

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2019] NZERA 662  
3064532

BETWEEN CHRISTINE GWILLIAM  
Applicant

AND TIMBERWORLD  
WARKWORTH LIMITED  
Respondent

Member of Authority: Jenni-Maree Trotman  
Representatives: Applicant in person  
No appearance for the Respondent  
Investigation Meeting: 15 November 2019  
Oral Determination: 15 November 2019  
Written Record Issued: 18 November 2019

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Christine Gwilliam was employed by Timberworld Warkworth Limited, trading as Mangawhai ITM, as an Administration Assistant. On 3 October 2018 she was notified by Timberworld that her position was redundant. She claims her dismissal was unjustified and seeks remedies.

[2] Timberworld denies Ms Gwilliam's claim. It maintains that she is prohibited from pursuing her personal grievance due to a 90 day trial period contained in her individual employment agreement (IEA). Ms Gwilliam denies signing an IEA.

[3] This determination addresses the preliminary issue as to whether or not Ms Gwilliam is prohibited, under s 67B of the Employment Relations Act 2000 (the Act), from bringing a personal grievance for unjustified dismissal.

## **The Authority's process**

[4] In light of the dispute between the parties as to whether or not the IEA was signed by Ms Gwilliam, the Authority determined it was appropriate to investigate the preliminary issue by hearing from the parties in person.

[5] To assist the Authority, a direction was made for Timberworld to provide documentation supporting its position that the IEA was signed by Ms Gwilliam. This included a copy of the letter that was provided to her with the IEA for signing, a copy of all other pre-employment documentation signed, and any correspondence sending a copy of the executed IEA to Ms Gwilliam or receiving this from her. In addition, the Authority made the following direction:

The Respondent must bring the original IEA to the investigation meeting and must allow the Applicant and/or her handwriting expert to view this beforehand.

[6] The date set for the provision of this documentation was subsequently extended at Timberworld's request due to its Director, Simon Cressey, being overseas. Notwithstanding this extension, and reminders being sent by the Authority including by minute dated 12 November 2019, the additional documentation was not provided by Timberworld. Nor did it afford Ms Gwilliam or her expert with an opportunity to view the original IEA.

[7] There was no appearance for or on behalf of Timberworld at the investigation meeting. This was despite granting Mr Cressey an opportunity to attend by Skype, the Authority phoning Timberworld on the morning of the investigation, and my waiting 15 minutes before commencing my investigation.

[8] As provided for in clause 12 of Schedule 2 of the Act I have proceeded to act as fully in the matter before me as if Timberworld had duly attended or been represented. This included obtaining evidence from both Ms Gwilliam and from Mike Moran, a handwriting and document examiner, in person.

[9] As permitted by s 174E of 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 but has not recorded all evidence and submissions received.

## **Was there a trial period?**

### *The Applicable Law*

[10] Trial period clauses are governed by s 67A of the Act. At material times this section provided:

- (1) An employment agreement containing a trial provision, as defined in subsection (2), may be entered into by an employee, as defined in subsection (3), and an employer ....
- (2) Trial provision means a written provision in an employment agreement that states, or is to the effect, that—
  - (a) for a specified period (not exceeding 90 days), starting at the beginning of the employee's employment, the employee is to serve a trial period; and
  - (b) during that period the employer may dismiss the employee; and
  - (c) if the employer does so, the employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.
- (3) Employee means an employee who has not been previously employed by the employer.

...

[11] If Ms Gwilliam's employment was subject to a trial period provision under s 67A of the Act, she will be barred under s 67B from bringing a personal grievance or legal proceedings in respect of her dismissal.

### *Did Ms Gwilliam sign the IEA?*

[12] I first turn to consider whether or not the signature that appears on the IEA was placed there by Ms Gwilliam. For the avoidance of doubt, the Authority was only provided with a photocopy of this document.

[13] Ms Gwilliam maintains that she did not sign the IEA and the first time she viewed it was on 26 July 2019. This followed an email request being made to Mr Cressey after the parties had attended mediation.

