

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 101/10
5292284

BETWEEN TONY JAMES WALLACE
 AND KATHLEEN AGNES
 MARAEA HUDSON
 Applicants

AND DR PETER YEE TRADING
 AS TURANGI CABINS AND
 HOLIDAY PARK
 Respondent

Member of Authority: P R Stapp

Representatives: Tony Wallace and Kathleen Hudson in person
 No appearance and no representative for the Respondent

Investigation Meeting: 20 May 2010 at Wellington

Determination: 27 May 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Tony Wallace and Kathleen Hudson were employed to manage a holiday park, but during their employment difficulties occurred between them and the owner, Peter Yee, about bills being paid and difficulties with the behaviour of a man staying at the holiday park. The man had to be removed by the Police. The power was turned off because the power bill had not been paid by Peter Yee. The relationship between Mr Wallace, Ms Hudson and Peter Yee became strained because of communication difficulties and Peter Yee's anger. Peter Yee allegedly dismissed both applicants and did not pay them their outstanding pay.

[2] There has been no statement in reply provided by Peter Yee. He was requested to provide wage time and holiday records but has not done so.

[3] I considered mediation as I must under s 159 of the Employment Relations Act. My consideration of this has been recorded in an earlier minute following a telephone case management conference and sent to both parties.

Failure of Dr Yee to appear and or be represented

[4] Peter Yee did not appear at the Authority's investigation meeting and was not represented. He has been served with the application and notice of investigation meeting. He knew of the date of the investigation meeting as early as the Authority's telephone case management conference on 22 March 2010. A memorandum dated 22 March 2010 provided the details.

[5] I delayed the start of the investigation meeting in the hope Peter Yee would turn up. Also the support officer tried to obtain information on his whereabouts. There has been no good cause identified for his failure to attend and or be represented.

[6] I decided to proceed fully in the matter as if Peter Yee was present and had been represented.

Issues

[7] How did the employment end? Was any dismissal justified? How much is owed to Mr Wallace and Ms Hudson? Are they entitled to any remedies for personal grievance and if so, how much for lost wages and compensation?

The facts

[8] Mr Wallace and Ms Hudson were employed as camp managers by Peter Yee trading as the Turangi Cabins and Holiday Park. They were each paid \$1,000 per week after tax.

[9] They commenced employment on 5 June 2009 before signing off an employment agreement dated 16 June 2009 which purported to start from 15 June 2009. The agreement between the parties included an arrangement for Mr Wallace to

put money into the business to clean it up and improve its appearance and be repaid from the business account. He was repaid some of the monies he has claimed: Document 5A (applicant's bundle).

[10] Mr Wallace knew Peter Yee before starting work for him and helped Dr Yee out financially. The camp managers' duties included paying the bills, but that task was taken over by Peter Yee at some point in the first part of July.

[11] Mr Wallace says that Peter Yee still owes him money he put into the business before starting work, and agreed this was a matter for another jurisdiction.

[12] On 19 July 2009 Ms Hudson found her banking access denied. She says she raised this with Peter Yee without any satisfactory resolution, including raising the problem with Peter Yee's lawyer. She was still expected to do the banking "somehow". Mr Wallace and Ms Hudson decided to put money through Mr Wallace's own account, instead of running around the district and region and paying bills in cash, and avoid leaving the camp unattended. The problems included paying staff wages out of Mr Wallace's personal money and getting reimbursed when the funds allowed it.

[13] During this time Ms Hudson found communication with Peter Yee and his accountants increasingly difficult. They had difficulties contacting Peter Yee and not getting replies from Peter Yee's accountants and lawyers.

[14] Mr Wallace and Ms Hudson received a letter dated 14 September 2009 giving instructions on what they were to do with the business's money and accounts and books. They say they carried out the instruction and transferred the money and handed in the accounts and books, but Mr Wallace says he was not paid back money owing to him once he transferred the funds.

[15] Mr Wallace and Ms Hudson claim that Peter Yee changed their duties in October and that he required them to only meet and greet people. This occurred at a meeting, and Ms Hudson says she got upset. In the meantime bills were still not being paid.

[16] In early November a man staying at the holiday park, and who had been befriended by Peter Yee, demanded the keys for the office from Ms Hudson, and he explained that he was now the manager. Mr Wallace and Ms Hudson claimed that this man appeared dubious and they say Peter Yee told them he was scared of the man despite them seeing Peter Yee and the man together and acting on good terms. They were concerned about the man's behaviour and character, and were concerned enough for public safety that they arranged for the Police to escort the man off the premises.

