

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2024] NZERA 493
3288840

BETWEEN PIPER JENSSEN
Applicant

AND CORO TRADING NZ
LIMITED
Respondent

Member of Authority: Shane Kinley

Representatives: Applicant in person
Maia Luxford-Sullivan, representative for the
Respondent

Investigation Meeting: On the papers

Submissions and affidavit evidence: Up to 17 July 2024

Determination: 16 August 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Piper Jenssen raised a claim she had been offered an increase in hours of work by Coro Trading NZ Limited (CTNZL) at BP Bayview by its Store Manager and sought compensation for a period when she said she should have been offered a higher minimum number of hours.

[2] CTNZL's response is that it never contractually guaranteed Ms Jenssen an increase in hours of work and no compensation is due as she was provided her contractually guaranteed hours of work.

The Authority's investigation

[3] For the Authority's investigation written witness statements in affidavit form were lodged by Ms Jenssen, and for CTNZL from the Store Manager, Assistant Store Manager and former Trainee Manager of BP Connect Bayview.¹ The representative for CTNZL also provided written submissions.

[4] The parties agreed at a case management conference on 5 June 2024 this matter would be investigated on the papers. Evidence and submissions were provided as timetabled.

[5] As permitted by s 174E of the Employment Relations Act 2000 (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. It has not recorded all evidence and submissions received.

The issues

[6] The issues requiring investigation and determination are:

- (a) Was Ms Jenssen offered an increase in hours of work at BP Connect Bayview by its Store Manager, from a minimum of 15 hours per week, to a minimum of 30 hours per week?
- (b) If so, is Ms Jenssen entitled to be paid compensation for the period of six weeks when she says she should have been offered the higher minimum number of hours (either as compensation for lost wages under s 123(1)(b) of the Act or as arrears of wages under s 131 of the Act)?
- (c) Is Ms Jenssen entitled to be reimbursed for the costs of a medical certificate?
- (d) Should either party contribute to the costs of the other party?

[7] At the case management conference CTNZL's representative confirmed it would reimburse Ms Jenssen for the costs of the medical certificate on presentation of proof of the amount paid. Ms Jenssen undertook to seek proof of payment. I indicated if Ms Jenssen provided proof of payment and reimbursement was made, then this issue would not need to be investigated or determined.

[8] Ms Jenssen advised in her affidavit, having checked for records of payment, she was no longer "claiming now for the reimbursement of the medical certificate ... [as]

¹ I have chosen to use position titles for these three witnesses rather than identifying them by name.

it was a nurse consult ... in the end at no cost to me". I have treated this as Ms Jensen effectively withdrawing this claim.

[9] I observe Ms Jensen genuinely thought in raising this claim the medical certificate had been paid for and she is commended for withdrawing this claim when she realised there had not been a payment. Similarly, CTNZL is commended for recognising its Assistant Store Manager had made an error in requesting a medical certificate without offering reimbursement. While there was a difference in evidence over what steps were taken at the time and Ms Jensen expressed dissatisfaction with CTNZL having requested the medical certificate on her first day of feeling ill, the fact there was no payment for the medical certificate means there is no live claim. This issue is not addressed further in this determination.

Was Ms Jensen offered an increase in hours of work?

Relevant law

[10] Verbal contracts are just as legally enforceable as written ones.² That said, there must be offer and acceptance. In this case I need also to consider the terms of Ms Jensen's written employment agreement with CTNZL, clause 45 of which states "any change or addition to this Agreement must be agreed in writing".

Submissions and evidence of the parties

[11] Copies of Ms Jensen's employment agreement and offer of employment were provided which stated ordinary hours of work were 15 per week. The parties agreed this was the arrangement when Ms Jensen was employed in August 2023.

[12] Ms Jensen's affidavit evidence said she had discussed needing 30 hours per week when she finished school for the year, before starting a tertiary course in 2024, with the hiring manager (the Trainee Manager). Ms Jensen also said she finished school in October 2023 and then:

started working the 30-hour weeks. I was advised by [the Store Manager] I would be getting a new contract amendment to be signed confirming the 30 hours, then a week later was told they were just going to keep the old contract as it was going to cause too much paperwork for them.

... after a couple of weeks without discussion or communication I looked at my roster and I had been cut back down to 15 hours. I tried to talk with Management as to why this had happened as I had been promised verbally and

² See for example the Court of Appeal's judgment in *Warwick Henderson Gallery Ltd v Weston* [2006] 2 NZLR 145.

in email, I would be doing 30 hours a week over December and January. I was advised there was not enough work available, yet they had hired at least 2 more teenagers who were now doing my shifts. ...

