

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 397  
3002118

BETWEEN                      STACEY SISSONS  
   Applicant

AND                              GOOD FOOD TRADING  
   COMPANY LIMITED (IN  
   LIQUIDATION)  
   First Respondent

AND                              JAMIE BLENNERHASSETT  
   Second Respondent

Member of Authority:      Robin Arthur

Representatives:            Nicholas Koreneff, Advocate for the Applicant  
   No attendance by the First Respondent  
   No attendance by the Second Respondent

Investigation Meeting:     20 December 2017 in Tauranga

Determination:              22 December 2017

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**DETERMINATION OF THE AUTHORITY**

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- A. Jamie Blennerhassett is personally liable for remedies awarded to Stacey Sissons because Good Food Trading Company Limited was an undisclosed principal at the outset of the employment relationship with her.**
- B. In settlement of her personal grievance for unjustified dismissal Dr Blennerhassett must pay Ms Sissons the following sums within 32 days of the date of this determination:**
- (i) \$3,177.50 in reimbursement of wages lost as a result of her grievance; and**
  - (ii) \$10,000 as compensation for humiliation, loss of dignity and injury to feelings; and**
  - (iii) \$1,684.94 as arrears of wages and holiday pay due to her at**

**the end of the employment.**

**C. Dr Blennerhassett must also pay Ms Sissons \$2071.56 as a contribution to her costs of representation and expenses in successfully pursuing her grievance.**

### **Employment Relationship Problem**

[1] Stacey Sissons worked in the delicatessen section of the Nosh Mount Maunganui store from 2 January to 5 November 2016. During her employment Good Food Trading Company Limited (GFTCL) operated the store. GFTCL was placed into liquidation on 4 December 2017 by resolution of its shareholders.

[2] Joanne and Jamie Blennerhassett, who are married to one another, were the directors and equal shareholders of GFTCL. The company ceased operating the store some time after Ms Sissons' dismissal. Although the Mount Maunganui store operated under the Nosh brand, GFTCL was not part of the business that operated a number of other Nosh stores elsewhere in the country and closed last year.

[3] Ms Sissons lodged two applications in the Authority. The first, on 19 January 2017, sought a finding she was unjustifiably dismissed on 5 November 2016 and should be awarded remedies of lost wages, compensation and representation costs. She also claimed she was short paid in her final pay. The second application, lodged on 7 August 2017, sought to have Dr Blennerhassett added as a respondent in person to her claim. This application said her written employment agreement referred only to "Nosh Mount Maunganui". Its wording did not mention GFTCL or indicate that company was the employing party to the agreement. Dr Blennerhassett had signed the agreement "for and behalf of Nosh Mount Maunganui". Ms Sissons' application said a legal principle referred to as the 'doctrine of the undisclosed principal' should operate to make Dr Blennerhassett personally liable for any remedies awarded if she established her personal grievance for unjustified dismissal.<sup>1</sup>

[4] Neither GFTCL nor Dr Blennerhassett lodged a statement in reply to either application. Attempts to have the parties meet in mediation, initially voluntarily and later by directions made in May and August 2017, did not result in any mediation date

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<sup>1</sup> *Cuttance (t/a Olympus Fitness Centres) v Purkiss* [1994] 2 ERNZ 321 at 332-333 and 338.

being set and attended the parties. The matter was then set down for an Authority investigation meeting. Authority records show the Notice of Investigation Meeting was delivered on 15 November 2017 to GFTCL's registered office and to the residential address of Mrs and Dr Blennerhassett as recorded in the Companies Office register. Copies of the Notice and associated documents were also sent to current email addresses for Mrs Blennerhassett and Dr Blennerhassett.

[5] One effect of the commencement of the liquidation of GFTCL on 4 December 2017 was that Ms Sissons' proceedings in the Authority could not continue without agreement of the liquidator or an order of the High Court.<sup>2</sup> No such agreement or order had been sought or given. What remained open for investigation by the Authority was Ms Sissons' claim that the company was an undisclosed principal at the outset of the investigation and that she was entitled to elect to pursue her claim against Dr Blennerhassett personally as the signatory of her employment agreement.

[6] A Minute of the Authority explaining that situation, dated 18 December 2017, was sent to the email addresses of Ms Blennerhassett, Dr Blennerhassett and Ms Sissons' representative. The Minute advised that the investigation meeting, as previously notified, would proceed on 20 December.

