



[4] Phoenix provided a sample copy of an individual employment agreement but not a copy signed by Ms Artho. The agreement provided that the employer was able to deduct monies from wages caused by “negligence, traffic offences and such similar matters.” Private use of the car was prohibited.

[5] Ms Artho said she had not signed an employment agreement. She also claimed that she had not been an employee of Phoenix. I find Ms Artho was an employee of Phoenix and that she did not sign an individual employment agreement.

[6] In terms of recovery of the money the employment agreement would not have assisted the company as it provided only for deductions from wages.

[7] Ms Artho claimed she was using the car for business purposes. She said she had taken the car to recharge the battery for the following day’s work as she had had to jump start it the previous day. I note the Police report says that Ms Artho gave no explanation for her actions after the accident.

[8] In *Katz v Mana Coach Services Ltd* [2011] NZEmpC 49 the Court stated that common law authorities established that an employer not liable to indemnify an employee against the consequences of the employee’s own fault; and the employee may lose the right of indemnity or reimbursement where any liabilities or expenses sought arise from employee’s breach of duty, negligence or other fault.

[9] Although Ms Artho had not signed an employment agreement she was nonetheless an employee and bound to carry out her duties in a proper and responsible manner.

[10] I find Ms Artho did not exercise reasonable skill and care and breached her employment agreement by driving the employer’s vehicle while intoxicated. As a result of that breach the vehicle was written off. The employer is entitled to damages for that breach.

[11] The evidence provided by Mr Smith indicates that the replacement value of the vehicle was in the vicinity of \$10,000. He also claims storage and towing costs of \$1,225.13.

[12] Ms Artho is to pay to the company the sum of \$10,000.00 for the vehicle and the sum of \$1,225.13, being stowing and storage costs.

[13] Ms Artho is also to pay the respondent the sum of \$71.56, being the filing fee.

Dzintra King

Member of the Employment Relations Authority