

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 298/09
5103894

BETWEEN SUSAN PARK
 Applicant

AND COFFEE SUPPLIERS
 LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Susan Park in Person
 Jo Douglas for Respondent

Investigation Meeting: 5 May 2009

Submissions Received: 29 May 2009 from Applicant
 15 May 2009 from Respondent

Further information
received: 17 June 2009; 14 July 2009; 4 August 2009

Determination: 24 August 2009

DETERMINATION OF THE AUTHORITY

[1] Ms Susan Park claims she was unjustifiably dismissed from her position as a telemarketer on 2 April 2007 after working for one day. Ms Park seeks remedies including payment of one weeks pay in lieu of notice plus holiday pay. Coffee Suppliers Limited (“CSL”) denies Ms Park was dismissed and says she left of her own accord.

The issues for this determination are:

- Was there a dismissal;
- If so, was the dismissal unjustified;
- If so what, if any remedies should be awarded?

Was there a dismissal

[2] Ms Park was employed as a Telemarketer for CSL and commenced her employment on 2 April along with two other new employees including Mr George Bodley who, like Ms Park was employed as a Telemarketer. The primary role of the telemarketer was to secure appointments with the appropriate manager of a business, on behalf of CSL's Sales representatives. The sales representatives would then attend the appointment with a view to selling the business a coffee machine. The role required cold calling by telephone.

[3] Ms Park was provided with a written employment agreement which she signed. The agreement provided for notice of one week by either party to terminate the employment relationship. The agreement also provides the employer with the discretion to pay all or some of that notice period in lieu.

[4] Mr Bodley and Ms Park were given a training session that first day by Mr Kris Robertson and Ms Jan Marrett, the Customer Service/Sales Co-ordinator. Mr Robertson demonstrated the coffee machine operations and gave a general overview of the company following which Ms Marrett showed them how to use the phones and the computer database.

[5] Mr Robertson explained to Mr Bodley and Ms Park what they were required to do and say when phoning prospective customers and provided them with a written script to follow. Ms Marrett trained them on how to record appointments on the electronic reporting sheet. Both employees were also given a sample copy of the proposal documents that set out the various options for leasing the coffee machines.

[6] Mr Bodley made 10 appointments that first day, compared with Ms Park's two. Mr Robertson said Ms Park seemed to be struggling with her new role and at one stage in the early afternoon he gave her some tips on better ways of getting her pitch across to the customers. Ms Park says Mr Robertson spoke to her in a nasty way and she felt intimidated and bullied by his approach.

[7] I find Mr Robertson went into the sales area from time to time throughout the day to listen to what the two new telemarketers were saying and to see how they were getting on. I also find that it is more likely than not that Mr Robertson did raise with

Ms Park that she was not following the “pitch” he had given her and that he gave her some advice about what to say that would help her obtain appointments for the sales representatives. Mr Robertson told me he was genuinely concerned that Ms Park was not coping with the role.

[8] At between 3.45 and 4.00pm Mr Robertson invited Ms Park into his office. In one statement provided to the Authority Ms Park says Mr Roberston “burst” into the sales room and “summonsed” her to his office. In another earlier statement provided with her Statement of Problem, Ms Park says Mr Robertson “...came bursting into the room and asked to see me in his office”. At the investigation meeting Ms Park explained that Mr Robertson seemed to be in a hurry when he came into the sales area. At the investigation meeting Ms Park could not recall what Mr Robertson’s exact words were that he used.

[9] I find on balance that it is more likely than not that Mr Robertson entered, rather than “burst” into the sales area. Further, I find it is more likely than not that Mr Robertson invited Ms Park into this office for a chat and in doing this, did what Ms Park says in her statement attached to the Statement of Problem that Mr Robertson “...asked to see me in his office”.

[10] Once in his office, Ms Park says Mr Robertson yelled at her and asked her what the problem was given that she had only made one appointment for the day. Ms Park says she tried to tell him of another appointment she had made, but that Mr Robertson was not interested in hearing about this. Ms Park says Mr Robertson conversed in a yell and this intimidated her and she felt bullied.

[11] Mr Robertson denies he yelled at Ms Park and says he explained to her that she had made an appointment outside her geographical area and that the second appointment she had made, related to a customer which already had a contract in place. Mr Robertson says that during their discussion Ms Park told him she would rather go back to gardening and that she did not like the air conditioning in the office. Mr Roberson says he told Ms Park that he was prepared to continue giving her training but that it was her decision as to what she wanted to do. After Ms Park did not respond to that he asked her if she intended coming in the next day to which Mr Robertson says, Ms Park replied no. Ms Park denies this and says that the meeting

ended with Mr Robertson told her she should go and not bother coming back the next day.

[12] It is common ground that Ms Park left the meeting and the office for half an hour after which time she then returned and passed all her sales leads onto one of the sales representatives. Ms Park collected her belongings and left the office permanently.

[13] Mr Bodley no longer works for CSL and I have, therefore treated his evidence as being neutral. He had nothing to gain from giving evidence at the investigation meeting. He told me Ms Park had told him during the day that the job wasn't for her and he therefore wasn't surprised that she did not return to work the next morning.

[14] Further, Ms Park told me in her written statement that there were no systems in place and the workplace in general was disorganised. She told me she cannot work in such an environment. She told me she didn't like the pitch document she had been given because it was bitsy and incomprehensible and she preferred to write her own script. I have had the benefit of reviewing the script provided to Ms Park and Mr Bodley on that first day. The document includes instructions to ensure the telemarketer is speaking to the decision maker and then an introduction. The script also provides specific instructions about responses to queries and how to schedule appointments for the sales representatives.

[15] I find on the balance of probabilities it is more likely than not that Ms Park was uncomfortable with her new role, was struggling to make appointments and had decided she no longer wished to be employed. Ms Park does not have a personal grievance and I am unable to be of further assistance to her.

Unpaid Wages

[16] It is common ground that Ms Park has never received payment for the day she worked for CSL. She is entitled to be paid for that day and this was recognised by Mr Robertson in his evidence. CSL has already made attempts to pay Ms Park her final pay, however, she refused to accept the cheque offered to her.

Coffee Systems Limited is ordered to pay Ms Park for the hours she worked on 2 April 2007 at the rate of \$20.00 per hour plus 8% holiday pay pursuant to s.131 of the Employment Relations Act 2000.

Costs

[17] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, Coffee Suppliers Limited may file and serve a memorandum as to costs within 28 days of the date of this determination. I will not consider any application outside that timeframe.

Vicki Campbell
Member of Employment Relations Authority