

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2019] NZERA 341  
3042831

BETWEEN

MARY-LOU ALLEDA  
Applicant

AND

SAI MANDIR LIMITED  
TRADING AS THE PEPPER N  
ROCKS CAFE  
Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in Person  
No Appearance by Respondent

Investigation Meeting: 10 June 2019 at Auckland

Written Record of Oral Determination: 10 June 2019

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**ORAL DETERMINATION OF THE AUTHORITY**

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**No Appearance by Respondent**

[1] The Notice of Investigation Meeting was served by sending it to the email address of Sandeep Raju, one of Sai Mandir Limited's (SML's) four directors.

[2] This was the email that SML had been using to communicate with the Authority about the investigation meeting dates, including dates to avoid. SML never advised the Authority of any new contact details or alternative method of communicating with it.

[3] The Authority delayed the start of its investigation meeting by half an hour to give SML extra time to appear.

[4] In the absence of an appearance SML, and having been satisfied that it was on notice of the investigation meeting today but chose not to attend, the Authority has determined Ms Alleda's claim based on the available evidence.

### **Employment Relationship Problem**

[5] Ms Alleda claimed she was unjustifiably dismissed by SML from her full time employment as the Head Chef of the Pepper N Rocks Café which SML owned and operated.

[6] Ms Alleda says she worked 45 hours per week, Mondays to Saturdays for \$21 per hour. She started employment on 21 May 2018 and her employment ended on 6 August 2018, when the café closed down.

[7] Ms Alleda was not given any notice or paid in lieu of notice nor was she paid any annual holiday pay, either while employed, or upon termination of her employment.

[8] In its Statement in Reply, SML sought to rely on Ms Alleda's trial period provision in her employment agreement to prevent her from pursuing her dismissal grievance.

[9] However, Ms Alleda was not precluded from pursuing her unjustified dismissal claim. SML was unable to rely on the trial period provision in her employment agreement because it failed to meet the mandatory requirements of s 67A and s 67B of the Employment Relations Act 2000 (the Act).

[10] Although Ms Alleda eventually received a written employment agreement, that only occurred after she insisted on it, and she did not receive it until after she had already started work for SML. That rendered the trial period nugatory.

[11] Ms Alleda was aware the café had financial problems because suppliers had been coming in to the café and asking about their overdue payments. Ms Alleda also had to buy café items out of her own money.

[12] However because Ms Alleda was not adequately consulted with about the café closing, she was upset to be dismissed on 6 August 2018, when the café was closed.

[13] Ms Alleda said that Mr Raju told her that although the café would be closed on 6 August 2018 for three weeks, they would fix the problems between the directors, then reopen the café. Ms Alleda's last day of work was 6 August 2018.

[14] Ms Alleda said Mr Raju told her he would pay her \$150 per week while the café was closed to stop her looking elsewhere for a job, while the problems with the café were resolved.

[15] Mr Raju sent Ms Alleda an email for her to give to WINZ on 12 August 2018 that stated the café was closed but he hoped it would reopen shortly. Ms Alleda's attempt to obtain financial support from WINZ was unsuccessful, because it said she had already exceeded her support entitlement.

[16] The café did not reopen. Ms Alleda only received two \$150 payments (\$300 in total), the first on 6 September and the second on 14 September 2018, paid by Mr Raju. Ms Alleda said she had to chase those payments, which was stressful for her.

[17] It is clear that Ms Alleda was dismissed.

[18] Her employment ended at SML's initiative. Ms Alleda was ready, willing and able to work but SML dismissed her, when it closed the café, because it failed to provide her with work or wages.

[19] The café closure left Ms Alleda, as the sole income earner, with two young children to support but no income. The loss of her job was obviously extremely stressful for her.

[20] Regardless of the problems between the directors, SML as Ms Alleda's employer was required to treat her fairly and reasonably.

[21] While SML was evidently experiencing financial difficulties, s 4(1A) of the Act required SML to provide Ms Alleda with information relevant to her ongoing employment and an opportunity to comment on it before it closed the café.

[22] That did not occur.