[13] Ms Jenssen's reply affidavit was consistent with this, also stating she discussed the increase in hours with the Trainee Manager and the Store Manager, and saying she worked "30 hours for a little bit just under a month before my hours were cut back down to 15 hours". She also reiterated other workers "started getting new hours, the hours that I had previously worked that last month" and co-workers "told me they had asked for more hours as study break was happening, so they were available to work more shifts – my shifts".

[14] The Trainee Manager's affidavit confirmed he interviewed and hired Ms Jenssen for a part-time role of 15 hours per week, though he said "I never guaranteed that [Ms Jenssen] would be rostered 30 hours per week". He also acknowledged Ms Jenssen had "informed me that she was willing to work up to 30 hours per week during Eastern Institute of Technology holidays from September" which he noted on the interview guide (as discussed at paragraph [18] below) and says he told Ms Jenssen "we could discuss closer to the time".

[15] The Store Manager's affidavit supported the Trainee Manager's evidence and acknowledged having a discussion with Ms Jenssen discussing her availability to work up to 30 hours per week and saying "I was supportive of offering her 30 hours per week, depending on operational requirements. I never guaranteed [Ms Jenssen] 30 hours of work per week".

[16] The Store Manager also described an email exchange with Ms Jenssen asking her to "provide me with the dates from when she would be able to increase her availability. I did not guarantee that her hours would be increased". She also described the process by which students would request extra hours through a rostering portal, with all staff able to access and request extra hours, including Ms Jenssen.

Finding

[17] Ms Jenssen's written employment is clear she was employed for 15 hours per week and no conclusive documentary evidence has been produced which shows she was guaranteed additional hours. The email exchange between Ms Jenssen and the Store Manager included the following:

Store Manager to Ms Jenssen: ... please send me an email with the details and dates of hours requested. Thank you for taking the time to come and talk to me

Ms Jenssen to Store Manager: I am available from the 10th of October with 30 hours a week Monday through to Saturday I am available in the hours of 10-2100

Store Manager to Ms Jenssen: Received thank you [Ms Jenssen]. Reflexis [the BP rostering portal] is still currently not scheduling properly so please also look at manual roster on wall until further notice.

[18] The interview guide filled in by the Trainee Manager, which Ms Jenssen had not seen prior to receiving the evidence for this matter, recorded “Can go up to 30 (September) when EIT starts up back 20 hours”.

[19] The documentary evidence does not support Ms Jenssen’s claim there was an agreement that she was contractually entitled to 30 hours of work per week.

[20] While the variation clause of Ms Jenssen’s employment agreement clearly required changes to that agreement be agreed in writing, I do not consider this would have been a barrier to an oral agreement being made to the contrary, should there be clear evidence of verbal offer and acceptance. In this case however I do not consider such clear evidence has been produced of verbal offer and acceptance for a change to Ms Jenssen’s terms of employment. The email exchange between Ms Jenssen and the Store Manager clearly shows Ms Jenssen expressing her availability for 30 hours per week, but the Store Manager’s response stops short of offering that number of hours.

[21] I am left needing to consider whether there is any other evidence which displaces the plain meaning of the documentary evidence and conclude there is not. I consider it more likely than not the Store Manager and Trainee Manager indicated additional hours were potentially available and the process for seeking those, and Ms Jenssen expressed her desire to work additional hours.

[22] Any verbal indications of the possibility of additional hours were then interpreted by Ms Jenssen as being agreement she would be rostered for 30 hours per week. Her view was reflected in her references to other workers “doing my shifts”.

[23] I find however the indications of the Store Manager and Trainee Manager fall short of being an offer and consider insufficient evidence has been provided of a clear and unequivocal meeting of the minds capable of being construed to be an oral agreement for a change to Ms Jenssen’s terms of employment.

Orders

[24] Ms Jenssen's claim she was offered an increase in hours of work by CTNZL is unsuccessful. As a consequence I do not need to consider further whether Ms Jenssen is entitled to be paid compensation for the period of six weeks when she says she should have been offered the higher minimum number of hours.

[25] Ms Jenssen effectively withdrew her claim to be reimbursed for the costs of a medical certificate.

[26] No orders are made.

Costs

[27] As Ms Jenssen's claims were unsuccessful or withdrawn, CTNZL would normally be entitled to consideration of costs. Submissions for CTNZL said however it "will not be pursuing costs for preparation for the investigation meeting".

[28] In light of CTNZL's submission, I consider it appropriate to order costs lie where they fall.

Shane Kinley
Member of the Employment Relations Authority