[17] Next, Peter Yee decided to change the menu for cheaper options. In the meantime Mr Wallace and Ms Hudson were becoming more and more frustrated because staff wages were not being paid and there were problems getting and paying for supplies.

[18] On 30 November 2009 the power to the holiday park was turned off because the power bill had not been paid. This was Peter Yee's responsibility. Mr Wallace organised a generator to restore the power, but that had to be turned off at night because it was too loud.

[19] The general situation deteriorated and Mr Wallace and Ms Hudson closed the camp, which they say made Peter Yee furious: they say he screamed in front of customers and blamed them for the situation. Mr Wallace and Ms Hudson say that Peter Yee yelled at them to leave, changed his mind and then threatened to call the Police and made demands, what they considered were unsafe, on what they were to do around the grounds. They say Peter Yee finally "*fired*" them on 7 December 2009. They claim they have not been paid.

[20] They claim their dismissals were unjustified. They are seeking lost wages and compensation.

[21] They claim they were not paid when their employment ended.

Determination

[22] Peter Yee's failure to reply and respond to the statement of problem, and the absence of any evidence to the contrary means that I must accept the claims from Mr Wallace and Ms Hudson for wages not paid.

[23] I have calculated holiday pay on the basis of the applicants' information as to their earnings from 5 June 2009 until 7 December 2009. This has been calculated on the basis of \$1,000 per week each and at 8% of the total earnings. They worked 27 weeks each in that time. Eight percent (8%) of \$27,000 is \$2,160 each for holiday pay, in the absence of any records and total gross pay details from Peter Yee (s 23 of the Holidays Act 2003). In addition they are each entitled to a day in lieu for work on Labour Day 26 October 2009 (s46, 47, 55 and 56 of the Holidays Act). This amounts to \$142.86 each.

[24] Also, I accept their claims for lost wages and compensation for unjustified dismissal. Peter Yee has not justified the dismissal with any reasons and did not follow any procedure. Without any reply and response from Peter Yee I hold that there has been no contributory conduct by Mr Wallace and Ms Hudson (see s 124 of the Act). Thus there is no reduction for contribution in the awards I am about to make.

[25] I accept that there was an arrangement for Tony Wallace to put money into the business and that he had the right to withdraw money from the business account to get repaid. He put money in while he was working and those sums have been repaid, but he has not been able to quantify any remaining amounts because the records are not available. I reserve leave to the applicants to return to the Authority if they are able to get any details on any amounts outstanding in regard to their employment.

[26] I accept that Tony Wallace and Kathleen Hudson have lost wages due to their dismissals. They have attempted to mitigate their losses and to find new jobs. Also, I accept that there has been an impact affecting them due to their dismissals. This relates to the sense of loss because of losing their jobs and the embarrassment with other people and the financial impact on them.

Orders of the Authority

[27] Peter Yee is to pay Tony Wallace the sum of \$4,800 unpaid wages after tax for the period 5 June 2009 until 7 December 2009 as claimed (s 131 of the Act).

[28] Peter Yee is to pay Tony Wallace \$3,000 compensation under s 123 (1) (c) (i) of the Act for humiliation loss of dignity and injury to feelings.

[29] Tony Wallace has lost wages due to his dismissal. I award him 3 months lost wages having regard to his attempts to obtain other work. This amounts to \$13,000 nett. Peter Yee is to pay Tony Wallace \$13,000 nett lost wages (s 123 (1) (b) and s 128 of the Act).

[30] Peter Yee is to pay Kathleen Hudson the sum of \$2,840 unpaid wages after tax up until the date of her dismissal (s 131 of the Act).

[31] Peter Yee is to pay Kathleen Hudson \$3,000 compensation under s 123 (1) (c) (i) of the Act for humiliation loss of dignity and injury to feelings. This relates to the sense of loss because of losing her job, and embarrassment and the financial impact on her.

[32] Kathleen Hudson has lost wages due to her dismissal and I award her 3 months lost wages having regard to her attempts to get other work. This amounts to \$13,000 nett. Peter Yee is to pay Kathleen Hudson \$13,000 nett lost wages (s 123 (1) (b) and s 128 of the Act).

[33] Peter Yee is to pay Tony Wallace and Kathleen Hudson \$2,160 nett each holiday pay. In addition Peter Yee is to pay Tony Wallace and Kathleen Hudson \$142.86 nett each for a day in lieu for the public holiday they each worked on Labour Day Monday 26 October 2009.

[34] Peter Yee is to pay Tony Wallace and Kathleen Hudson jointly and severally the \$70 filing fee (clause 15 Schedule 2 of the Act).

P R Stapp
Member of the Employment Relations Authority