### **The Authority's investigation**

[7] Ms Sissons and her stepfather Steven Beets had lodged written witness statements. Both attended the investigation meeting at the appointed time of 10am. Neither Mrs Blennerhassett nor Dr Blennerhassett attended. Attempts were then made to contact them by telephone, without success. In Dr Blennerhassett's case those calls were made to his present workplace and to his work mobile telephone. Neither call was answered.

[8] The Notice of Investigation Meeting issued to the parties on 20 November 2017 included notes warning of potential consequences of non-attendance by either party. One note advised that the Authority may issue a determination in favour of the applicant without hearing from the respondent if the respondent does not attend. The Authority has the power to proceed where a party, without showing good cause, fails

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<sup>2</sup> Companies Act 1993, s 248.

to attend or be represented.<sup>3</sup> After waiting until 10.20am I went ahead with the investigation meeting.

[9] Ms Sissons and Mr Beet, both under affirmation, then answered questions about their written statements. Their written and oral evidence has been relied on for the findings and orders made in this determination. Ms Sissons' representative also provided closing submissions on the issues for determination.

[10] As permitted by 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **The issues**

[11] The issues requiring investigation and determination were:

- (i) Was the existence of GFTCL as her true employer disclosed to Ms Sissons at the outset of the employment relationship and, if not, could she pursue her personal grievance against Dr Blennerhassett, as the signatory to her employment agreement?
- (ii) Was the termination of Ms Sissons employment, and how it was done, what a fair and reasonable employer could have done in all the circumstances at the time?
- (iii) If not, what remedies were due to Ms Sissons for her personal grievance of unjustified dismissal, considering:
  - (a) Lost wages; and
  - (b) Compensation for humiliation, loss of dignity and injury to feelings?
- (iv) Should any remedies awarded be reduced due to blameworthy conduct by Ms Sissons that contributed to the situation giving rise to her grievance?
- (v) Was Ms Sissons also owed arrears of wages due to a shortfall in her final pay?
- (vi) Should either party contribute to any costs of representation of the other party?

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<sup>3</sup> Employment Relations Act 2000, Schedule 2 clause 12.

**The outset of the employment: was GFTCL disclosed as the employer?**

[12] Ms Sissons applied for a job at the Nosh store through a Trade Me ad. She was invited to an interview by the delicatessen manager and contacted a few days later to say she had the job. She was told to call into the store office and collect an employment agreement from Dr Blennerhassett. Mrs Blennerhassett, who Ms Sissons later came to know was more closely involved in running the store, was not present that day.

[13] Dr Blennerhassett asked Ms Sissons why she wanted the job and talked to her about what was required. She was given two copies of the employment agreement signed by Dr Blennerhassett above the words “for and on behalf of Nosh Mount Maunganui”. When she started work at the store in the following week Ms Sissons gave one copy of the agreement, with her signature on it, to Mrs Blennerhassett.

[14] In their discussions with Ms Sissons before the employment started, neither the deli manager nor Dr Blennerhassett referred to the company as the employer. There was no evidence Ms Sissons was provided with any documentation before or at the outset of her employment that identified the company as the employer. All that was apparent to her about the identity of the employer at that stage was its trading name of Nosh Mount Maunganui and that it was the business of Dr Blennerhassett and Mrs Blennerhassett. There was nothing to indicate to her, at that point, that the business was being operated by a registered company and not in their personal capacity.

[15] Ms Sissons said the first time she saw the GFTCL name was on the payslip emailed to her at the time she got her first fortnightly pay direct credited to her bank account. She also noted the payer of the wages listed in her bank account was identified with the words “The Good Food Wages Nosh”. She recalled going to the upstairs office at the store and asking the accountant why that name was used. She said the accountant told her it was the previous name of the business.

[16] IRD records show PAYE deductions were made and paid from Ms Sissons wages by GFTCL. There was nothing to indicate she was aware of those arrangements at the outset of her employment.

[17] The references to the company in pay, bank and tax records did, however, confirm as more likely than not that GFTCL was intended to be the legal entity employing staff in the store. This was also consistent with the roles of Dr Blennerhassett and Mrs Blennerhassett as directors of that company. They could reasonably be assumed to have authority in that capacity to employ staff on behalf of the company.

[18] The difficulty for them however was that this information was not disclosed to Ms Sisson at the time of forming the employment relationship. The doctrine of the undisclosed principal thereby applied. The learned authors of *Law of Contract in New Zealand* summarised this principle of undisclosed agency in this way:<sup>4</sup>

Where an agent, having authority to contract on behalf of another, makes the contract in his or her own name, concealing the fact that he or she is a mere representative, the doctrine of the undisclosed principal comes into play. By this doctrine either the agent, or the principal when discovered, may be sued.