[14] To support her evidence, Ms Gwilliam sought the opinion of Mike Moran. Mr Moran is a handwriting and document examiner. Mr Moran said he undertook an

analysis of the signature on the IEA with the known signatures of Ms Gwilliam as they appeared on three documents. Namely, a drivers check consent form, new employee opt out request form and a tax code declaration. Each of these documents were signed and dated by Ms Gwilliam on the same day as the alleged IEA.

[15] Mr Moran's conclusion was that the signature that appeared on the IEA had a "remarkable resemblance" to the known signature on the three documents. He also concluded that the printed name above the signature had similar characteristics to these documents, as did the printed date. Having detailed the numerous similarities between the signature, printed name and date on the IEA when compared to the other documents, he concluded that the similarities were "too numerous to ignore". He was of the opinion that:

The duplication of the signature, printed name and date is not a handwritten simulation as such by another author. But in my opinion, the signature, printed name and date has been skilfully cut or snipped from one document and transferred to another. Modern technology has applications for anyone with dishonest intentions to carry this out. Certainly, the trash marks around the questioned signature are an indication that the signature/printed name has been electronically transferred.

An exact replication of ones signature by free hand is unlikely, unless done with modern technology or it has been traced. Plus no one person signs, writes or prints exactly the same way each time. Even if they signed 1 minute or 5 minutes ago there would be some natural variation within the handwriting traits. The images can be transferred on to 2 clear transparency's and compared with each other for further future confirmation.

Therefore, I have established that it is more probable than not that the signatures, printed name and date have not been authored on to the original hard copy, but through the use of modern technology have been transferred from another document.

[16] Mr Moran subsequently transferred the signature and printed name images appearing on the IEA, and the drivers check consent form, onto clear transparency material for further confirmation. The Authority viewed these images. When the transparencies of the images were held over each other, the images were identical.

[17] Having examined the signature appearing on the IEA with the other documents Ms Gwilliam signed, particularly the drivers check consent form, I am satisfied that she did not sign the IEA produced by Timberworld. I am fortified in this finding not only by the transparencies provided, but by two other key pieces of evidence.

[18] First, the “trash marks” or photocopy dots that Mr Moran refers to in his evidence are clearly visible around the signature and printed name on the IEA. Had there been an innocent explanation for these dots, and had Ms Gwilliam indeed signed the IEA, then it is more likely than not that Timberworld would have produced the original IEA to the Authority as it was directed to do.

[19] Second, the conduct of Timberworld following Ms Gwilliam’s termination suggests, on balance, that she did not sign an IEA. Ms Gwilliam’s personal grievance letter identified that she did not have an IEA and she was not subject to a trial period. In Timberworld’s reply, it denied that she was unjustifiably dismissed but did not dispute that she did not have an IEA. In addition, it did not make any reference in its reply to terminating her employment pursuant to the trial provision. The notice period that it provided was also two weeks as opposed to the one week notice period specified under the trial provision contained in the alleged IEA.

### *Finding*

[20] In the circumstances, I find Ms Gwilliam did not sign an IEA containing a trial provision before she commenced employment with Timberworld. Accordingly there is no barrier to her pursuing a personal grievance for unjustified dismissal.

### **Costs**

[21] Costs are reserved and will be determined following the investigation of Ms Gwilliam’s claim of unjustified dismissal.

### **Outcome**

[22] The overall outcome that I have reached is:

- a. The terms of Ms Gwilliam’s employment with Timberworld did not contain a trial period of 90 days or less.
- b. Ms Gwilliam is not prohibited from pursuing her personal grievance for unjustified dismissal.
- c. Costs are reserved.

[23] The parties' attention is directed to the minute of the Authority that accompanies this determination. This minute sets out directions for the progression of the Authority's investigation into Ms Gwilliam's personal grievance.

Jenni-Maree Trotman  
Member of the Employment Relations Authority