

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 37/10
5143272

BETWEEN GAYLE RANGIWANANGA
 Applicant

AND CADO HOLDINGS LIMITED
 Respondent

Member of Authority: Philip Cheyne

Representatives: Gayle Rangiwananga, the Applicant in person
 No Appearance for the Respondent

Investigation Meeting 19 February 2010 at Christchurch

Determination 22 February 2010

DETERMINATION OF THE AUTHORITY

[1] Gayle Rangiwananga worked fulltime for Cado Holdings Limited from about late February 2008 until she was dismissed in October 2008. In her statement of problem Ms Rangiwananga says that she was unjustifiably dismissed and that she was unjustifiably disadvantaged in her employment by being given a written warning a month or so before the dismissal. To remedy these grievances Ms Rangiwananga seeks compensation for lost remuneration and compensation for distress.

[2] In its statement in reply Cado Holdings Limited says that it did nothing wrong and did not dismiss Ms Rangiwananga. The statement in reply was lodged by Catherine Doherty who is the sole director and shareholder in the company.

No appearance for the respondent

[3] A phone conference was convened on 8 September 2009. Ms Doherty told the Authority that the company was insolvent and would be wound up. The applicant's

representative was asked to seek instructions in light of that information. When that produced no definitive response, I scheduled an investigation meeting. Notice of that meeting and the requirement for the parties to attend with any witnesses was served on Ms Rangiwananga and on the company at its registered office.

[4] Ms Rangiwananga appeared this morning but there was no appearance on behalf of the company. There being no good reason for the company's non appearance I decided to proceed. I should note that the company is still on the Register of Companies and has not been wound up.

Unjustified disadvantage grievance

[5] Ms Rangiwananga's evidence which I accept is that she was given a written warning on 3 September 2008 without any prior discussion or opportunity to comment on the reasons for the warning. The warning letter refers to documented customer and staff complaints since 9 June about Ms Rangiwananga and her alleged rude, disrespectful and belligerent behaviour. The company has not provided any of this documentation, either to Ms Rangiwananga during her employment, or to the Authority.

[6] Ms Doherty required Ms Rangiwananga to attend a meeting on 4 September to talk about the issues in the warning letter. Ms Rangiwananga asked to defer that meeting until 8 September so she could have the opportunity to get advice and/or representation. Ms Doherty refused to do this and, at the meeting on 4 September, simply reiterated the allegations and conclusions expressed in the 3 September letter.

[7] None of this is consistent with the actions of a fair and reasonable employer or how such an employer would act. Matters of concern should have been raised with Ms Rangiwananga as they occurred rather than being documented for later use. A meeting should have been arranged with Ms Rangiwananga being given notice of its purpose and an opportunity to get advice and/or representation. The various complaints including any documentation should have been put to Ms Rangiwananga and any response from her should have been considered and assessed before any conclusions were reached

[8] Ms Rangiwananga's employment was affected to her disadvantage by the company's unjustified action. Her security of employment was undermined and it

made her work environment much less satisfactory. Accordingly, Ms Rangiwananga has established a personal grievance.

Unjustified dismissal grievance

[9] Following the warning the working environment was stressful and difficult for Ms Rangiwananga.

[10] On 9 October 2008 Ms Rangiwananga attended work as usual at 5.30am. Ms Doherty spoke to Ms Rangiwananga about a customer complaint and Ms Rangiwananga provided an explanation. The way that Ms Doherty raised this complaint upset Ms Rangiwananga. Ms Rangiwananga rang a friend to get some advice about what to do. From that Ms Rangiwananga decided that she was too upset to continue working that day and went to tell Ms Doherty that she felt stressed and was going home. Ms Rangiwananga was visibly upset. However, Ms Doherty told her that if she left she would be abandoning her employment. Ms Doherty swore at Ms Rangiwananga while saying this. Ms Rangiwananga left with Ms Doherty yelling the same message as she went.

[11] Ms Rangiwananga saw her doctor at about 2.30pm on 9 October. The doctor certified Ms Rangiwananga as unfit for work from 9 October until 26 October (inclusive). Ms Rangiwananga attempted to fax a copy of the medical certificate to Ms Doherty later that afternoon. The company's phone system only permitted manual receiving of faxes and whoever answered the phone did not transfer the call so as to receive the fax. However, Ms Rangiwananga was eventually able to successfully send the medical certificate by fax at about 6.00am the next day (10 October).

