

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 503
3104176

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| BETWEEN | BARBARA-LEE (BARLEE) VAN NIEKERK Applicant |
| AND | HONEYBUNCH PURE NZ LIMITED First Respondent |
| AND | HONEYBUNCH PURE NATURALS NZ LIMITED Second Respondent |
| AND | LISA JOLLY Third Respondent |

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| Member of Authority: | Nicola Craig |
| Representatives: | Jeremy Lynch, counsel for the applicant Helen Watson for the first respondent Lisa Jolly for the second and third respondents |
| Investigation Meeting: | On the papers |
| Submissions received: | 4 September and 11 November 2020 from the applicant No submissions received from the first respondent 1 October 2020 from the second and third respondent |
| Date of Determination: | 4 December 2020 |

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Barbara-Lee van Niekirk (known as Barlee) claims that she was unjustifiably dismissed, was subject to a disadvantage due to unjustified action, is owed an unpaid bonus and had her wages reduced during the Covid-19 lockdown without her agreement.

[2] Ms van Niekirk initially filed this claim solely against the first respondent Honeybunch Pure NZ Ltd. That company is referred to as the employer in Ms van Niekirk's employment agreement. Helen Watson for the first respondent filed a statement in reply denying any knowledge of the applicant or having employed her.

[3] An amended statement of problem was filed adding the second and third respondents (Honeybunch Pure Naturals NZ Ltd and Lisa Jolly). A statement in reply for those parties recognised Ms van Niekirk as an employee of the second respondent but denied all her claims. This included asserting that Ms van Niekirk had resigned and not been dismissed.

Striking out the first respondent

[4] The Authority then sought the parties' views on whether the Authority should strike out the first respondent as a party to this proceeding and thus there would not be a need for a suggested preliminary investigation and determination of the identity of the employer.

[5] Ms van Niekirk responded that if the second and/or third respondents accepted it/they gave the employment agreement to her without authority from the first respondent to do so, she would accept the first respondent being struck out.

[6] No response was received from the first respondent so I take it that there is no objection from that company to being struck out.

[7] The second and third respondents were asked to inform the Authority whether they accepted that the employment agreement was given by it/them to Ms van Niekirk and that was done despite having no authority to bind the first respondent.

[8] The second and third respondents replied that they had lodged a claim against their bookkeepers who prepared their employment agreements during that time. Several agreements were said to have a typo indicating that the first respondent was the employer. Documents were filed suggesting that a claim had been made to what I take to be the Disputes Tribunal.

[9] The Authority informed the parties that I took that response to indicate that Ms Jolly accepts that she inadvertently gave Ms van Niekirk the employment agreement

with the incorrect name on it (namely the first respondent) as a result of the bookkeepers providing it.

[10] Ms van Niekirk's representative informed the Authority that was sufficient for her to accept that the first respondent should be struck out.

[11] Under s 221 of the Employment Relations Act 2000 (the Act) I strike the first respondent Honeybunch Pure NZ Ltd out as a party to this proceeding.

Mediation

[12] Under s 159 of the Act I direct that the remaining parties Ms van Niekirk, Honeybunch Pure Naturals NZ Ltd and Ms Jolly attend mediation within 70 days and attempt in good faith to reach a resolution of their differences. A copy of the amended statement of problem and the second and third respondents' statement in reply will be forwarded to the mediation team of the Ministry of Business, Innovation and Employment for their information. A dispute resolution coordinator will contact the parties directly to arrange a mutually acceptable date and time for mediation to take place.

Nicola Craig
Member of the Employment Relations Authority