

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 395/09  
5156031**

BETWEEN      PETER WILLIAM HUNT  
                    Applicant  
  
AND              PECKS      COTTAGE      BAKERIES  
                    LIMITED  
                    Respondent

Member of Authority:      Leon Robinson  
  
Representatives:              Applicant In Person  
    No appearance by Respondent  
  
Investigation Meeting:      10 June 2009  
    5 November 2009  
  
Determination:                10 November 2009

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**DETERMINATION OF THE AUTHORITY**

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**The problem**

[1]      The applicant Mr Peter William Hunt ("Mr Hunt") claims arrears of wages and unjustifiable constructive dismissal. The respondent former employer Pecks Cottage Bakeries Limited ("Pecks") denies Mr Hunt's claims.

[2]      While the respondent was represented at the first investigation meeting by its director Mr Christopher John Peck ("Mr Peck"), it chose not to be represented at the second investigation meeting. It further failed to comply with a direction to lodge an amended statement in reply.

**The facts**

[3]      Mr Hunt was employed by Pecks as a baker and was employed for some six years having commenced in May 2003. The terms of the employment were not recorded in a written employment agreement.

[4] At the end of February this year, Mr Peck spoke to Mr Hunt and mentioned that as business was slow he was going to "cut" Mr Hunt's hourly rate and working hours by one hour per day. While Mr Hunt accepted that business was slow, and agreed to reduce his work hours by one per day, he did not agree to accept a reduced hourly rate and stated so. Despite Mr Hunt's disagreement, Mr Peck declared the reductions would take effect from the following week 26 February 2009. Mr Hunt was not pleased but did not learn the actual reductions until he saw his bank statement on 7 March 2009. He then learned his wages had been reduced by \$78.72 net.

[5] At work on 9 March 2009 Mr Hunt approached Mr Peck unhappy with the reduced wages. Mr Peck reacted angrily and stated that Mr Hunt had agreed to a reduced hourly wage. Mr Hunt protested that he had not. Mr Hunt asked to be paid his full hourly rate but Mr Peck refused. Mr Hunt then declared that he had no choice but to resign and gave one weeks notice. Mr Peck said "good, you can f... leave".

[6] On Monday 16 March 2009, Mr Hunt commenced work at 4.00am. He worked to 12.30pm and then collected his personal effects. When he approached Mr Pecks for his final wages and holiday pay Mr Pecks became abusive. He said that Mr Hunt would not be paid his final wages or holiday pay. Mr Hunt abused Mr Pecks in retaliation and then left.

[7] By direct credit transfer on 18 March 2009, Pecks paid to Mr Hunt's bank account the sum of \$1.00.

## The merits

### **Arrears of final pay**

[8] Mr Hunt claims he is owed three days final wages at his hourly rate of \$25.00.

[9] I prefer and accept Mr Hunt's sworn evidence that he is owed three days final wages. I prefer Mr Hunt's evidence that he did not agree to a reduced hourly rate and therefore he is owed \$600.00 gross final wages (being 3 days x 8 hours @ \$25.00 per hour). That sum is to be reduced by the \$1 credit to Mr Hunt's bank account.

**Arrears of holiday pay**

[10] Mr Hunt claims he is owed two weeks holiday pay being the balance of accrued annual leave owing to him at the end of his employment. His evidence is not challenged.

**Unjustifiable constructive dismissal**

[11] The settled tests for constructive dismissal are:-

- (i) did the employee resign?
- (ii) was the resignation caused by a breach of duty on the part of the employer?
- (iii) if it was, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach.

[12] Mr Hunt raised a personal grievance of constructive dismissal by facsimile transmitted to Pecks on 18 March 2009.

[13] I find that Mr Hunt did resign. I further find that that resignation was acknowledged by Mr Peck when he told Mr Hunt "good, you can f... leave".

[14] I find that Mr Hunt did not agree to reduce his hourly rate and Mr Peck unilaterally altered Mr Hunt's contractual terms of employment by reducing Mr Hunt's hourly rate without agreement. That unilateral variation to the terms of contract constituted a breach of duty on Peck's part.

[15] I have no doubt that Mr Hunt's six year employment came to an end entirely because of Peck's breach of duty to him. I find that the breach of duty was serious enough that it was reasonably foreseeable that Mr Hunt would resign.

**The determination**

[16] I determine that Pecks is liable to Mr Hunt for arrears of wages in respect of his outstanding wages and holiday pay.

[17] I determine that Mr Hunt has a personal grievance for unjustifiable constructive dismissal. He is entitled to remedies in settlement of that personal grievance.

### The resolution

[18] **I order Pecks Cottage Bakeries Limited the gross sum of \$599.00 as arrears of wages.** As Mr Hunt has stood out of this sum, I think it fit that he have interest on it. **I order Pecks Cottage Bakeries Limited to pay interest on the judgment sum of \$599.00 at the rate of 4% per annum from 16 March 2009 until the date of payment.**

[19] **I order Pecks Cottage Bakeries Limited the gross sum of \$2,000.00 as arrears of wages.** As Mr Hunt has stood out of this sum, I think it fit that he have interest on it. **I order Pecks Cottage Bakeries Limited to pay interest on the judgment sum of \$2,000.00 at the rate of 4% per annum from 16 March 2009 until the date of payment.**

[20] Having found that Mr Hunt was unjustifiably constructively dismissed and in considering both the nature and the extent of the remedies to be provided, I am bound by section 124 of the *Employment Relations Act 2000* to consider the extent to which Mr Hunt'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 Mr Hunt did not contribute to the situation that led to his personal grievance and there is no basis to reduce either the nature or extent of the remedies to be provided to him.**

### Reimbursement

[21] I am satisfied that Mr Hunt has lost income as a result of the personal grievance I am satisfied that he took steps to mitigate his losses by applying for and interviewing for alternative employment. Mr Hunt eventually secured other employment at Pak'n'Save six weeks after the termination of his employment with Pecks. I therefore grant him six weeks gross wages as reimbursement. **I order Pecks Cottage Bakeries Limited to pay to Peter William Hunt the gross sum of \$6,000.00 as**

**reimbursement.**

### **Compensation**

[22] Mr Hunt said that the way in which his employment ended caused him to feel upset and insecure. He says he felt very intimidated by Mr Peck. He points to the direct credit to his bank account of \$1.00 as indicative of a very insensitive and arrogant attitude by Mr Peck. I find that is an aggravating feature of the dismissal. I am satisfied that Mr Hunt has suffered hurt and humiliation, embarrassment and loss of dignity as a result of the personal grievance I have found. Having regard to his evidence, his length of service and the nature of the personal grievance, I award Mr Hunt \$2,000.00 as compensation. **I order Pecks Cottage Bakeries Limited to pay Peter William Hunt the sum of \$2,000.00 as compensation.**

### **The costs**

[23] Mr Hunt is entitled to be reimbursed his lodgement fee on this application. **I order Pecks Cottage Bakeries Limited to pay the sum of \$70.00 to Peter William Hunt being the lodgement fee on this application.**

Leon Robinson  
**Member of Employment Relations Authority**