

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2021] NZERA 291
3119912

BETWEEN AVA FAITH MOULTON-HARDEN
Applicant

AND REXJOY ENTERPRISES LIMITED
(In Liquidation)
Respondent

Member of Authority: Philip Cheyne

Representatives: Paul Mathews, advocate for the Applicant
No appearance for the Respondent

Investigation Meeting: 8 July 2021 in Christchurch

Date of Determination: 8 July 2021

DETERMINATION OF THE AUTHORITY

- A. Rexjoy Enterprises Limited is to pay Ava Faith Moulton-Harden arrears of wages and holiday pay of \$446.69, pursuant to s 131(1) of the Employment Relations Act 2000.**
- B. Rexjoy Enterprises Limited is to pay Ava Faith Moulton-Harden compensation of \$15,000.00, pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000.**
- C. Rexjoy Enterprises Limited is to pay Ava Faith Moulton-Harden compensation of \$3,186.00, pursuant to s 123(1)(c)(ii) of the Employment Relations Act 2000.**
- D. Rexjoy Enterprises Limited is to pay Ava Faith Moulton-Harden costs of \$2,321.56.**

Employment relationship problem

[1] This determination confirms the oral indication of my preliminary findings, given at the conclusion of the investigation meeting.

[2] This claim was lodged in June 2020. Rexjoy Enterprises Limited was placed in liquidation on 30 March 2021. Section 248 of the Companies Act 1993 prevents the continuation of legal proceedings against the company, without the liquidator's agreement. Mr Mathews sought and obtained the liquidator's consent to the continuation of the proceedings.

[3] As the liquidator foreshadowed, there was no appearance for the respondent and it did not defend the claim.

[4] I amend the proceedings to reflect the applicant's full name.

[5] Ava Moulton-Harden says there was a default in payment to her of wages and holiday pay due. Ms Moulton-Harden claims arrears. Ms Moulton-Harden says she was unjustifiably dismissed and claims compensation. Costs are also sought.

[6] Rexjoy Enterprises Limited did not lodge a statement in reply.

Findings

[7] Ms Moulton-Harden was employed by Rexjoy Enterprises from 29 December 2019.

[8] Ms Moulton-Harden was dismissed by Rexjoy Enterprises on 24 January 2020.

[9] Whether the dismissal was justifiable must be determined objectively by assessing whether the employer's actions and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time. I must consider the matters set out at s 103A(3) of the Employment Relations Act 2000 and other factors I consider appropriate.

[10] I take from Ms Moulton-Harden's evidence that she had a concern about whether she had been correctly paid so she spoke to the manager (Joy Everett). Ms Moulton-Harden did not get a satisfactory response, so arranged for her then partner to come in to the shop as her

support person to continue the discussion about her pay. That led to words between the partner and the manager. The manager said she would call the police and the partner left the premises. The manager then dismissed Ms Moulton-Harden, saying it was because of her partner.

[11] Rexjoy Enterprises did not raise concerns with Ms Moulton-Harden before dismissing her. Ms Moulton-Harden had no opportunity to respond to the concerns, so Rexjoy Enterprises gave no consideration to any explanation.

[12] Circumstances were never likely to give rise to justification for a dismissal, regardless of these failures. Ms Moulton-Harden was entitled to seek support as part of questioning whether she had been correctly paid. Rexjoy Enterprises took exception to things said by the partner, but Ms Moulton-Harden was not responsible for that. It is probable also that Rexjoy Enterprises dismissed Ms Moulton-Harden for the additional reason that she was seeking to be paid correctly.

[13] An employment agreement apparently included provision allowing Rexjoy Enterprises to dismiss Ms Moulton-Harden within 90 days. If Rexjoy Enterprises had sought to rely on that provision as an answer to Ms Moulton-Harden's personal grievance claim, I would have needed to consider whether the agreement had been concluded in compliance with s 67A of the Employment Relations Act 2000 and whether Rexjoy Enterprises had given notice under the provision in the contract. Given Ms Moulton-Harden's evidence on both points, Rexjoy Enterprises would not have had the statutory protection from this personal grievance claim granted by s 67B of the Employment Relations Act 2000.

[14] Ms Moulton-Harden was unjustifiably dismissed and has a personal grievance.

[15] Ms Moulton-Harden did not contribute in a blameworthy way to the circumstances giving rise to her personal grievance.

[16] There is a claim for compensation for the humiliation, injured feelings and lost dignity suffered by Ms Moulton-Harden as a result of the grievance. I accept that Ms Moulton-Harden lost a lot of self-confidence and became anxious when applying for other work. It caused Ms Moulton-Harden to apply for work at larger businesses to reduce the risk of being

wrongly paid and unfairly dismissed again. Ms Moulton-Harden's grandmother (Tania Jordan) gave evidence to confirm Ms Moulton-Harden has suffered these effects. I accept this evidence. An award of \$15,000.00 is sought. I fix that sum as the amount of compensation required to remedy the harm caused to Ms Moulton-Harden.

[17] There is a claim to cover the lost remuneration for at least three months. I accept Ms Moulton-Harden lost at least three months' ordinary time remuneration. I accept Ms Moulton-Harden's evidence that she expected to work at least 15 hours per week. At \$17.70 per hour, Ms Moulton-Harden's loss was \$265.50 per week. I deduct a week's casual work that Ms Moulton-Harden obtained during the three months' following the dismissal. There remains a loss of \$3,186.00 and Ms Moulton-Harden is entitled to an order of compensation to cover that loss.

[18] Ms Moulton-Harden was not paid for 23 hours of work. Arrears of wages of \$407.10 are proven.

[19] Ms Moulton-Harden was not paid holiday pay at the termination of her employment. Ms Moulton-Harden was paid net wages of \$442.94 during the employment. The gross on that amount was \$494.91. Holiday pay of \$39.59 was due. I add to that figure holiday pay of \$32.57 on the arrears. Ms Moulton-Harden should have been paid \$72.16 in holiday pay, but was not. Arrears of \$72.16 in holiday pay are established.

[20] There will be an order of arrears of wages and holiday pay totalling \$446.69.

[21] There is a claim for costs, based on the Authority's daily tariff scale. I fix costs at a half-day based on the daily tariff rate for the first day. Together with the lodgement fee, costs come to \$2,321.56. There will be an order for that amount.

Philip Cheyne
Member of the Employment Relations Authority