[23] Nor did SML comply with any of the four procedural fairness tests in s 103A(3) of the Act. These breaches of the Act were not minor and they resulted in significant unfairness to Ms Alleda.

[24] SML had a good reason for ending Ms Alleda's employment because the café did not have funds to be able to keep trading. That meant SML's Alleda's dismissal was substantively justified because it had to close down.

[25] However the way it closed down was unfair to Ms Alleda. SML's dismissal of Ms Alleda therefore occurred in a procedurally unfair manner.

[26] That meant Ms Alleda's dismissal was procedurally unjustified, because SML failed to follow a fair or proper process, and did not adequately consult with Ms Alleda before she was dismissed.

[27] Because SML had a good reason for dismissing Ms Alleda (the café had closed down), she was not entitled to an award of lost remuneration. However she was entitled to an award of distress compensation.

[28] It was clear that Ms Alleda has suffered serious stress and distress as a result of SML's procedurally unjustified dismissal of her.

[29] Ms Alleda is a single mother with responsibility for two young children who she has to support by herself. The loss of her employment made it extremely difficult for her to provide for their daily needs and she was unable to get any assistance from WINZ.

[30] Ms Alleda was left in the stressful position of having to borrow money from family and friends, in circumstances where she had no idea how she would be able to afford to repay the money others lent her.

[31] SML failed to meet its contractual notice obligations to Ms Alleda, which required SML to have given her one month's notice of termination or pay in lieu. SML also failed to pay Ms Alleda 8% of her total gross earnings as holiday pay when it dismissed her.

[32] These additional breaches by SML added to Ms Alleda's financial stress.

[33] SML effectively left Ms Alleda to fend for herself and speculate about her employment status. It dangled the offer of weekly payments to her and then unilaterally stopped them after making only two payments. It suggested she would have ongoing employment because the café would reopen soon, but that didn't occur and she was not kept informed about what was happening with the café or directors.

[34] Ms Alleda gave evidence about the stress, hurt and humiliation she suffered as a result of her unjustified dismissal.

[35] She explained how it had adversely affected her health and wellbeing and how she had to attend her doctor and was prescribed medication. Ms Alleda also explained the difficulty she has had in trying to find alternative work because people were apprehensive about giving her a job when informed that she had an ongoing employment dispute with her former employer.

[36] Ms Alleda gave evidence about the impact her dire financial situation had on her, which had meant that basic expenses such as petrol, vehicle, rent and food became extremely difficult for her to cover, and her children had to go without.

[37] Ms Alleda had no option but to rely heavily on friends and family for financial support. She described her situation as being in “*a desperate state of need*” because she faced the prospects of being unable to provide the necessities of life for her two young children while facing ongoing financial commitments such as household expenses, bills for vehicle repayments and her student loan, without any income

[38] Ms Alleda gave evidence about how she felt she had lost an immense sense of dignity and personal confidence as a result of her dismissal from a job she had genuinely taken pride in. She described how the stress had taken a toll on her mentally and physically and the negative impact this had on her health.

[39] Within 7 days of the date of this determination, SML is ordered to pay Ms Alleda \$15,325.76 consisting of:

- (a) \$10,000 distress compensation under s 123(1)(c)(i) of the Act to compensate her for the humiliation, loss of dignity and injury to feelings she suffered as a result of her unjustified dismissal.
- (b) \$4,095 pay in lieu of notice, that she would have received if SML had met its contractual notice obligations (being \$21 per hour x 45 hours per week, x 52 weeks divided by 12 months); and
- (c) \$1,159.20 holiday pay arrears (being \$1,159.20 consisting of \$10,395 total gross wages of \$945 per week x 11 weeks + \$4,095 pay in lieu of notice x 8%);
- (d) \$71.56 to reimburse her filing fee.

[40] SML has been ordered to pay the above amounts to Ms Alleda within 7 days because according to the Companies Office, SML is due to be struck off the companies register on 19 June 2019.

[41] Ms Alleda did not incur any legal costs as she represented herself.

**Rachel Larmer**  
**Member of the Employment Relations Authority**