

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 377/09
5166484

BETWEEN PAULINE PARATA
 Applicant

AND THE \$2 SHOP LYNNMALL
 LIMITED
 Respondent

Member of Authority: Yvonne Oldfield

Representatives: Tony Kurta for Applicant
 No appearance for Respondent

Investigation Meeting: 28 October 2009

Determination: 29 October 2009

DETERMINATION OF THE AUTHORITY

Non-appearance of respondent

[1] Although a director of the respondent (Mr Salmon) wrote to the Authority upon receiving the statement of problem in this matter there was no appearance for the respondent at the investigation meeting. A track and trace of service of the notice of investigation meeting was conducted and showed that the notice was served on the respondent's registered address on 28 July 2009.

[2] This matter had also been subject to a direction to mediation with mediation to be completed by late September 2009. The mediation service advised the Authority that the direction was not complied with and that Mr Salmon had cited health issues as a factor in declining to attend.

[3] The Authority has heard nothing from Mr Salmon since he wrote in response to the statement of problem and cannot speculate on the reasons for the respondent's failure to arrange to be represented at the investigation meeting. I have therefore taken evidence from the applicant in the respondent's absence and proceed to determine the matter on the basis of that evidence.

Employment Relationship Problem

[4] This employment relationship problem concerns an allegation of unjustified dismissal. Ms Parata worked for the respondent in its Lynnmall shop from October 1999. From August 2004 she was the shop manager, pursuant to a written employment agreement entered into at that time. Ms Parata worked 45 hours a week for an annual salary of \$42,000.00 and supervised six other staff.

[5] Mr Salmon dismissed her by letter on 1 May 2009, with two weeks' pay in lieu of notice. Ms Parata was also paid out accrued holiday pay of \$7,666.26 gross. No reasons were given for the termination. Ms Parata said that without any prior warnings or suggestion of any problems with her management of the shop she simply received the letter of dismissal at her home on her day off (a Saturday.) She attempted to contact Mr Salmon to seek an explanation and to secure the written testimonial which had been promised in the letter of termination however she was unable to speak with him and the testimonial never eventuated.

[6] Ms Parata told me that it has proved very difficult to get other work in circumstances where she has been dismissed without warning or explanation after such a long time with one employer. She told me that she does not have any significant experience outside the retail sector and that this is where she has sought employment, applying for eight jobs since her dismissal. She said that potential employers have been reluctant to take her on without a reference and given the circumstances of the dismissal. Meanwhile, she has been in receipt of the unemployment benefit.

[7] Ms Parata claims lost remuneration to the date of the investigation meeting (five months pay) as well as \$10,000.00 compensation for hurt and humiliation. Ms Parata told me that she was shocked and confused by her dismissal after nine years of

what she considered good service and a good working relationship with Mr Salmon. She was also distressed by the fact that she was unable to say goodbye to colleagues and customers.

[8] The grievance was raised on 25 May 2009 in a letter from Mr Kurta but he received no response even after two further reminders. No reasons have ever been provided for the dismissal. In his letter to the Authority Mr Salmon said only that he believed he had complied with the requirements of the employment agreement. (In terms of the notice provisions, that assertion is correct.) On Ms Parata's behalf, Mr Kurta also seeks a penalty of \$3,000.00 for the respondent's failure to provide reasons for the termination.

Determination

[9] The onus is on the employer to justify a dismissal and for it to do so would require more than mere compliance with the notice provisions of the employment agreement. The respondent in this case has not provided any substantive justification for the dismissal nor has it shown that the decision to dismiss was a reasonable one based on information gathered as the result of a fair process. In the absence of any explanation from the respondent about why and how it came to the decision to dismiss, I am unable to conclude that it was justified. Ms Parata's claim succeeds.

Remedies

[10] I am satisfied that Ms Parata was distressed by the manner of her dismissal and in particular by what she called Mr Salmon's failure to talk to her "face to face." I consider the sum of \$9,000.00 to be appropriate compensation in all the circumstances. I also accept that Ms Parata has attempted to mitigate her loss and is entitled to her lost earnings in full (five months salary.) In the absence of any evidence from the respondent I make no reduction for contributory conduct.

[11] The claim for penalties is declined. Section 133 of the Employment Relations Act provides:

“(1) The Authority has full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this Act-

...

(b) for a breach of any provision of this Act for which a penalty in the Authority is provided in the particular provision.”

[12] Section 120 of the Act provides that every employer to whom a request for reasons has been made within 60 days of dismissal must within a further 14 days provide a statement of reasons. However, that section is not one that provides for a penalty in the Authority in the event of breach.

Summary of orders

[13] The respondent, The \$2 Shop Lynmall Limited, is ordered to pay to the applicant, Ms Pauline Parata, the following:

- i. \$9,000.00 compensation for hurt and humiliation, and
- ii. \$17,500.00 (gross) lost earnings.

[14] The issue of costs is reserved. Any claim for costs must be made within 28 days of the date of this determination.

Yvonne Oldfield

Member of the Employment Relations Authority