

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2019] NZERA 699
3068332

BETWEEN MELANIE YOUNG
 Applicant

AND DION CAMPBELL T/A DCx
 SALES
 Respondent

Member of Authority: Trish MacKinnon

Representatives: Adrian Plunket for the applicant
 Limited participation from the respondent in person

Investigation Meeting: On the papers

Information Received: 23 September 2019 from the Applicant
 23 September 2019 from the Respondent

Date of Determination: 9 December 2019

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Melanie Young was employed as a Client Success Manager by the respondent, Dion Campbell trading as DCx, from 24 September 2018 to 11 February 2019, the date from which her employment was terminated. Ms Young was owed wages, wage arrears and holiday pay from that date, including for the two-week period of notice she received.

[2] On 24 February 2019, through her employment advocate, Adrian Plunket, Ms Young raised a personal grievance and an action for the recovery of monies owed to her. She is seeking lost wages and holiday pay, plus KiwiSaver that was promised, but not paid, during

her employment. Ms Young also seeks compensation for hurt and humiliation, payment of her costs and interest as appropriate on awards made to her.

[3] Dion Campbell responded on 25 February 2019 to Mr Plunket's letter notifying him of these matters. Mr Campbell stated that all the information in Mr Plunket's letter was correct and noted that he "may have overlooked my responsibilities in her (Ms Young's) employment with DCx Sales". Mr Campbell also noted that Ms Young had been employed specifically to be Client Success Manager for one of DCx's clients, Reapify Finance.

[4] When the contract with that client was abruptly terminated, according to Mr Campbell, "DCx was not in a position with cashflow or sales to continue her employment". Mr Campbell agreed that all the payments Mr Plunket had itemised were indeed owing to Ms Young. He said he intended to make those payments to her "when DCx Sales Ltd or myself as an individual can afford to do this in the light of losing our client, and putting us in financial trouble". I note that, while Mr Campbell referred to DCx Sales Limited, a search of the New Zealand Companies Register reveals there is no limited liability company registered in that name.

The Authority's investigation

[5] Mr Campbell had limited participation in the Authority's process and did not attend a telephone conference arranged to take place with the parties on 9 September 2019 for the purpose of discussing how Ms Young's claims would be progressed. In a communication with Mr Plunket, which the respondent copied to the Authority Officer dealing with the file, Mr Campbell reiterated that he:

- a. did not dispute the matter;
- b. accepted that the fault lay with him;
- c. was amenable to "making mandatory payments" to Ms Young "with the help of a payment plan that we can agree too (sic)."

[6] In the course of the telephone conference of 9 September 2019, which proceeded in Mr Campbell's absence, it was agreed the matter would be determined on the papers by way of affidavits and optional submissions from the parties. A timetable was put in place and Ms Young duly provided her sworn affidavit with supporting documentation.

[7] Mr Campbell agreed in email correspondence with the Authority that he would provide an affidavit confirming the statements he had made in his 25 February 2019 communication to Mr Plunket. He has failed to do so, however, despite reminders and prompting from an Authority Officer.

[8] I am satisfied Mr Campbell has had the opportunity to provide evidence by affidavit and has elected not to do so. I am also satisfied he was informed by the Authority Officer that the Authority would be making decisions on the claims made by Ms Young if he failed to provide an affidavit within the specified timeframe.

The employment relationship

[9] Ms Young's affidavit set out the background to the employment relationship with Mr Campbell whom she had known since school days. She had left a secure management position with a nationwide organisation in order to take up the role of Client Success Manager with Mr Campbell, whom she referred to as the CEO and Sales Coach for DCx.

[10] Ms Young deposed that she loved her job with DCx but that in January 2019, her fourth month in the position, she began to experience problems with her pay. Wages were not being paid on time and she began to feel stressed over meeting her accommodation and family commitments as the bread winner for her two teenaged children.

[11] Emails were exchanged between Ms Young and Mr Campbell over the ensuing weeks in which Ms Young received many promises of payment, but no remuneration. On 27 January 2019 Mr Campbell raised the prospect of not being able to retain Ms Young as an employee and on 28 January he confirmed that he was giving her notice of the termination of her employment on two weeks' notice. Her employment was to end on 11 February 2019.