[19] Dr Blennerhassett, more likely than not, had that authority but had not disclosed GFTCL as the principal in the employment relationship. In those circumstances Ms Sissons was entitled to elect, as she did by her 7 August claim in the Authority, to pursue Dr Blennerhassett personally for any remedies awarded.<sup>5</sup>

[20] Orders made by the Authority for the payment of remedies by Dr Blennerhassett may be filed in the District Court and are then enforceable in the same manner as an order of the District Court.<sup>6</sup>

### **How did Ms Sissons' employment come to end?**

[21] Through a representative's letter dated 15 November 2016 Ms Sissons had raised a personal grievance about the termination of her employment. Her grievance raised concerns about disciplinary meetings held with her in early October and on 5 November in 2016. Both sets of meetings were said to have involved unfair treatment of her that then resulted in her unjustified dismissal.

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<sup>4</sup> Burrows, Finn and Todd (5th ed, LexisNexis, Wellington, 2016) at 605.

<sup>5</sup> On the application of this principle see, for example, *Kingi v Joseph (t/a Grand View Builders)* EC Auckland ARC 73/03, 25 February 2004 at [11] and *Fuimaono v Houia* [2017] NZEmpC 63 at [59].

<sup>6</sup> Employment Relations Act 2000, s 141.

[22] On 1 October the deli manager called her to a meeting about three emails the store had received about poor service. Ms Sissons was not shown those emails. The manager told her he would give her a good reference if she handed in a notice of resignation. She prepared a resignation letter that evening but when she showed it to her stepfather, Mr Beets, he arranged a meeting for Ms Sissons and him with the deli manager. At that meeting the deli manager showed them the three emails. They contained complaints about four staff. One said the staff members talked too much and took too long to serve the food. Another said one staff member with no gloves on had handed a customer a slice of salami. The third said the staff had a negative attitude. The manager then gave Ms Sissons a pre-prepared letter suspending her from work.

[23] Three days later Mrs Blennerhassett met with Ms Sissons, again accompanied by Mr Beets. Mrs Blennerhassett said she had done an extensive investigation and found Ms Sissons at fault. She refused to disclose any evidence of her investigation. She said Ms Sissons was to get a final written warning. No such warning was ever issued to Ms Sissons.

[24] On 5 November Ms Sissons was called to Mrs Blennerhassett's office and told a customer who had purchased sausages at the store had complained that "a blond girl in the deli ... served me with no gloves on". The complaint was made in an email dated 31 October. Mrs Blennerhassett said she would talk to Ms Sissons again at the end of her shift. In that discussion Ms Sissons denied she had handled sausages in the way complained about. However she said Mrs Blennerhassett had told her that she "can't keep having these complaints so I am sorry we have to let you go". According to Ms Sissons Mrs Blennerhassett had then said to let her know if there was anything she could do to help Ms Sissons find another job. As a result Ms Sissons was not sure whether she was instantly dismissed or was on notice that her employment was at an end. She was, however, clear that Mrs Blennerhassett's use of the words "let you go" meant she was "fired".

[25] Before she left the store on 5 November Ms Sissons asked another manager to print off a copy of the 31 October email complaint. After leaving work she read that email and noticed it made no reference to "a blond girl" as Mrs Blennerhassett had

told her. Ms Sissons has blond hair but said she was one of two women with blond hair working that day in any event.

[26] The following day she sent the deli manager a text asking if she should come to work the next day and received this reply (as written): “Hi, as I know your contract was terminated yesterday as you are aware off”. Ms Sissons then, at Mr Beets’ suggestion, asked for the reasons for her dismissal to be provided in writing. She did not get that written explanation.<sup>7</sup>

### **An unjustified dismissal**

[27] The actions of Ms Sissons’ employer in the meetings held with her on 1 October, 4 October and 5 November 2016 did not meet the statutory test of justification set by s 103A of the Act. She was not provided with all the information of concern to her employer and was not given a reasonable opportunity to respond to those concerns. For example, according to Mr Beets’ account of their discussion in their 4 October meeting, Mrs Blennerhassett referred to having carried out “thorough inquiries” about the complaints but would not say what those inquiries were or who they were made of. There was no evidence available to the Authority’s investigation to support a conclusion that those concerns were sufficiently investigated or that a fair and reasonable employer could have come to a conclusion that Ms Sissons had committed either misconduct or poor performance in food handling that could have justified her dismissal. The defects in the process her employer followed were more than minor and resulted in Ms Sissons being treated unfairly. As a result the employer’s actions in terminating her employment, in the way it was done and for the supposed reasons it was done, were unjustified. Ms Sissons was entitled to an assessment of remedies for her personal grievance for unjustified dismissal.

