

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 255/07  
5093018

BETWEEN LAI CHOON (SHARON) LEE  
Applicant

AND BRETT STOREY T/A THE ALTERATION  
SHOP  
Respondent

Member of Authority: Leon Robinson

Representatives: Applicant In Person  
No attendance by Respondent

Investigation Meeting: 21 August 2007

Determination: 22 August 2007

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**DETERMINATION OF THE AUTHORITY**

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[1] The applicant Ms Lai Choon (Sharon) Lee ("Ms Lee") says she was unjustifiably dismissed and is owed wage arrears of annual leave and statutory holidays.

[2] Contrary to the prescribed regulations, the respondent Mr Brett Storey trading as The Alteration Shop ("Mr Storey") did not lodge a statement in reply. Ms Lee's statement of problem was served on him on 9 July 2007. As no steps were taken, by a memorandum of 27 July 2007 I directed the matter proceed to an investigation meeting today and that Mr Storey be served with the memorandum and a Notice of Investigation Meeting. The memorandum particularly advised that Mr Storey could attend to seek the Authority's leave to defend the application.

[3] I am satisfied that the memorandum and a notice of investigation meeting have been served on Mr Storey. Mr Storey does not attend the investigation meeting today to seek the Authority's leave. Accordingly, the matter remains undefended and Ms Lee's sworn evidence is unchallenged.

**The holiday pay**

[4] Ms Lee commenced employment with Mr Storey on 15 December 2003. She worked Monday to Friday each week from 8.00 am to 4.00 pm. Her employment terminated on 2 July

2007. I calculate Ms Lee's total annual leave entitlement over the entire period of her service as 56 days as follows:-

15 December 2003 to 14 December 2004	15 days
15 December 2004 to 14 December 2005	15 days
15 December 2005 to 14 December 2006	15 days
15 December 2006 to 1 July 2007 <sup>1</sup>	11 days
<b>Total</b>	<b>56 days</b>

[5] Ms Lee says that although she was permitted her annual leave, she was not paid when she actually took her leave. Instead her employer made sporadic payments in addition to her weekly wages acknowledging his liability to her. I have sighted evidence of this acknowledgement.

[6] Ms Lee says that her employer has paid to her a total of 32 days as annual leave over the entire period of her service as evidenced by her payslips as follows:-

6 October 2005	1 day
13 October 2005	5 days
20 October 2005	5 days
27 October 2005	2 days
29 December 2005	1 day
8 June 2006	2 days
15 June 2006	2 days
22 June 2006	2 days
29 June 2006	2 days
6 July 2006	2 days
19 October 2006	2 days
23 November 2006	2 days
30 November 2006	1 day
28 December 2006	1 day
<b>Total</b>	<b>30 days</b>

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<sup>1</sup> Calculated on 4 weeks annual leave and pro-rated

[7] Accordingly, I find that Ms Lee is owed annual leave of 26 days. Using her hourly wage of \$15.50<sup>2</sup> at 8 hours per day, that yields a total sum owing of \$3,224.00. **I order Brett Storey to pay to Lai Choon (Sharon) Lee the gross sum of \$3,224.00 as arrears of wages being outstanding annual leave.**

#### **The statutory holidays**

[8] Ms Lee further claims four days wages for statutory holidays on 25 and 26 December 2003 and 1 & 2 January 2004. I am satisfied that she is owed this sum. Using her hourly wage of \$15.50 at 8 hours per day, that yields a total sum owing of \$496.00. **I order Brett Storey to pay to Lai Choon (Sharon) Lee the gross sum of \$496.00 as arrears of wages being statutory holiday pay.**

[9] As Ms Lee has not had the use of these sums I think it fit she has interest on it. **I order Brett Storey to pay to Lai Choon (Sharon) Lee interest on the total judgment sum of \$3,720.00 at the rate of 11% per annum from 2 July 2007 to the date of payment.**

#### **The dismissal**

[10] Ms Lee claims she was unjustifiably dismissed. I accept her unchallenged evidence that following her return from holiday on Monday 2 July 2007, Mr Storey's manager Mrs Charmaine Rawson told her that the Alteration Shop had been restructured and was now under new ownership. Mrs Rawson told Ms Lee she (Ms Lee) was no longer needed. When Ms Lee asked who the new owners were Mrs Rawson replied it was confidential.

[11] I accept that Ms Lee was sent away by Mr Storey's agent Mrs Rawson and that she establishes a prima facie case of unjustifiable dismissal. That sending away was a dismissal and Mr Storey does not attend today to justify that action. In the absence of any evidence of justification, **I find that Ms Lee was unjustifiably dismissed. Ms Lee has a personal grievance and she is entitled to remedies in settlement of that grievance.**

[12] Having made those findings and in considering both the nature and the extent of the remedies to be provided, I am bound to consider the extent to which Ms Lee's actions contributed towards the situation that gave rise to the personal grievance, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly. I find that Ms Lee did not contribute to the situation that led to her personal grievance.

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<sup>2</sup> She had a pay rise to \$16.00 per hour from 29 November 2006

[13] Ms Lee claims reimbursement of two weeks wages. I am satisfied she has suffered that loss. **I order Brett Storey to pay to Lai Choon (Sharon) Lee the gross sum of \$1,280.00 as reimbursement.**

[14] Ms Lee also claims compensation. She says she was depressed and upset when she was sent away by Mrs Rawson. She says the situation was very stressful for her because she had a mortgage to pay and other financial commitments. She further says her dismissal was humiliating following her return from leave and after her three and a half years of good service to Mr Storey. I accept she has suffered loss. **Having regard to her evidence, the nature of the dismissal and her length of service, I order Brett Storey to pay to Lai Choon (Sharon) Lee the sum of \$5,000.00 as compensation.**

### **Costs**

[15] Ms Lee is entitled to have her lodgement fee reimbursed to her. **I order Brett Storey to pay to Lai Choon (Sharon) Lee the sum of \$70.00 being the lodgement fee on this application.**

Leon Robinson  
Member of Employment Relations Authority

### **Summary of Orders**

**Brett Storey is ordered to pay to Lai Choon (Sharon) Lee:-**

- (i) the gross sum of \$3,224.00 as arrears of wages being outstanding annual leave;**
- (ii) the gross sum of \$496.00 as arrears of wages being statutory holiday pay;**
- (iii) interest on the total judgment sum of \$3,720.00 at the rate of 11% per annum from 2 July 2007 to the date of payment;**
- (iv) the gross sum of \$1,280.00 as reimbursement;**
- (v) the sum of \$5,000.00 as compensation;**
- (vi) the sum of \$70.00 being the lodgement fee on this application.**