

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Michelle Perkins (Applicant)  
**AND** Harbour City Signs Limited (Respondent)  
**REPRESENTATIVES** Kathy Hughes, Advocate for Applicant  
Parvez Akbar, Counsel for Respondent  
**MEMBER OF AUTHORITY** Dzintra King  
**INVESTIGATION MEETING** 28 September 2006  
**SUBMISSIONS RECEIVED** From Applicant 5 October 2006  
From Respondent 5 October 2006  
**DATE OF DETERMINATION** 6 October 2006

**DETERMINATION OF THE AUTHORITY**

The applicant, Ms Michelle Perkins, says she was unjustifiably dismissed by the respondent, Harbour City Signs Limited. The respondent says the dismissal was justified and as Ms Perkins resigned a day after being given notice of termination and did not work out her month's notice, claims payment for a sum equivalent to the remainder of the month's notice.

Ms Perkins took up her employment as an office administrator on 2 November 2005. Her employment was terminated on 16 January 2006. Ms Perkins' employment agreement contained a probationary clause. This read:

*The parties agree that the Employee will serve a probation period of **three months** at the beginning of their employment. The Employer will provide guidance and feedback to the Employee during this probation period. If the Employer justifiably considers the Employee has failed to appropriately carry out their duties during the probation period, and the Employee has been appropriately warned and supported during the probation period, the Employer may terminate the employment upon the expiry of the probation period by providing written notice of termination as specified in the termination clause. Nothing in this clause limits the legal rights and obligations of the Employee or the Employer during or after the probation period.*

The business closed down over the Christmas New Year period so Ms Perkins' last day at work before the close down was 21 December and her first day back at work was 16 January.

Ms Karen Taylor, the company's Operations Manager, was responsible for training Ms Perkins, who had told her employer prior to being employed that she was not familiar with the company's MYOB computer system. Ms Taylor said Ms Perkins did not possess basic accounting skills. Ms Taylor said Ms Perkins had received three warnings on 18 November, 14 December and 16 December. It quickly became apparent that the first two "warnings" were not warnings at all. Ms Perkins was not told her employment was in jeopardy and she had not been told that she had been given employment warnings, The "warnings" were simply

instances of Ms Taylor telling Ms Perkins about errors she had made. This was in accordance with the obligation to provide training.

The giving of a warning of 16 December was disputed by Ms Perkins. Ms Taylor said this was the first time she had expressly told Ms Perkins her employment was in jeopardy. Apart from Ms Taylor's diary notes there were no records of the "warnings". This "warning" was procedurally unfair.

Ms Taylor said that she had been working over the Xmas New Year period and had discovered additional errors made by Ms Perkins. When Ms Perkins returned to work on 16 January she asked Ms Taylor how to reconcile the accounts for the 20<sup>th</sup> and where she should file a cheque that had come in. Ms Perkins said she wanted to ensure that what she was doing was correct because she had been away for a month. Ms Taylor said someone who claimed to have accounts experience should know how to reconcile accounts and that Ms Perkins had been told where to file cheques on a number of occasions.

After Ms Perkins had come in on 16 January and before the dismissal on that day Ms Taylor spoke to Mr Barrie Dyer, the director of the company, about Ms Perkins. They decided her employment should be terminated. Ms Perkins said that Ms Taylor told her that it was not working out for her, that there was not enough work and her employment was to cease. She also told Ms Perkins she would give her a good reference. Ms Taylor said she had said nothing about there being no work but she had told Ms Perkins she was making a lot of errors, that she would not be renewing her trial period and that she would give her a month to find other employment.

On 18 January Ms Perkins found a letter on her desk. She assumed it contained the reference she had been promised. The letter was dated 13 January (Ms Taylor said this was a typo). The letter referred to Ms Perkins having been spoken to on more than two occasions about errors she had made and said:

*As discussed, we will not be renewing your contract once your probation period has been completed being 2 February 2006. We feel the conditions of your contract are not being met to a sufficient standard.*

*We therefore give you notice as per clause 12.1 of the employment contract effective from 16 January 2006 or earlier if you find alternative employment. Your last day will be 10 February 2006.*

Ms Perkins said she was shocked to receive this letter and worked the day out. She then wrote a resignation letter saying that she did not feel she had received adequate training and that she had told the company about her unfamiliarity with MYOB. She resigned as of 18 January.

### **The Resignation**

Ms Perkins was unjustifiably dismissed and was entitled to treat the actions of the employer as a breach of her contract. She was therefore entitled to treat the contract as being at an end.

### **Decision**

The termination was unjustified. Even if Ms Perkins had been told before the close down that her employment was in jeopardy she had no opportunity to improve her performance as she was dismissed on her first day back for inquiring about how to carry out some tasks. She was given no indication that the termination of her employment was being contemplated at that stage, the reasons for it were not put to her so she had no opportunity to respond and the decision was predetermined. The basic elements of procedural fairness were not met.

Additionally, the probationary clause provided for termination at the end of the three month period. Ms Perkins was dismissed after less than seven weeks' employment. While I can

understand an employer's frustration if an employee is not picking things up as quickly as expected there is an obligation to provide training over a reasonable period of time and the parties had agreed that that time period was to be three months.

### **Remedies**

Ms Perkins is seeking lost wages and compensation. Ms Perkins worked part time for the respondent - 16.5 hours at \$21 per hour. She had obtained other employment within 2 weeks but that was only for 6 hours a week. Ms Perkins is entitled to be paid two weeks' salary in full - \$693.00. She is entitled to be recompensed for her loss of earnings for the remainder of the three month period minus her earnings in that period - \$2,580.00.

She said the effect of the dismissal was that she came to doubt her own skills and abilities and felt she could not work in an office environment any more so she took on reception work. She has sought \$5,000 as compensation. The evidence does not satisfy so high an award. The respondent is to pay Ms Perkins the sum of \$2,000.

### **Contribution**

The process undertaken by the employer was fundamentally unfair so it is not possible to ascertain whether Ms Perkins' errors and alleged lack of skills were sufficiently serious to justify the dismissal or to constitute contributory conduct.

### **Repayment of month's notice**

There is no contractual provision requiring this and the employer was unable to identify any loss suffered as a consequence of Ms Perkins' early departure. Furthermore, the dismissal letter made it clear that she would have been released within the notice period if she found other employment.

### **Costs**

If the parties are unable to resolve this issue the applicant should file a memorandum within 28 days of the date of this determination. The respondent should then file a memorandum in reply within 14 days of receipt of the applicant's memorandum.

Dzintra King  
Member  
Employment Relations Authority