

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2020] NZERA 480
3061753

BETWEEN TARA TWINING
 Applicant

A N D LUGGATE HOTEL 2016 LTD
 Respondent

Member of Authority: Peter van Keulen

Representatives: No appearance by the Applicant
 Rodney Bowler for the Respondent

Investigation Meeting: 20 November 2020

Submissions Received: 20 November 2020 from the Respondent

Date of Determination: 23 November 2020

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Luggate Hotel 2016 Ltd (LHL) employed Tara Twining as a kitchen hand working in the bar it operates in Luggate. Ms Twining only worked for a short period of time before there was an altercation one evening at the bar involving Ms Twining's partner at the time (the altercation).

[2] Ms Twining was upset at what occurred and took exception to what she perceived were the actions of the bar manager and some of the other staff. Ms Twining raised her concerns with LHL but it appears that she remained unhappy and in the end she did not return to work.

[3] A few days after the altercation, Ms Twining returned her uniform to LHL and then she raised a personal grievance alleging unjustified disadvantage and unjustified dismissal. Ms Twining also claimed she had not been paid her correct wages or holiday pay.

[4] Ms Twining was unable to resolve her grievances with LHL and lodged a statement of problem with the Authority alleging:

- (a) The altercation and LHL's failure to deal with her concerns over it were a breach which led to her resigning and this amounted to a constructive dismissal.
- (b) LHL's failure to deal with her concerns over the altercation were an unjustified action which caused disadvantage to her employment.
- (c) LHL had failed to keep appropriate employment documents for her including wage and time records and holiday and leave records, for which Ms Twining sought various penalties.
- (d) LHL had failed to pay her wages and holiday pay correctly, including an allegation that LHL made unauthorised deductions, for which Ms Twining sought wage arrears and a penalty.

[5] LHL denied these various claims stating that Ms Twining remained employed after the altercation, being rostered to work on a normal basis. LHL understood Ms Twining had some concerns about the altercation and it invited her to meet with her manager or others from LHL on several occasions which Ms Twining declined; rather than discuss her concerns Ms Twining threatened to bring a claim against LHL, subsequently returned her uniform indicating she no longer wished to work for it and then raised her personal grievance. LHL also stated that all records were kept and it provided relevant documents to show this and that all wages and holiday pay had been paid correctly.

[6] I investigated Ms Twining's claims on 20 November 2020 and gave an oral indication on that day that all claims were dismissed. This determination records my reasoning and confirms that outcome.

Process

[7] On 28 August 2019 I held a case management conference for this matter. At that time Ms Twining had a representative acting for her and he attended the call along with Rodney Bowler of LHL. In that conference I made directions for the progression of this claim to an investigation meeting which was to take place on 4 February 2020.

[8] Ms Twining's representative subsequently ceased acting for Ms Twining but she confirmed she was able to proceed without a representative and that 4 February 2020 was still suitable for the investigation meeting.

[9] On 3 February 2020 Ms Twining advised the Authority that she had suffered a bereavement and would be unable to attend on 4 February. The investigation meeting was cancelled.

[10] The Authority then followed up with Ms Twining asking her to confirm when she thought she might be able to proceed with her claim. It was not until 3 July 2020 that Ms Twining confirmed to the Authority that she wished to proceed with her claim.

[11] The parties were then offered various dates for an investigation meeting. On 12 July 2020 Ms Twining advised the Authority that the 20 November 2020 date was suitable and Mr Bowler confirmed this was also suitable for LHL.

[12] On 13 July 2020, the Authority confirmed to the parties that the investigation meeting was scheduled for 20 November 2020 and on 12 August 2020 a Notice of Investigation Meeting was served on the parties; this notice confirmed the date, time and venue for the investigation meeting.

[13] On 6 November 2020 that Authority contacted the parties and reminded them of the arrangements for the investigation meeting on 20 November 2020.

[14] On 20 November 2020 Ms Twining was not at the Queenstown District Court by 9:30 am when the investigation meeting was due to start.

[15] I waited a further 30 minutes before commencing my investigation meeting to allow Ms Twining additional time to turn up or to contact the Authority to advise if she was delayed

or unable to attend. Ms Twining did not advise the Authority of any delay or that she would be unable to attend and by 10:00 she was still not at the Queenstown District Court.

[16] Mr Bowler for LHL was present at 10:00 am.

[17] I was satisfied that Ms Twining was aware of the time date and location of the investigation meeting, I had given additional time for her to attend or to contact the Authority if she was delayed, and, further, as the Notice of Investigation Meeting served on Ms Twining had set out that the Authority could proceed in either party's absence, I decided to proceed with my investigation.

Analysis of Ms Twining's claims

[18] As Mr Bowler was present at the investigation meeting I heard evidence from him and was able to confirm through him the nature, extent and veracity of the documents previously lodged with the Authority.

[19] Based on this evidence I am satisfied the following occurred:

- (a) There was an altercation at the LHL bar involving Ms Twining's then partner and staff of LHL in mid-October 2018.
- (b) The nature and extent of the altercation was described to me but I do not consider it appropriate nor necessary to record this for the purposes of my determination given what occurred and that some of the participants were not present at my investigation to give evidence about what they were alleged to have done.
- (c) Ms Twining was upset by the altercation and raised this with LHL.
- (d) LHL responded to Ms Twining's concerns, inviting her to various meetings to discuss them.
- (e) During this time Ms Twining remained employed at LHL and was rostered on to work but she did not attend for work at the LHL bar.
- (f) Ms Twining then asked for her holiday pay to be paid; LHL was confused by this as Ms Twining had not resigned so it sought to clarify this.

(g) Ms Twining responded by threatening to bring a claim for her holiday pay and she then returned her work uniform.

(h) Ms Twining then raised a personal grievance through her advocate for unjustified action and unjustified dismissal on 23 October 2018.

[20] I am satisfied that Ms Twining resigned because of the events in October 2018. However I am not satisfied that LHL breached any of its obligations to Ms Twining through what occurred; in fact it met its obligations through its employees' actions during the altercation and subsequently when LHL sought to understand and resolve Ms Twining's concerns over the altercation.

[21] So there was no action that would support a personal grievance for unjustified action causing disadvantage nor was there any breach that would support a constructive dismissal claim.¹

[22] LHL did pay Ms Twining her holiday pay and wages correctly and there was no unauthorised deduction as alleged. If there was any delay in paying Ms Twining's holiday pay this was occasioned by LHL seeking to confirm Ms Twining's employment status following her request to be paid her holiday pay. There is no basis for Ms Twining's wage arrears claims nor any basis for a penalty to be imposed.

[23] LHL did keep appropriate employment records for Ms Twining and produced them when requested. There is no basis for penalties to be imposed as claimed.

[24] In conclusion, all of Ms Twining's claims are dismissed.

Peter van Keulen
Member of the Employment Relations Authority

¹ *Auckland Shop Employees Union v. Woolworths (NZ) Ltd* [1985] 2 NZLR 372 (CA) at 374-375.