

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2024] NZERA 83  
3187559

BETWEEN

VANESSA CHANDLER  
Applicant

AND

QUEENSTOWN LOCAL LAUNDRY  
SERVICES LIMITED  
Respondent

Member of Authority: David G Beck

Representatives: Hayley Johnson, advocate for the Applicant  
Jody King for the Respondent

Investigation Meeting: 6 December 2023 in Queenstown

Submissions Received: 20 December 2023 from the Applicant  
20 December 2023 and further information provided 9 February  
2024 from the Respondent

Date of Determination: 14 February 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Vanessa Chandler was employed by Queenstown Local Laundry Services Limited (QL) as a laundry supervisor and delivery driver in Queenstown until 21 March 2022.

[2] Ms Chandler claims she was unjustifiably dismissed and unjustifiably disadvantaged in the course of her employment concerning an alleged unilateral reduction of wages following the Covid-19 lockdown period and the imposition of altered hours of work and days worked thereafter. Ms Chandler is claiming wage arrears, lost wages and compensation for the impact of the alleged unjustified dismissal.

[3] By contrast, QL contend the employment ended due to a genuine redundancy because the business was struggling with ongoing profitability and agreement was present on other matters claimed to have been disadvantageous to Ms Chandler.

[4] The parties attended mediation but the matter remained unresolved.

### **The Authority's investigation**

[5] Pursuant to s 174E of the Employment Relations Act 2000 ("the Act"), I make findings of fact and law and outline conclusions to resolve the disputed issues and make orders but I do not record all evidence.

[6] Vanessa Chandler attended the investigation meeting and so did Jody King, QL's sole director and shareholder. Ms Chandler provided a written brief and gave evidence at the investigation meeting. Prior to the investigation meeting, Ms King did not provide a brief of evidence as directed but she did, with the Authority and Ms Chandler's advocate's consent, give oral evidence at the investigation meeting.

[7] At the end of the investigation meeting submissions were timetabled and provided by the applicant's advocate on 20 December 2023. Ms King provided a further discursive statement detailing her personal circumstances and concluded: "I waited five months for her to leave did everything correct. Was forced to make her redundant in March 2022". Ms King also provided a range of text communication between her and Ms Chandler that latterly evidenced a tense personal and employment relationship.

### **Issues**

[8] The issues to be determined are:

- (a) Was Ms Chandler unjustifiably dismissed and/or disadvantaged or was the employment relationship ended by reason of a genuine redundancy enacted in a procedurally and substantively fair manner.
- (b) If an unjustified dismissal and/or disadvantage claim is established what remedies should be awarded?
- (c) If Ms Chandler is successful in all or any element of her personal grievance claims should the Authority reduce any remedies granted because of any contributory conduct?
- (d) An assessment of the level of costs to be awarded to the successful party.

### **What caused the employment relationship problem?**

[9] Ms Chandler was a close friend of Ms King (including being the Godmother of her son) from the end of the 90s' and had lived at Ms King's home for ten years before initially working for QL between 2016-2018 as a laundress. The friendship and its subsequent ending is a complicating factor in determining the employment relationship issues as a significant amount of communication was informal.

[10] After taking a short break, Ms Chandler recommenced employment as a laundry supervisor with QL on 8 August 2019. Ms Chandler says she took the break because she was having problems working weekends and upon returning, it was agreed that she work Monday to Friday inclusive for forty-one hours at an hourly rate of \$25 (that Ms Chandler says increased to \$25.62 from 1 September 2019 but then decreased from 25 May 2020 to a flat rate of \$585.80 per week).

[11] Ms Chandler says during the first and second period of employment, no employment agreement was provided until August 2021. A copy of that employment agreement was provided by Ms Chandler. It was signed by Ms King and dated 19 October 2019. Ms King was unclear on when the employment agreement was provided. Ms King appeared to accept it was provided mid - September 2021 but suggested it had always been available and accessible to Ms Chandler on QL's data base. In the circumstances, I find this employment agreement was intended to and agreed as governing the employment relationship.

