



New Zealand Employment Relations Authority Decisions

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Menzies v Safari Group (NZ) Limited (Auckland) [2013] NZERA 939; [2013] NZERA Auckland 270 (26 June 2013)

Last Updated: 4 June 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2013] NZERA Auckland 270
5391577

BETWEEN ANITA MENZIES Applicant

AND SAFARI GROUP (NZ) LIMITED

Respondent

Member of Authority: R A Monaghan

Representatives: A Menzies in person (on the request for further directions)

I Pitham, advocate for respondent

Determination: 26 June 2013

SUPPLEMENTARY DETERMINATION OF THE AUTHORITY

[1] In a determination dated 3 April 2013 I found Mrs Menzies was dismissed unjustifiably. I ordered Safari Group Limited (SGL) to reimburse Mrs Menzies for lost remuneration in the amount of two months' salary.

[2] The parties dispute whether the amount should be calculated with reference to Mrs Menzies' annual salary for full time hours of work, or pro-rated with reference to the limited hours Mrs Menzies had worked in the period prior to her dismissal. They have sought further directions from the Authority on the matter.

[3] SGL says payment should be calculated on a pro-rated basis. It pointed out that, in a letter dated 8 June 2012, it recorded the parties' agreement that Mrs Menzies' hours of work were reduced to 3 days per week. This arrangement was to continue for four weeks, when Mrs Menzies was to advise SGL of her progress towards an improvement in her health. A decision would then be made about what action was required from there.

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[4] At the end of four weeks Mrs Menzies requested an extension of 2-3 weeks if this was convenient, to which she received no answer. At about the same time SGL had decided not to continue her employment.

[5] I do not accept SGL's submission that in those circumstances the status quo prevailed - namely that Mrs Menzies' hours of work remained at 3 days per week and her lost remuneration should be calculated accordingly. SGL cannot take the benefit of its inaction in respect of the requested extension, coupled with its action in imposing an unjustified dismissal instead. Moreover, the latter dated 8 June 2012 varied the employment agreement for a limited time. In the absence of further express variation the arrangement defaulted to the originally-agreed full time hours of work.

[6] I take into account that Mrs Menzies had been unable to carry out full time hours of work, and had asked that shortened hours of work continue for another 2-3 weeks. In the circumstances I am not satisfied she would have been able to (or required to) resume full time hours promptly on the expiry of the initial four week period.

[7] I am not satisfied, either, that Mrs Menzies would have been unable to return to full time hours of work at the end of the additional 2-3 week period she sought.

[8] The appropriate calculation is:

- Mrs Menzies was entitled to one week's payment in lieu of notice, which as a matter of contract should be calculated with reference to the full time salary;
- reimbursement for the loss suffered in respect of the next two weeks is to be calculated at the pro-rated amount for a 3 day working week; and
- reimbursement for the loss suffered for the balance of the two month period is to be calculated at the rate for full time hours of work.

[9] I order accordingly.

R A Monaghan

Member of the Employment Relations Authority

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