### **Remedies**

#### *Lost wages*

[28] Ms Sissons claimed lost wages for the period from her dismissal on 5 November until was able to secure a new job five weeks later. Her relatively short period of unemployment, and the other job applications she made during that period, showed she had made satisfactory efforts to mitigate her loss. She was entitled to

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<sup>7</sup> Employment Relations Act 2000, s 120.

reimbursement for the five weeks' wages she lost. Based on the average 41-hour week she had worked at the store, at her hourly rate of \$15.50, the weekly wage for that calculation was \$635.50. The sum due as reimbursement under s 123(1)(b) of the Act was \$3,177.50.

*Compensation for humiliation, loss of dignity and injury to feelings*

[29] Ms Sissons gave measured evidence about the emotional effect on her of her dismissal from the store and its consequences on her. Aged 19 at the time she took pride in living independently in her own flat and found herself “pretty much struggling from day to day” without money for food or gas. Her confidence in seeking other work was knocked as she came to doubt she could please future employers. She withdrew from social activity with friends.

[30] Mr Beets described Ms Sissons as ringing him up in tears with news of her dismissal. She spent most evenings with her mother and him in the following weeks, which was unusual, and she was often in tears. He said she was “devastated” by what had happened as “standing on her own two feet” was important to her. He also observed Ms Sisson had “started to change back to her normal self again” once she got a new job after five weeks.

[31] Their evidence established Ms Sissons should be awarded compensation for the shock and humiliation of her dismissal and the embarrassment caused to her by it and how it happened. However their evidence also established Ms Sissons was a resilient person who had, with her diligent efforts to find new work, recovered from those effects. As a result \$10,000, a sum at the lower end of the scale for such awards, was the appropriate amount of compensation under s 123(1)(c)(i) of the Act.

*No reduction for contributory conduct*

[32] Under s 124 of the Act the Authority must consider whether any remedies awarded under s 123 should be reduced due to conduct of Ms Sissons that contributed to the situation giving rise to her grievance. There was no evidence sufficient to make such a reduction. Ms Sissons was not responsible for the failures of her employer to conduct a fair disciplinary process. Neither did the evidence support a conclusion that she had, in fact, followed inadequate food handling procedures in her work. Her evidence was that she always wore gloves or, if not, would “be on the other side of a

plastic bag”. The latter phrase referred to a method of using a bag to pick up goods in a way that ensured they were not touched by bare hands.

### **Wage arrears**

[33] Ms Sissons evidence also established she was entitled to an order for the payment of wage arrears. The amounts were shortfalls in what she was due as her final pay.

[34] Her final pay slip showed she was due to be paid the net amount of \$1787.25 but only \$963.90 was deposited into her account. She was still owed wages of \$823.35 (net).

[35] A calculation of her holiday pay entitlement, based on her gross earnings during her employment, showed Ms Sissons was due holiday pay of \$1867.85 (net). She was paid only \$1006.26. She was later paid the same amount again but had returned it at the request of Mrs Blennerhassett. The result was Ms Sissons was still owed \$861.59 (net) in holiday pay.

[36] Along with the remedies awarded under s 123 of the Act, those outstanding sums of \$823.35 for wages and \$861.59 for holiday pay are amounts that Dr Blennerhassett is liable to pay Ms Sisson as arrears due under s 131 of the Act.

### **Costs**

[37] In closing submissions Ms Sissons, through her representative, sought an order that “normal costs should be awarded”. No settlement offers had been exchanged between the parties that might affect the assessment of costs.

[38] Costs follow the event, meaning the event of Ms Sissons’ successfully pursuing her personal grievance.

[39] This was a straightforward matter to which the Authority’s typical daily tariff would apply as a starting point.

[40] The meeting took two hours. The time taken in this particular case over repeated attempts to arrange mediation by direction, in this case, warranted some uplift from what the tariff applied to the short meeting would generate. Accordingly

\$2000 is set as the amount that Dr Blennerhassett must pay as a contribution to the costs of representation incurred by Ms Sissons in bringing her case to the Authority. He must also reimburse the \$71.56 filing fee Ms Sissons paid to lodge her application in the Authority.

Robin Arthur  
Member of the Employment Relations Authority