[12] Ms Chandler says up until returning to work after the April 2020 Covid-19 imposed lockdown, all had gone well in the employment relationship. Upon the return, Ms Chandler says QL imposed an effective wage reduction by only paying Ms Chandler \$585.80 per week (the level of a government provided subsidy). Ms Chandler says after explaining to Ms King that this was unsustainable “we decided” to “reduce my hours to match the wage subsidy amount”, resulting in Ms Chandler working just Tuesdays, Wednesdays, and Thursdays. Ms Chandler says she envisaged this would continue for six weeks but her hours were not restored and the relationship with Ms King deteriorated to the point where they ceased communicating. Ms Chandler did not formally challenge the hours reduction at the time nor was anything documented as an agreed variation by QL.

[13] Ms King says she tried to resolve the communication breakdown with a letter she gave Ms Chandler at or around 29 July 2021. The discursive letter is an amalgam of personal and work-related comment. Generally, Ms King made a plea to resolve matters on a personal level but despite offering an apology for the impact of her behaviour (and explaining the reason as being health related), the letter is peppered with negative and pejorative comment on Ms Chandler’s approach to her work.

[14] Two comments in the 29 July letter stand out and are relevant to this investigation – one, being a suggestion: “I need all my staff to be supportive and pro-active to my instructions. As there will be big changes happening” and the concluding comment warning that if the issues were work related: “As a boss, if this is not addressed by Thursday 19<sup>th</sup> August – Regretfully I will be forced to stand you down without pay until you meet to discuss work related matters”.

[15] On a constructive note, the letter did invite Ms Chandler to attend “an urgent meeting with a 3<sup>rd</sup> person of your choice or for you to inform me in writing of what these issues are and I can address them accordingly”. The letter and subsequently disclosed correspondence showed a significant, unresolved, and ongoing issue of QL being unable to persuade Ms Chandler of the need to fill out daily time sheets to record her hours worked.

[16] Ms Chandler says she responded by text of 9 August 2021, seeking clarity on work related mistakes to rectify but got no coherent response and so she arranged a meeting with a

local Citizens Advice Bureau (CAB) worker agreeing to mediate. This meeting occurred on 16 September 2021. Ms Chandler says the outcome was inconclusive except for an agreement that Ms King would stop pressing her to work on a Saturday, a KiwiSaver issue was rectified and Ms King agreed should Ms Chandler leave, her notice period would be reduced from four to two weeks.

[17] In contrast, Ms King says that during the CAB meeting, Ms Chandler signalled an intention to resign albeit at some future unspecified date. Ms King also recalls indicating at the meeting that including herself working in the business, there was not enough ongoing work to sustain the ongoing engagement of three others (inclusive of Ms Chandler). Ms King also explained QL's business was being impacted by the then existing border closure and lack of overseas visitors.

[18] Ms King says while spending more time in the business she arranged the roster so she would not be at work the same days as Ms Chandler.

### **Ending of the employment relationship**

[19] By text of 28 September 2021, Ms King purported to end Ms King's employment by indicating "in light of last weeks meeting. Shall we make it two weeks notice from today". Ms Chandler responded promptly with "No I will let you know when". This led to Ms King indicating first: "Ummm. No.that won't work sorry, I can't afford to keep you on. I will write out a formal letter then," and then: "You made it clear you did not want to work for me. So, that actually works out well".

[20] Despite the above exchange Ms Chandler says Ms King did not provide her a letter of termination but continued to not communicate, which left Ms Chandler feeling anxious. Thereafter, up to March 2022 Ms King and Ms Candler only communicated by text. The texts disclosed were not amicable. They included an exchange of 27 October where Ms King referred to the CAB meeting, in part indicating to Ms Chandler: "You said you were leaving at the meeting. Please do so".

[21] In November/December 2021, Ms Chandler recalled continuing issues and that after she returned from an absence due to a work-related injury on 9 December, Ms King made another dismissal threat.

#### *The dismissal of 8 March 2022*

[22] At the start of 2022 Ms Chandler was diagnosed with vertigo and had some time off in February and then after visiting her GP on 4 March, Ms Chandler obtained a medical certificate she provided Ms King. It indicated work related factors were contributing to her ongoing depression and anxiety. A dispute then ensued over Ms Chandler's sick leave allocation that led to a text from Ms King of 8 March that indicated she had waited patiently for her to leave and expressed a view that Ms Chandler was stringing out her sick leave allocation. The text ended with:

Your actions currently are not 'in good faith' I will not be paying anymore sick days after this week.

And your last day of employment with the laundry will be 21 st March.

