New Zealand Employment Relations Authority Decisions

Mulyadi v Spotless Services (NZ) Ltd AA 41/06 (Auckland) [2006] NZERA 635 (16 February 2006)

Last Updated: 24 November 2021

Determination Number: AA 41/06 File Number: AEA 541/05

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND OFFICE

BETWEEN Aurora Mulyadi (Applicant)

AND Spotless Services (NZ) Limited (Respondent)

REPRESENTATIVES Rolf Stucki, advocate for Applicant

Paul Wallace, Advocate for Respondent

MEMBER OF AUTHORITY Robin Arthur

INVESTIGATION MEETING 13 December 2005

DATE OF DETERMINATION 16 February 2006

DETERMINATION OF THE AUTHORITY

[1] The applicant worked cleaning hotel rooms for the respondent from 20 December 2004 until she resigned on 13 January 2005.

[2] The parties agree that, following letters from the applicant and her husband to the respondent and the intervention of a Labour Inspector, all wages and holiday pay owing to the applicant were paid to her by 15 May 2005.

[3] The outstanding issue is a claim by the applicant that she was constructively dismissed. She seeks compensation for lost wages and for hurt and humiliation and her costs. The applicant's case, in short, is that she was short paid from the start of the job, that the respondent did not respond properly to her queries about this and that she felt forced to resign.

[4] The respondent says it has accepted and corrected errors in the way it paid the applicant but that she resigned prematurely without pursuing the matter fully with her employer. The circumstances, the respondent argues, were not sufficiently serious to warrant a finding of constructive dismissal.

[5] During the investigation meeting the parties requested and were granted an adjournment to discuss whether they would settle the matter between themselves. They were unable to do so and asked that the investigation proceed but that any determination not be made and issued to them before 14 February 2006. They intended to explore further whether a settlement could be reached. That opportunity was provided but I am now informed that the matter is not resolved and the parties require a determination.

[6] The issues to be determined are:

(i) whether the respondent had breached the applicant's employment agreement; and, if so

(ii) whether the breach was sufficiently serious for a reasonable employee to conclude that the employer would not meet its obligations under the employment agreement in the future.

Breach of duty

[7] The applicant signed an employment agreement on 20 December 2004. The agreement promised her $10.23 an hour for the first three months of work and $10.40 an hour thereafter.

[8] I find that, from the applicant's first day of work, the respondent breached its agreement to pay her on an hourly basis. Instead the respondent operated what was effectively a piece work payment system. As the witness statement of the respondent's executive housekeeper Shuben Sharma explained:

" ... payment could vary depending on the number of rooms cleaned by an attendant.

For example if an attendant was allocated 14 rooms to clean and only managed to clean 10 rooms in the available time they would only be paid for the number of rooms cleaned (10) multiplied by the average cleaning time (25 minutes) per room (i.e. 250 minutes of 4.16 hours) at their hourly rate of pay.

By not cleaning the rooms within the allocated 25 minutes per room the attendant in this example who may have worked from 8.15 to 2.15 would only be paid for 4.16 hours rather than the 6 hours that should be on their timesheet."

[9] The applicant accepts that before starting work for the respondent she was told about the expected number of rooms to be cleaned and the allocated amount of time for each room. She has worked as a hotel room attendant and an expected target of room numbers and cleaning times is common throughout the industry.

[10] What is not accepted is that Mr Sharma told her that this was the basis on which she would be paid. Even if I were to accept Mr Sharma's evidence that he did tell the applicant this, I find that the respondent was not entitled to pay her on that basis. On behalf of the respondent Mr Sharma signed an employment agreement with the applicant promising her to pay her on an hourly basis. No written variation to provide for payment on a piece work basis was signed by the parties.

[11] During the applicant's brief employment the respondent 'trimmed' 24.25 hours from the hours recorded on her timesheet and paid her on the basis of an allocated average cleaning time for the number of rooms she actually cleaned in her shift. I find this was a breach of duty by the respondent.

Seriousness of the breach

[12] Ms Muyaldi and her husband talked about her first week pay being for less than her hours worked. After finding her second week's pay was similarly short, she talked with Mr Sharma. I find his response was inaccurate and abrasive. He told her that she had been paid correctly on the basis of rooms cleaned and dismissed her comment that her husband was also concerned by asking whether he was a businessman who understood such matters. She says that she spoke with Mr Sharma again to complain about a shortfall in her pay but he denies a second conversation occurred.

[13] The following week, after receiving her third payslip, Ms Muyaldi resigned. She says she told Mr Sharma that this was because of the pay. He says she told him only that it was for "personal reasons". She returned her uniform and swipe card and left that day.

[14] Her husband wrote a letter of complaint to Mr Sharma that day and sent a copy to the hotel's general manager. Around three weeks later the respondent paid the applicant for 24.25 hours she

had worked and not been paid for. However the company withheld her holiday pay until a Labour Inspector intervened.

[15] To amount to a constructive dismissal, the respondent's breach of duty must be sufficiently serious to enable a reasonable employee to conclude that the employer could not be relied on to perform the terms of the agreement in the future. The employee's resignation must be a sensible and reasonable response, and not an over-reaction or hasty.

[16] After hearing the evidence of Ms Muyaldi and Mr Sharma, I find that Ms Muyaldi's resignation was hasty in the circumstances. Her two conversations – at most – with her immediate manager were not sufficient pursuit of the issue to enable her to conclude that the employer would not pay her on an hourly basis in the future. Her conclusion was premature. Her letter of complaint should have been written before she resigned. If she had done that and got no response from the company, her claim would have more weight. She had not raised her pay issues with any other manager or followed the process for dealing with employment problems set out in the staff handbook. The process sets deadlines for managers to reply to written complaints. The handbook was referred to in her employment agreement, and, although there is some doubt that a personal copy was provided to her, a copy was available on the staff noticeboard to which she had access.

Conclusion

[17] I find that the applicant was not constructively dismissed. However the respondent – through the actions of Mr Sharma – was in breach of its agreement with her to pay her on the basis of an hourly rate. The respondent may also have breached its duties to advise the applicant of the process for dealing with employment relationship problems.

[18] If the applicant had sought penalties for these breaches, I would have considered awarding penalties. The evidence was sufficient, I consider, to warrant a penalty for the breach of the employment agreement against both the respondent company and Mr Sharma individually for his role in the breach. However no penalty was sought and none is imposed.

[19] If other room attendants are being paid on a piece rate basis when they have an employment agreement providing for hourly pay, they may have grounds to seek a remedy for breaches by the respondent, including a penalty. Mr Wallace, for the respondent, told me no other room attendant has complained but that misses the point. The respondent would, in such circumstances, be in breach nevertheless.

[20] Ms Muyaldi's application is dismissed. The circumstances of this case are such that it is probably most appropriate that any costs should lie where they fall. However if there is any questions of costs, the parties are directed to attempt to resolve them between themselves. If they cannot do so the parties may file and serve submissions on the subject for determination by the Authority.

Robin Arthur

Member of Employment Relations Authority
