

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2021] NZERA 583
3135182

BETWEEN

RORY-LEE MITCHELL
Applicant

AND

THE LASH BTCH LIMITED
Respondent

Member of Authority: Sarah Kennedy

Representatives: Rory-Lee Mitchell, Applicant in person
No appearance for the Respondent

Investigation Meeting: 8 September 2021 by Zoom

Determination: 23 December 2021

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Rory-Lee Mitchell (Rory) was employed by Marshall Reedy (Marshall) on behalf of the Lash Btch Limited (formally known as Girlsies Limited) to work in a beauty salon from 2 November 2020 to 25 November 2020.

[2] Rory says her employment ended abruptly by way of dismissal on 25 November 2020 when she decided not to accept an offer of a proposed business partnership with Marshall. Rory raised a personal grievance on 10 December 2020 in relation to the dismissal and now seeks arrears consisting of unpaid wages (inclusive of holiday pay), the half share of a bond for a lease on new premises (\$1,150) and the difference between the training wage and the minimum wage. She also seeks reimbursement of the application fee of \$71.56.

The Authority's investigation

[3] Lash Btch did not respond to requests for mediation or participate in the Authority's investigation. On the day of the investigation meeting, it was noted the meeting notice had been served on Lash Btch, and Marshall (on behalf of Lash Btch) declined the electronic invite to the investigation meeting which being held via Zoom.

[4] Rory provided a written statement and answered questions under affirmation from me. The investigation meeting was held via Zoom and Rory's mother attended as her support person.

Background

[5] Rory's evidence was that there was no written employment agreement, but she and Marshall agreed verbally she would work Monday to Friday 9:00am to 2:00pm, plus extra hours if needed. Shortly after Rory started working, Marshall asked her to consider entering a business partnership to run and expand the salon together.

[6] A handwritten document headed up "Partnership Agreement" that Rory says formed the basis of the discussions between them was provided to the investigation. That document appears to envisage a 50:50 partnership between Marshall and Rory and lists both parties' contributions to the start-up including a half share of a \$2,300 bond to secure new commercial premises.

[7] Rory said she delayed making a decision about the partnership because her accountant required further information. While waiting for that information, she says Marshall put pressure on her to pay a half of share of the bond straight away so the new premises could be secured, which she subsequently paid, thinking Marshall would pay her back if the partnership did not eventuate.

[8] Rory said that after a lot of consideration, she then declined the offer of partnership because she wanted to be realistic about the hours she could work and ultimately did not wish to have a management role at that time. Having said that, she offered to continue to help get the new shop up and running and to continue to work the hours she was already rostered for.

[9] Rory says that Marshall declined her offer to assist and on 25 November 2020 dismissed her by way of a Facebook message with no notice and in the following weeks, she did not receive her final pay or any holiday pay owed to her.

[10] Rory only received one payment of wages from Lash Btch on 19 November 2020 with no payslip. She now knows after making enquiries that no Kiwisaver contributions were paid and no income tax was deducted on her behalf.

[11] Rory advised me that she is now only seeking the arrears set out above and is not pursuing a personal grievance claim about the dismissal.

Analysis

Training rate

[12] Rory believes she was underpaid. She says she agreed to start on a training wage of \$15.12 until they moved into the new salon, but she was under the impression that she would receive training leading to NZQA credits or a certificate. Because she received no training, she says she should have been paid at the minimum wage instead of the training rate.

[13] The training rate does not apply to employees who are being trained at work, but it does apply to employees doing an approved industry training programme.¹ I accept Rory's evidence that she was not attending an approved industry training programme and her wages were at the applicable training rate, but it remains unclear whether the short duration of the employment relationship impacted on any proposed training. On that basis I am not satisfied the higher rate should have applied.

Bond

[14] Rory says she is entitled to reimbursement of her share of the bond payment because she never entered into the partnership with Marshall and/or she is no longer an employee of Lash Btch. In these circumstances, the claim for the bond payment can be determined by the Authority if the payment arose during the course of an employment relationship and in the work context.² If it falls within definition of an employment

¹ <https://www.employment.govt.nz/hours-and-wages/pay/minimum-wage/different-types-of-minimum-wage-rates/>

² *FMV v TZB* [2021] NZSC 102 at [93].

relationship then the Authority has exclusive jurisdiction to consider that aspect the claim.³

[15] Rory provided a copy of the lease agreement with her signature on it and ANZ deposit receipts showing two deposits of \$1,150 into an ANZ account that matches the name and bank account number of the property management company who are recorded on the lease as the “landlord”. Having also reviewed the handwritten partnership agreement and heard Rory’s evidence, I accept she paid a half share of the bond.

[16] Rory’s evidence was that although she felt pressured, in the end, she paid it in good faith thinking that if the partnership did not go ahead, Marshall would repay her. Despite the handwritten document entitled “Partnership Agreement” it is not clear whether that was a request to buy into the business or not. I consider that the partnership discussion would not have come about, but for the employment relationship (that was already established, albeit briefly) and the bond payment was squarely connected with the business because the reason for new premises was to grow the business.

[17] In those circumstances I am satisfied the bond payment was sufficiently within the work context and the employment relationship that it falls within the Authority’s jurisdiction and is therefore is a matter which I can determine.

Wages and holiday arrears

[18] I accept Rory’s evidence that she is owed 37.5 hours in unpaid wages. Her evidence was that she was paid on 19 November 2020 and she provided the break down for the 37.5 hours she worked from 16 November to 25 November 2020 when she was dismissed. At the training rate this amounts to \$567.00 and with holiday pay now comes to \$612.36.

Costs

[19] The applicant was self-represented meaning that recovery of costs is limited to the Authority’s filing fee which I consider to be appropriate to order in this case.

³ Employment Relations Act 2000, s 161(1).

Orders

[20] Under s 131 of the Employment Relations Act 2000, Lash Btch is to pay Rory-Lee Mitchell within 28 days of this determination the following amounts:

- (a) \$612.36 representing unpaid wages (gross and including holiday pay),
- (b) \$1,150.00 representing Ms Mitchell's half share of the bond.

[21] From the \$612.36 wage arrears (gross), Lash Btch is to forward the appropriate amount of tax to IRD and deduct the employee Kiwisaver contribution and also forward that to IRD along with the appropriate employer contribution.

[22] Lash Btch is also to pay Rory-Lee Mitchell the application fee of \$71.56.

Sarah Kennedy
Member of the Employment Relations Authority