

[4] On 20 October 2023, Ms Butler-Smith provided the Partnership with a letter from Inland Revenue confirming her last day of parental leave would be 18 February 2024. During her period of parental leave, Ms Butler-Smith attended the workplace twice a month to assist the Partnership with paperwork in relation to the Dairy Diary indicating which cows were being treated for lameness/mastitis and she also completed the shed checklist. Ms Butler-Smith says this was approximately two hours of work per month for which she was not paid.

[5] Ms Butler-Smith was due to return to the farm on 19 February 2024. On 13 February 2024, she borrowed a trailer from the Partnership and when returning the trailer, Dr David Cavey asked to meet her. She was told a decision had been made to terminate her employment due to health and safety issues arising out of her having a baby on the farm. Confirmation of Ms Butler-Smith's dismissal was confirmed by way of letter dated 20 February 2024.

[6] Ms Butler-Smith claims the following:

- (a) Two hours per month work for the four months she was employed by the Partnership and not paid totalling \$192.00;
- (b) The sum of \$9,360 in lost wages based on an hourly rate of \$24/hour at an average of 30 hours per week for the 13 weeks following the termination of her employment. She was unable to find work during that period;
- (c) The sum of \$2,880.00 for the unpaid notice period of four weeks provided for in her Employment Agreement but not honoured by the Partnership;
- (d) The sum of \$25,000.00 as compensation for humiliation, loss of dignity, and injury to feelings (s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act)).

The Authority's investigation

[7] The Authority heard evidence from Ms Butler-Smith who had also filed a written brief of evidence. Ms Butler-Smith affirmed her evidence.

Discussion and analysis

[8] The Partnership did not attend the investigation meeting, nor did it engage in the Authority's investigation. It was clear however from the Authority's file that the Partnership was aware of the proceedings, however, because there was no attendance at the investigation meeting, which was by way of AVL, I considered whether I should proceed in the absence of the Partnership. For this reason, the commencement of the investigation meeting was adjourned for some 15 minutes to give the Partnership the opportunity to contact the Authority if for some reason they had been unable to join the investigation meeting. No contact was made with the Authority and accordingly I decided to proceed on the basis that as the Partnership was aware of the investigation meeting, had been sent an audiovisual link, the matter should proceed.

[9] Ms Butler-Smith claims that her dismissal was unjustified. She says the impact on her from an emotional perspective was significant. She was a first-time mum and says she felt she was placed under a lot of pressure, both emotionally and financially, which affected her first-time mum experience. When she fell pregnant, she had always felt she would have a job to come back to and having lost this, she gave evidence of how it affected her parenting and her sense of wellbeing.

[10] As the Partnership was not there to justify or speak to its actions, it follows I find Ms Butler-Smith's dismissal unjustified. There was no consultation with her, there was simply a blunt assessment by the Partnership that she could not bring a baby on the farm as this would be unsafe.

[11] There was no opportunity given to explore the validity of that conclusion or look at alternatives. Ms Butler-Smith's evidence regarding hurt and humiliation was poignant. As well as the evidence already referred to, her evidence revealed the significant effect the unexpected termination of her employment had on her whilst she was in a very vulnerable state.

[12] Section 124 of the Act requires me to consider whether Ms Butler-Smith contributed in some blameworthy way to her personal grievance. I find she did not.

[13] Although the evidence was that Ms Butler-Smith had requested wage and time records, the Partnership had not provided them. Accordingly, under the circumstances, I accept Ms Butler-Smith's evidence in respect of the amounts owing to her.

[14] In regards the non-provision of wage and time and leave records, Ms Butler-Smith's seeks a penalty against the Partnership for its breach of s 130 of the Employment Relations Act 2000. There has been no appearance by the Partnership. Under the circumstances I am reluctant to impose a penalty in this case without further explanation.

Orders

[15] Dale and David Cavey, trading as DG and DV Cavey Partnership are ordered to make the following payments to Natalie Butler-Smith within 28 days:

- (a) \$192.00 for the two hours per month for the four months she attended the workplace but was unpaid;
- (b) The sum of \$9,360.00 for the 13 weeks Ms Butler-Smith remained unemployed;
- (c) The sum of \$2,880.00 for the four-week notice period provided for in the Employment Agreement but not honoured by the Partnership;
- (d) The sum of \$20,000.00 in terms of s 123(1)(c)(i) of the Act as compensation for the humiliation, loss of dignity and injury to feelings suffered by Ms Butler-Smith because of her unjustified dismissal.

Costs

[16] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[17] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Ms Butler-Smith may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum David and Dale Cavey will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[18] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.¹

Geoff O’Sullivan
Member of the Employment Relations Authority

¹ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1