



Loader continued Ms Rangi's employment as a Waitress and Grill Cook until April 2010 when Ms Loader offered, and Ms Rangi accepted, the position of Manager for Ms Loader's shop in Napier called Rainbow Fish Supplies.

[2] Ms Rangi claims that in July 2010 she was dismissed from her position and that the dismissal is unjustified and seeks remedies including lost wages and compensation. Ms Rangi also claims that Ms Loader has breached the good faith obligations of the Employment Relations Act (the Act) and seeks a penalty for not providing a written employment agreement. In her statement of problem Ms Rangi sought reinstatement to a position with Ms Loader, however, that claim was withdrawn at the investigation meeting.

[3] Ms Rangi lodged a statement of problem in the Authority on 7 September 2010. Despite a reminder, no statement in reply was received from Ms Loader.

[4] In a memorandum dated 14 October 2010 Ms Loader was advised that the matter had been set down and should she attend the investigation meeting, she would require leave to reply or respond to Ms Rangi's application.

[5] Even though the matter had been set down, the Mediation Service of the Department of Labour continued to try and arrange a suitable mediation date and venue for the parties. The Authority was advised however, that Ms Loader had suffered serious injuries in a car accident and she was unable to attend mediation.

[6] The scheduled investigation meeting proceeded and arrangements were made to accommodate Ms Loader's injuries. On 17 November 2010 the Authority reminded Ms Loader, via email, that due to her failure to lodge a statement in reply, she would require the leave of the Authority if she wished to respond or defend the matter.

[7] Ms Loader attended the investigation meeting and made an oral application for leave. Leave was granted on the basis that in the interests of justice it is better for the Authority, when investigating claims before it, to have both sides of the story.

[8] The issues for the Authority are:

- was Ms Rangi dismissed unjustifiably and if so what (if any) remedies is she entitled to;

- did Ms Loader breach her obligations of good faith; and
- should a penalty be awarded for a breach the statutory obligation to provide a written employment agreement.

### **Was Ms Rangi Dismissed**

[9] Ms Rangi was pleased to accept the offer to move to Napier as the shop manager as she saw the new job as a promotion and an opportunity to advance herself. In readiness for her move Ms Rangi arranged for a tenant for her property in Taupo who took a lease over the property for a two year period. Ms Rangi also viewed the move to Taupo as somewhat of a sacrifice as her father was terminally ill and her mother had limited ability to care for him due to her own health problems.

[10] Ms Rangi moved herself and her possessions to Napier and commenced her new job on 1 April 2010. There was no written employment agreement, however Ms Rangi says it was agreed that she would work 50 hours each week and be paid \$600 nett. The records produced by Ms Rangi show she was paid for 50 hours per week at \$16.00 per hour during her employment in Napier.

[11] Ms Loader told the Authority that it was her intention that Ms Rangi would be employed in Napier on a long term basis. At the commencement of her employment Ms Loader made several trips to Napier to assist Ms Rangi and to provide guidance.

[12] On one of the first trips to Napier, Ms Rangi told Ms Loader she was struggling with the staff and things were not working out. In her oral evidence Ms Rangi told the Authority she pleaded with Ms Loader to give her one more month to prove that she could pick things up. Ms Loader agreed.

[13] Ms Loader says the business lost money and the turnover of the shop decreased. Ms Loader says it became so bad that she decided to sell the shop to her son. Ms Loader says the sale occurred in July.

[14] Ms Loader encouraged Ms Rangi to take some leave which she did in July. While she was on leave and in Taupo, Ms Loader called Ms Rangi to a meeting. At this meeting Ms Loader advised Ms Rangi that she had sold the shop and Ms Rangi did not need to return to Napier. Ms Loader says she offered to assist Ms Rangi to relocate her possessions back to Taupo.

[15] I am not sure the shop was actually sold as a business. At the investigation meeting Ms Loader told the Authority that her daughter had previously owned the shop. Her daughter had a mortgage over the shop which Ms Loader took over under her own name. Ms Loader continues to service that mortgage. There has been no sale and purchase agreement signed by herself as vendor and her son as purchaser. Ms Loader and her husband continue to supply all the meat for the shop.

[16] It seems to me that what has occurred, is Ms Rangi has been dismissed from her position as manager and Ms Loader's son has been put into the position in her place. From the evidence I have deduced that the arrangements with Ms Loader's son is that he runs the shop and takes any profits. He is not paid as an employee. However, the fact remains that Ms Rangi was dismissed from her position and that dismissal came out of the blue.

[17] Standing back and assessing the actions of Ms Loader and how she acted I am satisfied she did not act as a fair and reasonable employer would have in all the circumstances.

[18] Ms Rangi was unjustifiably dismissed and is entitled to remedies.

## **Remedies**

### *Contribution*

[19] As required by section 124 of the Act I have considered whether Ms Rangi has contributed to the action giving rise to the dismissal. At the investigation meeting Ms Rangi accepted she was not coping with the staff and agreed that the income for the shop was declining. Ms Rangi told me that she begged for a chance to turn things around and was given one month to do so.