[23] Ms Chandler did not return to work but she was paid in lieu of a two weeks' notice period up to 21 March 2022.

#### *The personal grievance*

[24] In a letter from her advocate of 7 June 2022, Ms Chandler raised a personal grievance claiming she had been unjustifiably dismissed and was due unspecified wage arrears. QL's response authored by Ms King of 19 July 2022, suggested Ms Chandler had resigned without any pressure from QL and that Ms King did not have the time "to engage in defending such blatant untruths".

[25] The parties then attended mediation but the matter was not resolved.

#### **Issue 1 – was Ms Chandler unjustifiably dismissed?**

[26] Ms Chandler's employment agreement's provision for redundancy indicates:

Redundancy is when an employee's role is no longer needed.

If after following a good faith restructuring process the employee is made redundant, they will be given notice as set out in Ending employment [four weeks]. They will not receive redundancy compensation or other redundancy entitlements.

[27] The above clause is in accord with long established case law that redundancy arises where a specific position is superfluous to the needs of an employer's business to establish an abstract construct that it is the position and not the person that is redundant.<sup>1</sup> However, this is an overarching definition that does not necessarily address the spectrum of how a redundancy arises and in what context.

### *Justification*

[28] To justify termination of employment and an employer's actions including in a redundancy situation, QL must meet statutory requirements set out in s103A of the Act commonly referred to as the 'justification test'. This test requires the Authority to undertake an objective assessment of whether QL's actions and how it acted, were what a fair and reasonable employer could do in all the circumstances at the time of the ending of the employment relationship. In applying this test, the Authority must consider several factors including: the resources available to QL and here in context, whether QL gave Ms Chandler an opportunity to comment on a proposal to end the employment relationship and whether that comment was genuinely considered.

### *Good faith*

[29] To ensure a redundancy is enacted in a procedurally fair manner, good faith obligations also apply as set out in s 4 of the Act - these include a positive disclosure obligation of an affected employee being provided with access to information supporting the reason for the redundancy and the detail of how it is proposed it will be implemented. Further and crucially, an employee must be afforded an opportunity to comment on any redundancy proposal prior to a decision being finalised.

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<sup>1</sup> *GN Hale & Sons Ltd v Wellington Caretakers IUOW* [1990] 2 NZILR 1079 (CA) affirmed as still applicable law in *Grace Team Accounting v Brake* [2015] 2 NZLR 494.

[30] The Court of Appeal in *Grace Team Accounting v Brake*<sup>2</sup> has ruled that an employer claiming to be in a redundancy situation is only entitled to justifiably end an employment relationship for valid and demonstrable commercial reasons and when looking at applying the s103A test has said:

If the decision to make an employee redundant is shown not to be genuine (where genuine means the decision is based on business requirements and not used as a pretext for dismissing a disliked employee), it is hard to see how it could be found to be what a fair and reasonable employer would or could do. The converse does not necessarily apply. But, if an employer can show the redundancy is genuine and that the notice and consultation requirements of s 4 of the Act have been duly complied with, that could be expected to go a long way towards satisfying the s 103A test.

[31] In essence, the above requires the Authority to determine first if the redundancy was genuine (an assessment that must exclude any ulterior motive) and then whether it was enacted in a procedurally fair manner.

### **Assessment**

[32] While QL says Ms Chandler was aware of the trading difficulties it was facing and had been alerted to a need to reduce employee numbers in September 2021, by the time Ms King decided to end the employment relationship in early March 2022 there was no proposal put to Ms Chandler that a redundancy was being contemplated. Further, a reading of the 8 March dismissal text alludes to a 'good faith' dispute about sick leave usage. This suggests the dismissal was not for a redundancy reason, genuine or otherwise.

[33] Ms King insisted during the investigation meeting that the employment had ended in September 2021 with Ms Chandler having given notice that she was seeking alternative employment and then Ms King appeared to suggest the need for a redundancy became apparent when Ms Chandler did not leave. No evidence was provided to establish that the need to make Ms Chandler redundant was genuine.

[34] I find as submitted by Ms Chandler's advocate, that no fair process was enacted prior to the dismissal (in breach of the employment agreement and statutory requirements)

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<sup>2</sup> At [85].

regardless of the various grounds subsequently advanced as reasons for QL ending the employment relationship.