[12] Ms Young deposed that she was "shocked and absolutely gutted" at her dismissal. The repercussions were immediate in that she could not pay her rent and had to leave the home she lived in with her children and move in with her mother. She also had to seek alternative employment as a matter of urgency.

[13] Ms Young's affidavit referred to her distress at finding herself in this position after having given up secure employment to work for someone she trusted as a friend and an

employer. She said she felt stupid and humiliated as well as being mortified that she had to beg for financial support from her family.

Discussion

[14] The facts of the employment relationship and how it ended were set out in Mr Plunket's letter to Mr Campbell of 25 February 2019, along with the remedies she sought. Those matters were not contested by Mr Campbell who acknowledged Ms Young was owed six weeks' wages, plus annual holidays and KiwiSaver contributions at the agreed rate of 3.5% from the commencement of her employment. At her annual rate of pay of \$48,500, six weeks' wages equate to \$5,596.15 gross. Holiday pay and KiwiSaver will be calculated on total wages later in this determination.

[15] Ms Young's representative advises Mr Campbell paid \$300 towards wage arrears after the statement in problem was lodged. That amount will be deducted from the sum he will be ordered to pay to Ms Young.

[16] It is clear from Mr Campbell's responses to Mr Plunket's letter that Ms Young was dismissed without consultation or proper process. Her dismissal was acknowledged by Mr Campbell as unjustifiable procedurally. Mr Plunket characterised the dismissal as a redundancy, which Mr Campbell did not disagree with, attributing it to a lack of cashflow resulting from the loss of a client.

[17] When Mr Plunket questioned the genuineness of that redundancy and asked the employer for financial information supporting the reasoning behind it, Mr Campbell's response was that this was not a problem. He said he could supply financial information if so desired. He has not, however, supplied any such information.

[18] I find Ms Young was unjustifiably dismissed by her employer Dion Campbell trading as DCx Sales. In considering what remedies are appropriate for her personal grievance I am required to take into account any contribution Ms Young made to the situation that gave rise to her personal grievance.¹ That may be disposed of easily as there is nothing in the evidence to suggest Ms Young contributed in any way to that situation.

¹ In accordance with s 124 of the Employment Relations Act 2000.

[19] I accept Ms Young's evidence of the humiliation, loss of dignity and injury to feelings she suffered from her dismissal and find an award of \$10,000 without deduction under s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act) to be appropriate.

[20] Ms Young obtained alternative employment four weeks after being given notice of the termination of her employment by Mr Campbell and 2 weeks after her notice period expired. Section 128 of the Act provides that, where the Authority determines an employee has a personal grievance and has lost remuneration as a result of that grievance, the Authority must order the employer to pay the employee the lesser of a sum equal to the lost remuneration or to three months' ordinary time remuneration.

[21] By my calculations, Ms Young lost two weeks' remuneration, before obtaining alternative employment, as a result of her personal grievance, after the arrears of wages owing to 11 February 2019 are taken out of the equation. That amounts to \$1,865.38. Mr Campbell is accordingly ordered to pay Ms Young that amount.

[22] Ms Young took no holidays during the course of her employment and is accordingly entitled to 8% of her gross earnings from the commencement of her employment.²

Orders

[23] Dion Campbell trading as DCx Sales is ordered to pay Melanie Young the following sums:

- a. \$5,296.15 gross, being unpaid wages owing to 11 February 2019;
- b. \$1,865.38 gross, being remuneration lost under s 128 of the Act;
- c. \$1,641.54, being holiday pay due under s 23(2) of the Holidays Act;
- d. \$718.18, being compensation for loss of a benefit (KiwiSaver contributions at 3.5%) under s 123(1)(c)(ii) of the Act; and
- e. \$10,000 without deduction, being compensation under s 123(1)(c)(i) of the Act.

[24] Interest, to be calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016 on the sums specified at [23] (a) to (d) above, is payable from 1 March 2019 until the date those sums are paid.

² In accordance with s 23(2) Holidays Act 2003.

[25] All monies are to be paid within 28 days of the date of this determination.

[26] In the absence of any detailed information as to Mr Campbell's financial position, it is not appropriate to order payment by instalments, or a payment plan, as referred to in Mr Campbell's communication to the Authority of 23 September 2019.³

Costs

[27] The issue of costs is reserved.

Trish MacKinnon
Member of the Employment Relations Authority

³ Section 131(1A) of the Act refers.