

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 5  
5423447

BETWEEN        GEORGIA MARGARET GRIMME  
                         Applicant

A N D            JOE'S CARPENTRY LIMITED  
                         (formerly Coco Joe's Limited)  
                         Respondent

Member of Authority:     T G Tetitaha

Representatives:         Applicant in person  
                                 Respondent by its duly authorised agent, J Jerome

Investigation meeting:    24 December at Kerikeri

Submissions Received:    24 December 2013 from Applicant  
                                 24 December 2013 from Respondent

Date of Oral  
determination:            24 December 2013

Date of Determination:    10 January 2014

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**DETERMINATION OF THE AUTHORITY**

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- A. Georgia Margaret Grimme was unjustifiably dismissed by Joe's Carpentry Limited.**
- B. The Authority declines to award any remedy under s123(b) because Ms Grimme has not proven to the required standard she has lost remuneration.**
- C. An order the respondent pay Georgia Margaret Grimme the sum of \$1,000 hurt and humiliation compensation (s123(c)(i)).**
- D. There shall be no order for costs.**

**Employment relationship problem**

[1] Georgia Margaret Grimme was employed as a chef/cook by then Coco Joe's Limited (now Joe's Carpentry Limited) on 7 December 2010. On 26 April 2011 she was told there was no more work for her. She alleges she was unjustifiably dismissed.

[2] The respondent denies she was dismissed. It says she resigned and was due to finish on 19 February 2011 to take up employment in the USA in June 2011. Due to injury she did not take the position and she asked for further work. She was hired until work ran out. The respondent believes it acted in good faith.

[3] At the conclusion of the hearing on 24 December 2013, the Authority gave an oral determination, including the above orders. This is the written reasons for those orders.

**Facts leading to dismissal**

[4] The respondent purchased the restaurant/cookery school business in December 2010 where Ms Grimme worked. In December 2010 Ms Grimme notified the respondent she was leaving to take employment up in the USA in June 2011. She wanted to work until she left. The respondent accepted her resignation.

[5] There was no agreement about the termination date. Ms Grimme's employment contract provided a three weeks' notice of termination (clause 13.1).

[6] On or about 20 February 2011 Ms Grimme suffered an injury falling from a horse. A medical certificate stated she was unfit to work until 18 March 2011.

[7] During this period, the respondent closed its Kerikeri business and moved its operations to Highway 10 Takeaways in Waipapa. An employee left on maternity leave. Two new trainees from WINZ were employed to cover the labour shortage.

[8] Ms Grimme contacted the respondent on 18 March seeking work. Work was provided from 20 March to 18 April 2011. She was told on 26 April 2011 there was no more work.

[9] On 4 May 2011 Ms Grimme raised a personal grievance. She then went to work in the USA in June 2011. She now seeks determination of her personal grievance.

**Issues**

[10] The following issues arise:

- (a) Was Ms Grimme dismissed?
- (b) If so, was the process leading to dismissal what a fair and reasonable employer could have done in the circumstances?
- (c) If she was unjustifiably dismissed, what remedies (if any) should be awarded?

[11] The test to be applied is *whether the respondent's actions were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred* (s.103A(2)). In applying this test, the Authority must consider the matters set out in s.103A.

[12] The Authority must not determine the dismissal unjustifiable if the procedural defects were minor or did not result in the employee being treated unfairly (S103A(5)). A failure to meet any of the s.103A(3) tests is likely to result in a dismissal being found to be unjustified.<sup>1</sup>

**Was Ms Grimme dismissed?**

[13] There was little dispute about the facts. Although there was no agreement about her actual termination date, the respondent continued to offer Ms Grimme employment despite termination being effective 19 February 2011. There was little dispute she was told on 26 April 2011 it had no more work for her. This effectively terminated her employment.

[14] If the respondent wished to terminate the employment agreement, it was required to give her three weeks' notice. No such notice was given. Ms Grimme was dismissed by the respondent on 26 April 2011.

**Was the process leading to dismissal what a fair and reasonable employer could have done in the circumstances?**

[15] The process leading to dismissal was unfair. Her employment continued until terminated in accordance with her employment agreement. The termination did not

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<sup>1</sup> *Angus v. Ports of Auckland Limited* [2011] NZEmpC 160 at [26]

occur in accordance with her agreement. None of the matters set out in s103A(3) were applied here. Georgia Margaret Grimme was unjustifiably dismissed by the respondent.

**What remedies (if any) should be awarded?**

[16] Ms Grimme seeks three months wages and compensation for hurt and humiliation of \$2,000.

[17] She had resigned effective 1 June 2011. Accordingly her losses are confined to the period 19 April to 31 May 2011.

[18] Ms Grimme must act reasonably to mitigate loss of wages. Otherwise she has not lost remuneration as a result of the grievance under s123(1)(b). If the remuneration has been lost because of a failure to mitigate, there is no statutory requirement to order reimbursement.<sup>2</sup> At hearing she stated she was leaving to go to the USA and saw no point in actively seeking work. She did approach WINZ but gave no evidence of any other efforts to find employment. In the circumstances, the Authority declines to award any remedy under s123(b) because Ms Grimme has not proven to the required standard she has lost remuneration.

[19] Compensation for hurt and humiliation under s123(c)(i) would be minimal. Ms Grimme was due to finish her job in June 2011 in any event. Termination may have happened earlier than expected but there was little evidence to justify an award of more than \$1,000 in the circumstances. There is an order the respondent pay Georgia Grimme the sum of \$1,000 hurt and humiliation compensation (s123(c)(i)).

[20] Both parties were self-represented. There shall be no order as to costs.

**T G Tetitaha**  
**Member of the Employment Relations Authority**

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<sup>2</sup> *Finau v Carter Holt Building Supplies* [1993] 2 ERNZ 971 (EmpC) at 977