

Background

[4] Ms Melrose was employed as general manager, initially on a part time basis in March 2007, and then on a full time basis from April 2007.

[5] Ms Melrose was employed on a salary of \$47,000.

[6] In late September 2007 her employment agreement was varied to payment on an hourly basis. This was conveyed to Ms Melrose as a fait accompli. She was told her pay would be equivalent to \$47,000 based on a 40 hour week.

[7] In the middle of November Ms Melrose discovered she was pregnant.

[8] On 30 November she had a discussion with Mr Antony Bell, a director of the respondent, concerning an issue that had arisen with another employee. Ms Melrose became upset and left the discussion in tears. She subsequently phoned Mr Wayne Clark, the other director, to tell him she felt she needed to go home. During that conversation she told him she was pregnant and wanted to avoid undue stress.

[9] A week later, a Mr Aaron Morehu, met with the directors. Mr Morehu told Ms Melrose that he had been interviewed for the role of general manager of the bar, Ms Melrose's position. Ms Melrose was called to a meeting and told that Mr Morehu would be the general manager and she would be the assistant general manager.

[10] On 7 January 2008 Ms Melrose received her pay slip for the previous week which showed she had not been paid for 7 hours on 2 January. When she complained Mr Bell told her she had only been paid for 5 hours because on the previous Wednesday she had only worked 5 hours so she could see her midwife. Mr Bell gave her a verbal warning for incorrectly filling in her timesheet. Ms Melrose had not filled in a timesheet for 2 January as it was a statutory holiday. She protested the warning.

[11] On 14 January Mr Morehu started work.

[12] On 16 January Mr Bell approached Ms Melrose and asked her to attend a meeting the following day. Ms Melrose asked what it was about but he refused to tell her.

[13] The two directors and Mr Morehu were present at the meeting. Ms Melrose asked to obtain representation. Her partner, Mr Karl Colquhoun, attended. When the meeting resumed, Mr Bell that there would one of two outcomes: she could resign or be dismissed.

[14] Ms Melrose was shown a timesheet for 7 January which indicated that she had left at 6pm. She was then shown some video footage showing her leaving the bar at 4.50pm.

[15] She was not given a copy of the timesheet, which had some details crossed out, or a proper opportunity to examine it. Ms Melrose was not given an opportunity to view video footage taken later that day; she thought she might have returned to the bar later and then left.

[16] She was told there were other days when she had recorded her time incorrectly butt was not given any details nor would Mr Bell allow her to view the video footage for the other days

[17] Ms Melrose became very upset and was told she had until 10.30am the following day to let them know whether she would resign.

[18] On 18 January she rang Mr Bell and told him she would not resign. She then received a letter of dismissal.

Remedies

[19] Ms Melrose was unjustifiably dismissed. She was not given a proper opportunity to respond to the allegations and was not provided with all the relevant information.

[20] I am satisfied that Ms Melrose was dismissed because she was pregnant.

[21] Ms Melrose was not consulted regarding her demotion to assistant general manager. It was presented as a *fait accompli*.

[22] Ms Melrose is entitled to be paid a month's notice per her employment contract. This amounts to \$3,916.66.

[23] Ms Melrose is to be paid lost earnings until 27 June 2008 being the date she would have started maternity leave. That constitutes 23 weeks' wages, being \$20,788.46.

[24] Ms Melrose is also entitled to a global award for humiliation and distress. I set this at \$9,000.

[25] Unfortunately, I am unable to order that a parental leave payment be made. Ms Melrose had not yet applied for parental leave; and, even if she had, the right to be paid parental leave is conferred by statute and does not arise out of the employment agreement. It is not a benefit that can be compensated under s 123 (1) (c) (ii). The reasoning for this is set out in *Huntley v Maataa Waka Ki te Tau Ihu Trust*, unreported, CA74B/08, 22 September 2008.

Costs

[26] The applicant has sought costs of \$2,000 plus disbursements, being the \$70 filing fee. I am satisfied that the amount sought is reasonable. The respondent is to pay \$2,000 in costs plus the \$70 filing fee disbursement.

Dzintra King

Member of the Employment Relations Authority