[12] At about 10.00am on 10 October a person delivered to Ms Rangiwananga by hand a letter dated 9 October. The letter says *At 7.20am today you left the premises of Eats on Orbell with no explanation and no follow up telephone call. This constitutes abandonment of employment and as such is grounds for instant dismissal. Accordingly you are to uplift your final pay ...on Monday 14 October 2008 at 12.45pm.*

[13] Ms Rangiwananga sought legal advice and on 14 October her representative wrote to Ms Doherty setting out the basis for her two personal grievance claims and suggesting mediation as a first step. Mediation did not resolve the matter and these proceedings were eventually initiated.

[14] I do not accept the assertion in the statement in reply that Cado Holdings did not dismiss Ms Rangiwananga. The letter dated 9 October but delivered on 10 October clearly constitutes a sending away at the employer's initiative.

[15] There has been no attempt to justify the dismissal other than the reference in the dismissal letter to Ms Rangiwananga leaving the workplace on the morning of 9 October. I do not accept that Ms Rangiwananga abandoned her employment. She left because she was upset as a result of Ms Doherty's conduct against the background of the earlier personal grievance and its effects. I accept Ms Rangiwananga's evidence that she was visibly distressed before she left the worksite. The distress was sufficient for the general practitioner who saw Ms Rangiwananga later that day to certify her as unfit for work for more than two weeks. All that leads me to conclude that Ms Doherty knew well enough the reason for Ms Rangiwananga's departure that morning. In addition, the medical certificate had been received by Cado Holdings Limited well before the dismissal letter was delivered. Even looking at the situation in the best light possible from the company's perspective, this was not a situation where a fair and reasonable employer would have dismissed an employee.

[16] Finally, the way Cado Holdings Limited acted falls well below how a fair and reasonable employer would have acted in the circumstances.

[17] It follows that Ms Rangiwananga has a personal grievance of unjustified dismissal.

Remedies

[18] There is no evidence to support a contention that Ms Rangiwananga contributed to the circumstances of the disadvantage grievance. Further, while Ms Rangiwananga contributed to the dismissal by leaving the workplace, her actions were not blameworthy. She became upset, went to leave work, got abused by her employer and later dismissed when the employer knew that she had been certified as medically unfit for work.

[19] There is evidence, which I accept, about Ms Rangiwananga's distress, upset and anger about the warning. Ms Rangiwananga wrote a letter to Ms Doherty in which she labelled the accusations and warning as *unjust and fabricated* and an attack on her character and integrity. Ms Rangiwananga continued to work for a month or so afterwards in a tense and stressful situation which was caused by the warning and

the manner of its delivery. I assess compensation to remedy these effects at \$3,000.00.

[20] There is also evidence of significant distress caused by the unjustified dismissal. Ms Rangiwananga was on a sickness benefit for about 4 months after the termination of her employment because of depression, both grievances being a material cause of that state of affairs. I accept Ms Rangiwananga's evidence that her depression had receded before the dismissal but it took hold of her afterwards. The best that can be said from the company's perspective is that Ms Rangiwananga appears to have got on with her life now. I assess compensation to remedy these effects at \$12,500.00.

[21] Ms Rangiwananga lost remuneration as a result of her dismissal grievance. Her evidence which I accept is that she was on a sickness benefit until sometime in February 2009. She was sick because of the dismissal. Because Ms Rangiwananga could not be precise about when she returned to work, I will limit the period covered by compensation to the first 3 months after the dismissal. Accordingly to wage records Ms Rangiwananga's ordinary rate of pay was \$13.50 per hour or \$540.00 (gross) per week. She is entitled to compensation of \$7,020.00 (gross) as a result.

Orders

[22] Cado Holdings Limited is to pay Ms Rangiwananga compensation of \$3,000.00 pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000.

[23] Cado Holdings Limited is to pay Ms Rangiwananga compensation of \$12,500.00 pursuant to s.123(1)(c)(i) of the Employment Relations Act 2000.

[24] Cado Holdings Limited is to pay Ms Rangiwananga compensation of \$7,020.00 pursuant to s.123(1)(b) and s.128(2) of the Employment Relations Act 2000.

[25] Costs are reserved.