

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Ashleigh Robinson (Applicant)
AND Kirsty Gill t/a Gills Cleaning Services (Respondent)
REPRESENTATIVES Garth O'Brien for Applicant
No appearance for Respondent
MEMBER OF AUTHORITY Vicki Campbell
INVESTIGATION MEETING 10 August 2006
DATE OF DETERMINATION 14 August 2006

DETERMINATION OF THE AUTHORITY

[1] No statement in reply has been received from the respondent. I am satisfied the respondent received the statement of problem.

[2] On 4 July 2006 a copy of the notice of investigation meeting was couriered to the respondent. The track and trace details relating to that courier package show that Ms Gill signed for the documents at 11.05am on 5 July 2006. I am satisfied the respondent has been served notice of the investigation meeting.

[3] The investigation meeting commenced at 10.00am on 10 August 2006. The respondent did not make an appearance at that time. The notice setting down the investigation meeting sets out the consequences of non-attendance. I adjourned the meeting briefly at 10.01am to allow the respondent the opportunity to appear. At that time I also looked up Ms Gills telephone number in the white pages and passed the number on Ms Debbie Marsh, Employment Relations Authority Support Officer. At about 10.10am Ms Marsh advised me that she had attempted to make contact with Ms Gill but to no avail. Ms Marsh rang both the home phone number and Ms Gills cellphone number and left messages explaining that the investigation meeting was about to get under way, provided the address for attendance and also asked that Ms Gill contact Ms Marsh on her direct line. The respondent did not appear at the investigation meeting and at the time of this determination being drafted had not made contact with Ms Marsh.

[4] I reconvened the investigation meeting at about 10.15am and considered the matter in terms of Clause 12 of Schedule 2 of the Act which empowers the Authority to proceed to act fully in a matter if a party fails to attend or be represented without good cause.

Employment relationship problem

[5] Ms Ashleigh Robinson was employed by Kirsty Gill t/a Gills Cleaning Services in July 2004. Her initial terms of employment included hours of work of 9am to 3pm, five days a week and an hourly rate of \$10. In June 2005, Ms Gill gave Ms Robinson a copy of an employment agreement to read which had already been signed by Ms Gill. Ms Robinson told me at the investigation meeting that she did not sign the employment agreement because there were matters in the agreement that she wanted to have the opportunity to negotiate with Ms Gill.

[6] At the same time as the employment agreement was provided, by agreement, Ms Robinson's working hours increased to 9am to 5pm on the same five days per week, and her wages increased to \$10.30 per hour. Ms Robinson's evidence at the investigation meeting was that she ended up working not only her day shifts but for quite some time she was also working some night shifts. This meant she would work from 9am to 5pm and then would commence work on a night shift at 6pm and work until 9pm or 11pm. This situation occurred on about three nights per week. Ms Robinson was also working some additional hours on some weekends on either a Saturday or Sunday for about six hours.

[7] The number of hours Ms Robinson was working began having an impact on her health. With that in mind she met with Ms Gill and advised her that she could no longer continue working the night shifts because of the effect on her health. Ms Robinson told Ms Gill that she would have to give the night shift hours up. Shortly after that conversation, Ms Gill arrived at Ms Robinson's home and told her that she expected her to do the extra hours and that if she was not prepared to do the night shift, then she should not bother coming back to work.

[8] In September, a new employee called Rachel Pu commenced work with Kirsty Gill t/a Gills Cleaning Services. Following Ms Pu's engagement, Ms Robinson noticed that her own day shift hours were decreasing. She discovered that Ms Gill was giving Ms Pu work that Ms Robinson had previously undertaken. The effect of this was that on some days, rather than working the seven hours she had previously been working on a daily basis, Ms Robinson would work as little as one hour. Naturally, this had a corresponding affect on her pay as she was paid for each hour worked.

[9] Throughout her employment relationship with Ms Gill, Ms Robinson told the Authority that it was not uncommon, at least once a month, for her pay to be up to four days late. On these occasions, Ms Robinson would notify Ms Gill that she had not been paid and Ms Gill would then

pay her. Ms Robinson was paid by direct credit into her bank account. Ms Robinson was reasonably forgiving about this situation even though she faced dishonoured fees from her bank.

[10] However, the situation began to take its toll when Ms Robinson's hours and pay were reduced. On 18 November 2006 Ms Robinson was not paid her fortnightly wages. On 25 November 2006 she decided that enough was enough. She approached Ms Gill who invited her into her office. Ms Robinson advised Ms Gill that she just wanted an explanation as to why her pay was late again. Ms Robinson says that Ms Gill started accusing her of doing cash jobs and wasting her time, which Ms Robinson denied. Ms Robinson told me that Ms Gill then asked her to write a resignation. Ms Robinson says she refused to write a resignation when handed a piece of paper and pen but did write down that Kirsty Gill was trying to get her to resign. At that point, Ms Gill told Ms Robinson that she was a liar, and that she was fired.

[11] Ms Robinson claims her dismissal was unjustified and is claiming payment of outstanding wages and holiday pay, together with compensation for the affect the dismissal had on her.

[12] I am satisfied that Ms Robinson was dismissed by Ms Gill. Ms Gill told her she was fired and sent her away. I am satisfied that the actions of Ms Gill and the way she acted was not what a fair and reasonable employer would have done in all the circumstances. Ms Robinson has a personal grievance and is entitled to remedies.

Remedies

Arrears of wages

[13] I am satisfied, based on the evidence provided at the investigation meeting, that Ms Robinson is owed arrears of wages that remain outstanding of \$71.00. That sum has been calculated by adding the wages of \$185.00 unpaid as at 25 November and due for the fortnight ending on 18 November, to the \$86.00 due for the hours worked for period 22 to 25 November inclusive. Ms Robinson advised me that she received a payment of \$200 in December following the termination of her employment and I have taken that into account in my calculations.

[14] Ms Robinson also claims an amount of \$216 for holiday pay which has not been paid. That amount seems to be on the light side given that Ms Robinson worked for Ms Gill for a period of at least 18 months. However, I am satisfied the amount sought remains outstanding and is payable by Ms Gill.

Pursuant to s.131 of the Employment Relations Act, Kirsty Gill t/a Gills Cleaning Services is ordered to pay to Ms Robinson an amount of \$287.00 gross for arrears of wages and outstanding holiday pay within 28 days of the date of this determination.

Compensation

[15] Ms Robinson's distress was evident at the hearing. She gave compelling evidence of the financial difficulties that arose for her following her dismissal. Ms Robinson told me that over the Christmas period she was quite distressed, she was unable even to go to her doctor to get a Ventolin prescription filled because she simply had no money. Ms Robinson told me that the loss of her job had a significant impact on her.

[16] I am satisfied that Ms Robinson had suffered humiliation and distress as a result of the unjustified dismissal and is entitled to compensation for that suffering.

[17] Section 124 of the Employment Relations Act 2000 requires the Authority to take into account the extent to which the actions of the employee contributed to the situation that gave rise to the personal grievance and if the actions so require for the remedies to be reduced accordingly. I am satisfied that Ms Robinson has not contributed in any way to her unjustified dismissal.

Taking an overall view of the circumstances giving rise to the personal grievance, I order Kirsty Gill t/a Gills Cleaning Services to pay \$3,000 without deduction pursuant to s.123(1)(c)(i) of the Employment Relations Act within 28 days of the date of this determination.

Costs

[18] Costs are reserved.

Ms Robinson is directed to serve a copy of this determination on Kirsty Gill trading as Gills Cleaning Services forthwith.

Vicki Campbell
Member of Employment Relations Authority