



New Zealand Employment Relations Authority Decisions

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Tautari v Gemlee Limited t/as Ernesto WA141/10 (Wellington) [2010] NZERA 759 (7 September 2010)

Last Updated: 16 November 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

WA 141/10 5160663

BETWEEN KAHLI TAUTARI

Applicant

AND GEMLEE LIMITED

TRADING AS ERNESTO Respondent

Member of Authority: Representatives:

Investigation Meeting: Determination:

P R Stapp

No appearance and no representative for Applicant Wendy Marsland for Respondent

7 September 2010

7 September 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a statement of problem dated 12 June 2010 the applicant claimed that the respondent deducted wages and she has requested the Authority to recover the money.

[2] The respondent denied the claim saying that it paid the applicant.

These proceedings

[3] The parties attended mediation services provided by the Department of Labour. However, the Authority was still required to investigate the matter. The Authority's support officer was advised, when attempting to organise a case management conference, that the applicant's representative was having difficulties getting instructions from the applicant. Without any developments occurring from the applicant I set the matter down for an investigation meeting on notice (7 September 2010).

[4] On 1 September 2010 the applicant's representative withdrew representation for the applicant. The lawyer concerned advised the Authority that the applicant had been notified of the hearing and that all correspondence from the Authority had been forwarded to her email address and messages left on her cell phone. This was followed up by the Authority's support officer with the applicant by email and enclosing the paperwork. Nothing has been heard from the applicant.

[5] The applicant did not appear, and was not represented at the Authority's investigation meeting. I delayed the start of the investigation meeting to enable the support officer to contact the applicant. The applicant did not return the support officer's telephone call.

[6] There has been no good cause for the applicant's failure to appear and or to be represented at the Authority's

investigation meeting. I was satisfied that the applicant had been notified of the investigation meeting by her lawyer at the time notice was provided. I decided to act fully in the matter as if the applicant had attended or been represented (clause 12 Schedule 2 of the Employment Relations Act).

Issues

[7] Has there been an unlawful deduction to the applicant's wages? Has the applicant been paid?

The facts

[8] The applicant commenced working for Gemlee Limited trading as Ernesto on 22 January 2009. She was employed as a Front of House Team Member to serve food and beverages and provide service for customers at the company's Cuba Street cafe in Wellington. She was provided with an individual employment agreement in an offer of employment dated 27 January 2009. The employment was subject to agreement on the terms. The agreement was not signed, but the employment continued.

[9] The employment ended on or about 13 May 2009. **Determination**

[10] An individual employment agreement was presented to the applicant after she had started work. When the applicant's employment ended a deduction was made in the final pay under clause 5.4 of the employment agreement. The deduction covered an overpayment and the cost of various items that were listed for the applicant. The respondent believed it could act under the employment agreement to make a deduction.

[11] However, after the employment relationship problem was filed in the Authority, the respondent decided that because the employment agreement had not been signed off it was obliged to pay the applicant the deducted amount, and did do so by depositing \$512.75 in the applicant's bank account on or about 26 June.

[12] Since the sum of money has been paid, paid in good faith, and paid quickly, there is no employment relationship problem for me to deal with. That ends the matter.

[13] The applicant's failure to attend and to pursue her claim properly means that there is no reason to award her any costs. If she has incurred costs prior to the investigation meeting she will have to pay them herself. The respondent was not represented and dealt with the matter through a director.

[14] At 12.02 pm on 7 September 2010 the applicant contacted the Authority to say she would not be taking the matter any further in the Authority. This confirms my decision to close her application.

P R Stapp
Member of the Employment Relations Authority