

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 196/08
5100781**

BETWEEN MICHELLE VALERIE SKINNER
Applicant

AND LIME RECRUITMENT LIMITED
Respondent

Member of Authority: Leon Robinson

Representatives: Applicant In Person
No Appearance for Respondent

Investigation Meeting: 28 May 2008

Determination: 28 May 2008

DETERMINATION OF THE AUTHORITY

The problem

[1] The applicant Ms Michelle Valerie Skinner (“Ms Skinner”) asks the Authority to investigate the termination of her employment with Lime Recruitment Limited ("Lime"). Ms Skinner says she was unjustifiably dismissed. She seeks formal orders from the Authority to resolve her personal grievance.

[2] Ms Skinner's application lodged in the Authority on 23 April 2008 was served on Lime on 24 April 2008. Lime did not lodge a statement in reply and as a result the application is not defended. Lime has taken no steps in the matter. I set the application down for investigation meeting today.

[3] Lime did not attend the investigation meeting today. I was satisfied that Lime had not shown good reason not to attend the scheduled investigation meeting. As a result and in accordance with the prescribed regulations, I proceeded to act as fully in the matter as if Lime had attended.

[4] I am satisfied the notice of investigation meeting was served on Lime on 15 May 2008. Lime did not attend the investigation meeting to seek the Authority's

leave. Accordingly, the matter remains undefended and Ms Skinner's affirmed evidence is unchallenged.

The facts

[5] Ms Skinner was employed by Lime as a Receptionist & Recruitment Administrator. She commenced the employment on Monday 20 August 2007 and agreed to work two days per week for one month and then full-time thereafter.

[6] On Wednesday 12 September 2007 Ms Skinner was called away from work to collect her ill daughter from childcare. Ms Skinner left a message for Lime's director Nicola Fraser ("Ms Fraser") advising her of the situation and seeking approval to work the following day.

[7] Lime's other director Ms Adriana Rodrigues telephoned Ms Skinner later at 4.00pm that same day. Ms Rodrigues enquired about Ms Skinner's daughter. She told Ms Skinner not to come in the following day but also, that Ms Skinner was not needed anymore because the company (Lime) "was not ready for [her] yet". Ms Rodrigues thanked Ms Skinner for her work and wished her well. Ms Skinner said "okay" resigning herself to the situation she was confronted with and said she would post her key back to Lime.

The merits

[8] I find that Ms Rodrigues' advice to Ms Skinner at 4.00pm on 12 September 2007 was a sending away and constitutes a dismissal. I now determine whether that dismissal was unjustifiable.

[9] The test of justification is prescribed at Section 103A of the *Employment Relations Act 2000* ("the Act"). That section provides:-

103A. Test of justification

For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.

[10] Lime does not co-operate in the Authority's investigation to justify its decision to terminate Ms Skinner's employment. I accept Ms Skinner's unchallenged evidence and there is nothing in her evidence which suggests to me any justification whatsoever for the termination of Ms Skinner's employment. Consequently, I have no hesitation in finding that Lime's actions in terminating Ms Skinner's employment were not the actions of a fair and reasonable employer. The dismissal is unjustifiable.

The determination

[11] **I find that Ms Skinner was unjustifiably dismissed.** She has a personal grievance. She is entitled to remedies in settlement of that personal grievance.

The resolution

[12] I am bound by section 124 of the Act to consider the extent to which Ms Skinner's actions contributed towards the situation that led to the personal grievance I have found, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly. **I find that Ms Skinner did not contribute in any way to the situation that led to her unjustifiable dismissal.**

Reimbursement

[13] Ms Skinner was without income for eight weeks following her dismissal. I am satisfied that she took steps to find alternative work. Eventually she obtained her present employment in November 2007. I am satisfied that Ms Skinner has suffered loss of income. I award her reimbursement in the gross sum of eight weeks wages. I calculate that gross sum as \$5,760.00 (8 weeks x 40 hours @ \$18.00 per hour). **I order Lime Recruitment Limited to pay to Michelle Valerie Skinner the gross sum of \$5,760.00 as reimbursement.**

Compensation

[14] Ms Skinner says that following the termination of her employment she was "completely stressed out". She found it difficult to manage her finances and particularly the costs of childcare and she and her partner were forced to borrow funds from her parents. Her stress caused some difficulties in her relationship. Ms Skinner tells the Authority she also found it embarrassing to have to tell people she had been "laid off" from a job she had not long started and that she had also told people was a

very good job. She is disappointed the employment did not continue because she was keen to establish a career in human resources.

[15] I accept that Ms Skinner has suffered humiliation, loss of dignity and injury to her feelings. Having regard to her evidence, her length of service and the nature of her personal grievance, I award her \$3,000.00 compensation. **I order Lime Recruitment Limited to pay to Michelle Valerie Skinner the sum of \$3,000.00 as compensation.**

Costs

[16] As Ms Skinner was not represented by professional advocate, there will be no order for costs.

Leon Robinson
Member of Employment Relations Authority

SUMMARY OF ORDERS

Lime Recruitment Limited is ordered to pay to Michelle Valerie Skinner:-

- (i) the gross sum of \$5,760.00 as reimbursement; &**
- (ii) the sum of \$3,000.00 as compensation.**