[35] I find it is more likely than not, the dismissal was for a mixed ulterior motive in that the personal relationship between Ms King and Ms Chandler had significantly deteriorated and Ms King could not wait until Ms Chandler found alternative employment. I have considered that QL is a small employer that was struggling post - Covid and that Ms King was unwell but this does not detract from the complete absence of basic procedural steps prior to Ms King peremptorily bringing the employment relationship to an end.

[36] I overall find in terms of s 103 of the Act, QL did not act in a fair and reasonable manner in all the circumstances and Ms Chandler was treated shabbily – the dismissal and/or redundancy process was enacted in a flawed manner and caused significant detriment.

### **Finding on first issue**

[37] I find Ms Chandler was unjustifiably dismissed and is entitled to consideration of the remedies she seeks.

### **Second issue : what remedies should Ms Chandler be awarded?**

#### *Lost wages*

[38] Ms Chandler did not find alternative employment until 22 November 2022 but has claimed thirteen weeks lost wages of \$13,322.40 based on an hourly rate of \$25.62 for 40 hours per week. While I am prepared in the circumstances to award thirteen weeks lost wages pursuant to s 123(1)(b) of the Act, calculating the amount due was hampered by QL's ongoing failure to provide a wage and time record. On the day of the investigation meeting, QL provided a document entitled "Wages Payable-Payroll Transactions" that did not detail the hours worked by Ms Chandler in each pay period or an hourly rate of pay.

[39] The employment agreement produced and affirmed by both parties shows that Ms Chandler was to be paid \$25 per hour as a "weekly Salary for 41 hours of \$1025.00 (gross) per week". The payroll documentation shows a figure of \$1025.00 per week was paid up to 18

May 2020 but thereafter, regardless of days or hours worked, Ms Chandler was paid \$585.80 per week.

[40] On the basis what is detailed in the employment agreement, I award Ms Chandler the sum of thirteen weeks lost wages in the amount of \$13,325.00.

*Wage arrears*

[41] In addition, Ms Chandler made a claim for wage arrears saying the reduction of her pay from \$1025.00 per week to \$585.80 per week from 18 May 2020 onwards had not been consented to and was not the subject of a documented agreed variation. The period involved is 95 weeks and the difference between the salary amount initially paid and the reduced rate amounts to \$41,724.00.

[42] QL in contrast claimed Ms Chandler refused to detail her hours of work despite numerous requests and produced documentation to show this. However, correspondence disclosed shows a MBIE Labour Standards Officer had contacted Ms King in May 2022 and apprised her of the legal onus being on the employer to keep and produce when requested, wage and time records – a requirement of s 130 of the Act. Ms King suggested that after the April 2020 Covid lockdown there simply was insufficient hours to allocate to employees and pay and working days were accordingly reduced. No documentation established any agreement on this. It was apparent from evidence disclosed that Ms King for QL, unilaterally altered hours of work without agreement, this included the issuing of a roster from 4 October 2021 that reduced Ms Chandler's hours to 23.75 per week and working days to three.

[43] In such cases where no records are kept or produced s 132(2) of the Act applies which is that “unless the defendant proves that those claims are incorrect, accept as proved all claims made by the employee”.

[44] Due to the lack of records kept s 132(2) of the Act applies so that evidence given by Ms Chandler may be accepted because QL cannot prove that the amounts claimed are

inaccurate.<sup>3</sup> However, Ms Chandler had no record of her working hours but it was clear that she had attempted to resolve the unilateral reduction of her pay from an agreed 41 hours per week minimum.

[45] As an alternative finding, in the absence of any agreed variation it is still evident that QL had to obtain permission to unilaterally alter Ms Chandler's salary and did not do so. The Employment Court has pointed to the "widely understood common law rule" in *Gate Gourmet v Sandu* that:

.... where there are agreed hours of work cancelled by the employer, wages remain "payable" provided that the employee was ready and willing to work those hours.<sup>4</sup>

[46] I received no submissions from QL apart from a suggestion made, that a lack of protest from Ms Chandler at the time and understanding of the financial difficulties QL faced, was implied consent to the changes in her salary rate. I find this contention unconvincing and had evidence that QL made no attempt to engage with Ms Chandler before imposing the changes.

[47] The Authority is satisfied on the balance of probabilities that Ms Chandler has discharged the onus of proving her wage arrears claim and that QL has not proven that Ms Chandler was properly remunerated as agreed.

