

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Ani Aerengamate (Applicant)

**AND** Optimum Performance (Lifestyle) Limited (First Respondent)  
**AND** Optimum Performance (Lifestyle) Youth Trust (Second Respondent)

**REPRESENTATIVES** Anita Legge, Counsel for Applicant  
No appearance for First Respondent  
No appearance for Second Respondent

**MEMBER OF AUTHORITY** Dzintra King

**INVESTIGATION MEETING** 13 April 2006

**ADDITIONAL EVIDENCE  
SUPPLIED** 15 May 2006

**DATE OF DETERMINATION** 9 June 2006

DETERMINATION OF THE AUTHORITY

The applicant, Ms Ani Aerengamate, claims that she has been unjustifiably dismissed and claims lost wages and compensation for humiliation and distress.

Neither of the respondents appeared at the hearing. After the hearing I took evidence from Mr Steven McDowall, the Chief Operating Officer of the second respondent. He stated that the applicant had been employed by the second respondent and supplied me with copies of an employment agreement (not signed by the applicant) and the time and wages records. I am satisfied that the employer was the second respondent.

As the employer chose not to appear I took evidence from the applicant and my determination is based on that unchallenged evidence. I find that the applicant was unjustifiably dismissed.

Remedies

*Reimbursement*

Ms Aerengamate commenced employment on 19 August 2003 as a caregiver and was dismissed on 8 September 2003 with a week's notice. Her last day at work was 15 September 2003.

Her normal hours of work were 4pm until 11pm at the rate of \$10 per hour. During the short period of her employment Ms Aerengamate was paid \$1,795. Ms Aerengamate said she applied for other

jobs and obtained part time employment with Rosebuds and Anchor. Section 128 (2) provides that if an employee has lost remuneration as a result of a personal grievance then the employer is to pay three months' lost remuneration. Reimbursement for a longer period is discretionary. Although reimbursement was sought until June 2004 when the applicant obtained full time employment no reasons were given for the seeking of a payment of lost remuneration for the period exceeding the three months. The applicant had employment difficulties shortly after commencing employment. It is difficult to ascertain how long the employment would have lasted. In the circumstances I decline to award reimbursement for more than the three month period.

I do not have start and finish dates for the employment obtained since dismissal so cannot make the appropriate calculations. The applicant should provide details of her earnings within the three months after dismissal to both the Authority and the second respondent and the parties should then calculate the amount owing. Should there be difficulties in doing this leave is reserved to refer the matter back to the Authority.

### *Compensation*

Ms Aerengamate has sought the sum of \$10,000 as compensation pursuant to s.123 (c) (i). She told me she had been very shocked and very embarrassed by the dismissal and hurt by the fact that it had been premeditated. She had really enjoyed her job and thought she had established good relationships with the boys for whom she was caring. The second respondent is to pay the applicant the sum of \$2,500.

### Costs

The applicant should file a costs memorandum within 28 days of the date of this determination. The second respondent should then file a memorandum in reply within 14 days of receipt of the applicant's memorandum.

Dzintra King  
Member of Employment Relations Authority