

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 302/09
5137306
5136298

BETWEEN

AIR NATIONAL
CORPORATE LIMITED
Applicant

VALERIE PAMART
APPLICANT

AND

VALERIE PAMART
Respondent

AIR NATIONAL
CORPORATE LIMITED
RESPONDENT

Member of Authority: Dzintra King

Representatives: Gary Blair, Counsel for Air National Corporate Limited
No Appearance by Valerie Pamart

Investigation Meeting: 13 July 2009

Determination: 25 August 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Air National Corporate Limited (“Air National” or “the company”) seeks a compliance order that Ms Valerie Pamart pay it the sum of \$25,126.15 being the residual amount owed under the terms of her employment agreement.

[2] Ms Pamart filed personal grievance proceedings against Air National alleging that she had been unjustifiably constructively dismissed.

[3] Shortly before the hearing date Ms Pamart asked whether she needed to attend in person and whether her witnesses needed to attend. Although the Notice of

Hearing set out the consequences of non attendance I notified Ms Pamart that both she and her witnesses would need to attend unless there was good reason for witnesses not to appear. Ms Pamart was also notified that if she did not appear then the case brought against her by Air National would be heard and determined in her absence and that if she did not appear to pursue her personal grievance proceedings it was likely that they would be dismissed.

[4] Ms Pamart then sought an adjournment which I refused to grant.

Background

[5] Ms Pamart was offered a position on 17 March 2008 and commenced as a pilot on 9 May 2008.

[6] Ms Pamart was not able to take up employment until she had completed studies and had been examined to gain a New Zealand Air Transport Pilot's Licence ("APTL"), to undertake training for and successful completion of a type rating to fly the Westwind II aircraft.

[7] During April and early May she undertook training in the United States and obtained the required type rating.

[8] Under the terms of the employment agreement Ms Pamart was to pay back on a pro rata basis the amount advanced for the training if she left her employment before serving two years. The sum due at termination reduces on a pro rata basis for each month's completed service over a period of two years.

[9] The company offered to consider a staged repayment of the bond. This offer was not taken up.

[10] Ms Pamart completed some 3 months' service as a pilot. The bond sum in terms of clause 36 of the individual employment agreement was reducible at the rate of \$1,250 per completed month. Accordingly, the residual sum due at termination is \$26,250. Ms Pamart has not contested the accuracy of the amount sought. The

company has deducted from the amount owing monies owing but not paid to Ms Pamart upon termination. The amount still owing is \$25,126.15.

[11] I am satisfied that Ms Pamart owes the amount sought and pursuant to s 137 make an order that Ms Pamart pay the sum of \$25,126.15 within 21 days of the date of this determination.

[12] Air National has asked that interest be awarded on this sum. Ms Pamart is to pay interest on the above amount of \$25,126.15 at the rate of 2.7%, the interest to run from the date of this determination until such time as the amount is paid in full.

Personal Grievance

[13] Ms Pamart did not appear to pursue her personal grievance. The application for adjournment had not been granted. Ms Pamart had been made aware that the proceedings could be dismissed and that costs could be awarded.

[14] I dismiss the personal grievance.

Costs

[15] Air National seeks costs in relation to both matters. Cost of \$2,000 are sought in relation to the compliance order application and \$3,000 in the personal grievance matter.

[16] The actual costs for Air National total \$4,752.81. This includes GST, the filing fee and 27.5 hours' preparation at \$150 per hour.

[17] Mr Blair accepted that the competing applications by the parties were fundamentally related to the same cause of action and that the costs involved for each were difficult to separate by way of proportion but that the majority of the costs incurred related to the personal grievance.

[18] Ms Pamart's failure to notify the Authority or Air National of her request for an adjournment within a reasonable time period meant that Air National had to expend time and money to prepare for the personal grievance claim.

[19] Ms Pamart is to pay Air National the sum of \$3,500 in costs and the \$70 filing fee.

Dzintra King

Member of the Employment Relations Authority