[48] I find that arrears are payable by QL but given the difficulty in establishing Ms Chandler's actual hours of work and availability for such toward the end of the employment relationship, I consider it fair in all the circumstances, exercising the equity and good conscience provision of s 157(3) of the Act, to award an estimate of wage arrears in the amount of \$25,000.00.

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<sup>3</sup> *Shah Enterprise NZ Limited and Sapan Jagdishbhai Shah v A Labour Inspector of Ministry of Business, Innovation and Employment* [2022] NZEmpC 177, EMPC 1/2021 at [26].

<sup>4</sup> *Gate Gourmet v Sandu* [2020] ERNZ 561 at [57] and [60].

*Compensation for humiliation, loss of dignity and injury to feelings*

[49] I heard from Ms Chandler how the decision to terminate her employment caused her significant distress and ongoing anxiety; medical information provided supported the claimed compensation. This included the period between the CAB meeting and the ending of the employment where a threat of dismissal had been communicated but not enacted.

[50] Ms Chandler gave compelling evidence and described how the manner of the abrupt dismissal impacted her confidence. It occurred in humiliating circumstances with no opportunity of input from Ms Chandler. Ms Chandler also says the humiliation, shock and distress was compounded over time by her wages being kept at a level where she was unable to meet basic cost of living expenses. Ms Chandler also felt hurt and betrayed by how she was treated by a former friend and it impacted greatly their personal relationship. Ms Chandler described the impact on her of the dismissal leading to an understandable loss of self-esteem and feeling of worthlessness and de-motivation to the extent she sought medical assistance and was unable to resume employment until November 2022.

[51] Ms Chandler impressed as a witness with no rancour toward QL and did not embellish her situation but struck me as being significantly affected by the experience of being dismissed in such circumstances.

[52] Having considered Ms Chandler's evidence and comparable awards made and all the background circumstances of the employment's ending, I consider an appropriate compensatory amount under s123(1)(c)(i) of the Act, to be \$20,000.00.

**Contributory conduct of Ms Chandler**

[53] Section 124 of the Act indicates that I must consider the extent to what, if any, Ms Chandler's actions contributed to the situation that gave rise to her personal grievance and assess whether any calculated remedy should be reduced. In these circumstances, I can find no reason to reduce the remedies awarded as Ms Chandler although at times engaging in robust discourse, did nothing blameworthy to prompt QL to dismiss her in such an abrupt fashion.

## **Payment by instalments**

[54] QL through their accountant provided limited evidence the company was in a difficult financial position with turnover essentially halving in 2021 but QL is still trading. In the circumstances and after considering the evidence of Ms King's difficult personal situation, pursuant of s 123(2) of the Act, I order that the remedies below be paid by instalments over a six months' period of equal monthly amounts to be paid no later than the last working day of every month. The first payment, however, should be made on 15 March 2024 and the final payment to be made on 30 August 2024.

## **Summary**

[55] I have found that:

- (a) Vanessa Chandler was unjustifiably dismissed by Queenstown Local Laundry Services Limited and has been the subject of a unilateral breach of her employment agreement that reduced agreed wages and hours of work.
- (b) Queenstown Laundry Services Limited must pay Vanessa Chandler:
  - (i) \$20,000.00 compensation without deductions pursuant to s 123(1)(c)(i) Employment Relations Act 2000;
  - (ii) wage arrears pursuant to s 123(1)(b) of the Employment Relations Act 2000 in the amount of \$25,000.00 (gross) and;
  - (iii) lost wages pursuant to s 123(1)(b) Employment Relations Act 2000 in the amount of \$13,325.00 (gross).
  - (iv) Unless agreed otherwise between the parties, all the above payments to be made in six equal monthly instalments commencing on 15 March 2024 and thereafter payments on the last working day of each month with the final payment falling due on 30 August 2024.

## **Costs**

[56] Costs are reserved. The parties are invited and encouraged to resolve the matter. If they are unable to do so, the party that considers it is entitled to seek a costs contribution has 14 days from the date of this determination in which to file and serve a memorandum on

costs with the Authority and the other party has a further 14 days in which to file and serve a memorandum in reply. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

[57] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>5</sup>

David G Beck  
Member of the Employment Relations Authority

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<sup>5</sup> For further information about the factors considered in assessing costs see:  
[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)