[20] Ms Rangi had taken on a job as a manager of a retail shop. She was accountable for its success or otherwise. When the shop started losing money it was Ms Rangi's job to turn it around. She failed to do this and the consequence was, that Ms Loader could no longer afford to pay a Manager to look after the shop.

[21] Given Ms Rangi's role as manager I find she has contributed to the actions giving rise to her personal grievance. I assess that contribution as being 50%.

*Lost wages*

[22] Ms Rangi seeks reimbursement of three months lost wages. Ms Rangi found alternative employment through her mother on 27 September 2010. Ms Rangi was without paid employment for 12 weeks.

[23] Ms Rangi wrote to Ms Loader on 12 July 2010 setting out her personal grievance and asking for a full time job back at Stag Park at the rate of pay she had in Napier. In response, Ms Loader offered Ms Rangi part-time work at that rate (that is \$16.00 per hour). Ms Rangi did not respond to that offer. I find Ms Rangi could have mitigated part of her loss to the extent of the part-time job Ms Loader was offering her, but she chose to ignore the offer.

[24] I have calculated the payment of lost wages at Ms Rangi's gross rate which was \$800 per week (being 50 hours at \$16.00 per hour). The order for reimbursement of lost wages will be subject to my findings on contribution.

**Ms Loader is ordered to pay to Ms Rangi the sum of \$4,800 gross pursuant to section 123(1)(b) of the Act within 28 days of the date of this determination.**

*Compensation*

[25] Ms Rangi seeks the payment of \$8,000 under this heading. Ms Rangi has provided compelling evidence as to the hurt and humiliation she suffered as a result of her dismissal including that she became homeless as she had leased her property, that she was embarrassed to have the big move for a better job and was now back home, dependant on her parents and with nothing to show for it. Ms Rangi said she felt like a laughing stock.

[26] Taking into account the circumstances of her dismissal I am satisfied a reasonable sum for compensation would be \$6,000. This sum is subject to my findings on contribution.

**Ms Loader is ordered to pay to Ms Rangi the sum of \$3,000 pursuant to section 123(1)(c)(i) of the Act within 28 days of the date of this determination.**

*Other money lost*

[27] Ms Rangi seeks reimbursement of \$300.00 for the costs associated with moving her belongings back to Taupo after her dismissal. At the meeting on 2 July 2010 Ms Loader offered to help with bringing Ms Rangi's personal effects back to Taupo.

[28] I am satisfied \$300 was a reasonable expense and is money Ms Rangi would not have expended but for her unjustified dismissal. It is therefore money lost as a result

of the grievance. As this sum is a reimbursement of actual costs it shall not be subject to my finding on contribution.

**Ms Loader is ordered to pay to Ms Rangi the sum of \$300 without deduction pursuant to section 123(1)(b) of the Act within 28 days of the date of this determination.**

**Did Ms Loader breach her obligations of good faith?**

[29] Ms Rangi was dismissed without any notion of procedural fairness. I am not satisfied Ms Loader was being entirely open and honest with Ms Rangi when she told her the shop had been sold. It was clear from Ms Loader's evidence at the investigation meeting that she still pays the mortgage on the business. In effect she continues to own the assets of the business.

[30] Section 4 of the Act requires employers proposing to make a decision that will have an adverse effect on the continuation of employment of one of its employees to provide access to information relevant to the continuation of the employment and an opportunity to comment on the information before a decision was made.

[31] In this case, Ms Loader made the decision to remove Ms Rangi from her job without affording her the opportunity to view information and comment on it, prior to the decision being made. I find that was a breach of her obligations of good faith towards Ms Rangi.

[32] No penalty has been sought for this breach and therefore none will be awarded.

**Should a penalty be awarded for a breach the statutory obligation to provide a written employment agreement**

[33] Section 63A(2) requires employers to provide an employee with a copy of the intended employment agreement and provide the employee an opportunity to seek advice about the agreement and a reasonable time in which to do so. Section 63A(3) provides that every employer who breaches section 63A will be liable to a penalty imposed by the Authority.

[34] I find Ms Loader has failed to meet her obligations under the Act to provide Ms Rangi with a copy of her employment agreement. Ms Loader is therefore liable to a penalty.

**Ms Loader is ordered to pay a penalty in the sum of \$1,000 pursuant to section 63A(3) of the Act within 28 days of the date of this determination. The penalty is to be paid to the Crown.**

### **Costs**

[35] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If they are not able to reach agreement on the matter of costs, Ms Rangi may lodge and serve a memorandum as to costs within 28 days of the date of this determination. Ms Loader will have 14 days from the date of service to lodge a reply memorandum. No application for costs will be considered outside this time frame without prior leave.

[36] In order to assist the parties with resolving costs themselves, I can indicate (subject to any submissions) that a tariff based approach to costs is likely. In which case the usual starting point would be around \$3,000 (GST inclusive) per day. That figure would then be adjusted in light of the particular circumstances of this case which my records show took less than half a day in investigating.

Vicki Campbell  
Member of Employment Relations Authority