

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Janine Anne Welsh (Applicant)  
**AND** Occidental Hotel (1998) Limited (Respondent)  
**REPRESENTATIVES** Janine Anne Welsh in person  
Jacque Cameron for the respondent  
**MEMBER OF AUTHORITY** Philip Cheyne  
**INVESTIGATION MEETING** 4 February 2005  
**DATE OF DETERMINATION** 8 February 2005

**DETERMINATION OF THE AUTHORITY**

***Employment Relationship Problem***

[1] Janine Welsh lodged a statement of problem in which she claimed that she had not received final wages upon the termination of her employment with her employer who she identified as *Jacque Cameron/Dumelow*. Ms Welsh seeks payment of those wages and also seeks a remedy for a tax payment owed by her to IRD caused by her employer's delays in filing PAYE tax deduction details.

[2] Jacque Cameron lodged a reply disputing most of the facts set out by Ms Welsh.

[3] Ms Cameron was not available for the phone conference although the date and time had been agreed with her in advance. In that circumstance there was little point in directing the parties to mediation so I simply scheduled an investigation meeting, notice of which was properly served on Ms Cameron.

***Respondent's Identity***

[4] While Ms Welsh identified Ms Cameron personally as her employer, it is clear that the business which employed Ms Welsh was owned and operated at the relevant time by a company called Occidental Hotel (1998) Limited. Jacque Cameron (formerly Mrs Dumelow) and her ex-husband (Paul Dumelow) were the shareholders and directors of the company. Ms Welsh worked for the company for some years and knew that the business was owned and operated by the company although there was never any written employment contract or agreement. For most of the time, Mr Dumelow managed the business and Ms Cameron had little to do with its running.

[5] The disputed events occurred after Ms Cameron had separated from Mr Dumelow. After the separation, Ms Cameron assumed responsibility for managing the business. While Mr Dumelow had left and thereafter had nothing to do with the management of the business, that does not alter

the fact that Ms Welsh was employed at all relevant times by the company. Accordingly, I substitute the name of the company for that of Ms Cameron as the correct respondent.

### ***Facts and Issues***

[6] While Ms Welsh and Ms Cameron did not agree on much, there are very few factual disputes that need to be resolved.

[7] Ms Welsh's claim for a payment from the respondent to cover her tax liability is straight forward because the facts are not in dispute. Ms Welsh received a benefit at the relevant time but she was also working at the Occidental. Her practice was to estimate her future earnings to ensure that she did not get paid more benefit than was her entitlement. Understandably, Ms Welsh did not want to be in the position of having to repay a lump sum at the end of the financial year. Unfortunately, Ms Cameron was late filing IRD PAYE returns and that resulted in Ms Welsh being paid her benefit without her wages in the relevant period being assessed. The result was an overpayment of the family assistance benefit and Ms Welsh was eventually assessed as owing those arrears.

[8] The difficulty with Ms Welsh's claim is that she had already received the money which she eventually had to repay to IRD. On that analysis, she has suffered no financial loss although I do appreciate she suffered precisely the problem that she wanted to avoid; ie, owing a lump sum. The other difficulty for Ms Welsh is that the company committed no breach of her terms and conditions of employment by not filing its IRD returns on time. I therefore dismiss this part of Ms Welsh's problem.

[9] The second part of the problem is the claim for arrears. During the investigation meeting it emerged that Ms Welsh had made a complaint to the Department of Labour in respect of unpaid holiday pay and as a result of the Labour Inspector's actions, had received a payment from her former employer. She was unable to tell me whether the payment included her last few days wages which had been withheld by Ms Cameron. Ms Cameron told me that she withheld the wages to offset against the statutory holiday pay that had been paid in advance to Ms Welsh the week before the termination of the employment. Ms Cameron now acknowledges that those actions are not supported by the law. Having checked the Labour Inspector's file, I am satisfied that the payment made to Ms Welsh was solely holiday pay and did not include the wages for time worked in her last week of work.

[10] As mentioned, there are no written terms of employment. The respondent cannot say that it can hold wages owed against an obligation to forfeit wages in lieu of proper notice. Whether there was a dismissal or a resignation, the respondent must still pay Ms Welsh the wages due for the time actually worked by her. That amounts to \$420.00 (gross) and I order the respondent to pay that sum to Ms Welsh.

[11] Ms Welsh is also entitled to be paid the commissions due to her for the sale of ancillary products. There was agreement that the sales totalled \$1983.50. Commission was due at the rate of 5% on the GST exclusive sales figure (\$1763.11) so Ms Welsh is due \$88.16 (gross). I order the respondent to pay that sum to her.

[12] The final aspect of Ms Welsh's claim is for time that she would have worked but for the termination of her employment. I decline to make any award for this claim. For Ms Welsh to succeed with this part of the claim, I would need to be satisfied that she had a personal grievance against the respondent that was raised within 90 days of the grievance arising on 22 December 2003. There is no evidence that any personal grievance was raised with the respondent within time.

The Authority therefore does not have jurisdiction to make any award even if I was satisfied that Ms Welsh had been unjustifiably dismissed.

[13] Finally, Ms Welsh sought costs, being the lodgement fee. Having enjoyed a measure of success, Ms Welsh is entitled to have the respondent reimburse the lodgement fee of \$70.00

***Summary***

[14] The respondent is to pay Ms Welsh:

- a. Arrears of wages of \$420.00 (gross),
- b. Commissions due of \$88.16 (gross),
- c. Costs of \$70.00.

Philip Cheyne  
Member of Employment Relations Authority