Was Ms Marsters entitled to maintain her hours of work?

[13] Having found that Ms Marsters was a permanent part time employee it follows that any change to her hours of work would require her agreement. There was absolutely no attempt by Events Security to obtain that agreement. **She is entitled to be reimbursed for the hours she was contracted to work from the time they were unilaterally reduced until her employment was terminated.**

Was Ms Marsters unjustifiably dismissed?

[14] Ms Marsters was simply advised by phone that she was no longer to work at the Wananga and Events Security ceased providing her with work from 24 September 2009. It was not until some two months later that any attempt was made by Event Securities to explain this decision to her and even then in such ambiguous terms as to fall well short of any justification. It may be that Events Security believed they had good reasons for terminating Ms Marsters employment but their dogged refusal to communicate with her, her representative or the Authority leave me with absolutely no option but to find that **Ms Marsters was unjustifiably dismissed and that she**

has a personal grievance against Events Security as a result of that unjustifiable dismissal.

Remedies

Contribution

[15] I have found that Ms Marsters was entitled to retain her contracted hours of work and to be reimbursed for the wages she lost as a result of the unilateral reduction in those hours. I have also found that she has a personal grievance against Events Security as a result of her unjustified dismissal. She is entitled to remedies as a result of that personal grievance. In determining what remedies Ms Marsters is entitled to receive I am satisfied that, in terms of section 124 of the Employment Relations Act (the Act) she did not *contribute to the circumstances which gave rise to (her) personal grievance*.

Reimbursement of lost wages

[16] Ms Marsters hours of work were unilaterally reduced from 32.5 hours per week to 25 hours per week (i.e. 7½ hours per week) from the week ending 12 April 2009. Her employment was terminated at the end of the week ending on 13 September 2009. From date the reduction of hours took effect until the termination of employment was a total of 23 weeks. For the first 14 of these weeks she was paid \$13.00 per hour and for the remaining 9 weeks \$14.00 per hour. In some of the earlier weeks (i.e. when she was on a rate of \$13.00p/hr) she worked in excess of 25 hours and these additional hours totalled 20.5. **As set out in the following calculation Ms Marsters was underpaid, and is entitled to be paid, a total of \$2043.00 gross. She is also entitled to holiday pay on this amount calculated at 8%**

$$14 \text{ wks} \times 7.5 \text{ hrs} = 105 - 20.5 = 84.5 \text{ hrs} \times \$13.00 = \$1098.00$$

$$9 \text{ wks} \times 7.5 \text{ hrs} = 67.5 \text{ hrs} \times \$14.00 = \$945.00$$

$$\text{Total owing for unilateral reduction in hours} = \$2043.00$$

Wages lost as a result of unjustified dismissal

[17] Ms Marsters' last day of employment with Events Security was 13 September 2009. According to the letter dated 18 November 2009 from Mr Low, Events Security were likely to cease providing security services to the Wananga on 18 December 2009. It seems reasonable to assume that, but for her unjustified dismissal, it is likely that Ms Marsters would have continued in her role at the Wananga until that date. It is equally reasonable to expect that she would in all likelihood have been made redundant from that same date. Ms Marsters was not successful in her attempts to find other employment until after that date. **She is entitled to recover the wages she would have received from the date of her dismissal until 18 December 2009 calculated at the rate of 32.50 hours per week and \$14.00 per hour i.e. a total amount of \$6370.00 (14 wks x 32.5 hrs x \$14.00 = \$6370.00). Ms Marsters is also entitled to receive holiday pay on this amount calculated at 8%**

Compensation for hurt and humiliation

[18] Ms Marsters was clearly distressed by the way in which she had been treated by her employer and by the loss of a job she liked and found rewarding. Even almost a year after her dismissal she became visible upset when asked to recall these events. Taking into account all of the circumstances leading to her unjustified dismissal, **Ms Marsters is entitled to be compensated for the hurt and humiliation those events have caused her and I assess that compensation at \$4000.00 without deduction.**

Determination

[19] It was with some regret that I explained to Ms Marsters at the Authority's investigation meeting that the fact that Events Security Ltd had been placed in the hands of the liquidator meant that it was most unlikely that she would receive any of the amounts I might order be paid to her. However the orders set out below are made in the perhaps forlorn hope that the liquidator will be able to identify sufficient funds to enable Ms Marsters to be paid at least some of the monies owing to her.

[20] In light of the findings set out above Event Security Ltd. (In liquidation) is ordered to pay Ms Vaine Charlotte Masters

- a. **\$2043.00 plus 8% of this amount as holiday pay, less the appropriate amount of tax, being wages owed to her as a result of the unjustified unilateral reduction in her hours of work.**
- b. **\$6370.00, plus 8% of this amount as holiday pay, less the appropriate amount of tax, being wages lost by Ms Marsters as a result of her unjustified dismissal.**
- c. **\$4000.00 without deduction in terms of section 123(1)(c)(i) of the Act as compensation for the hurt and humiliation caused to Ms Marsters by her unjustified dismissal.**

Costs

[21] Under the circumstances there will be no order for costs.

James Wilson

Member of the Employment Relations Authority