

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2011] NZEmpC 10  
ARC 65/10**

IN THE MATTER OF      of a challenge to a determination of the  
Employment Relations Authority

BETWEEN                EMMA GYENGE  
Plaintiff

AND                      CLIFFORD LAMAR LIMITED  
Defendant

Hearing:                by memorandum filed on 24 January 2011

Judgment:             10 February 2011

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**SUPPLEMENTARY JUDGMENT OF JUDGE A D FORD**

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[1]      In my substantive judgment<sup>1</sup> in this matter I upheld the plaintiff's challenge and found that she had been unjustifiably dismissed from her employment with the defendant. I awarded her various remedies but I also rejected some of the relief she had claimed and sought clarification on certain other matters. I deal with each in turn.

**Loss of earnings**

[2]      First, in relation to her claim for reimbursement for loss of earnings, it appeared from the evidence that the basis of the claim was that when the plaintiff obtained new employment with another hairdressing firm, Scots, her working hours were 24 hours a week compared with the 33 hours per week she had been working with Clifford Lamar. After a period of 26 weeks she began working for Scots full-time. Her hourly rate of pay at Scots, however, was \$14.25 compared with \$12 per hour at Clifford Lamar. I accepted that her claim appeared to be soundly based but I

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<sup>1</sup> [2011] NZEmpC 1.

was unable to reconcile the figures just mentioned with the amount claimed in the plaintiff's final submissions under this head of \$5,001.75

[3] In her additional submissions on this issue, Mrs Gyenge explained that the \$5,001.75 figure had been calculated on the basis that, had the plaintiff not been disadvantaged in her employment with the defendant in 2008, she would have obtained promotion in October that year under which her paid hours would have been increased to 37.5 per week and her wages would have increased to \$14.25 per hour.

[4] In my judgment I explained that the only grievance before the Court related to the plaintiff's unjustified dismissal at the end of December 2008. It did not extend to any earlier disadvantage in employment grievance. I am not prepared, therefore, to allow the figure claimed under this head.

[5] Mrs Gyenge then claims that the plaintiff's normal paid hours at Clifford Lamar were 35.5 hours per week and not the 33 hours per week figure which I had mentioned in my judgment. The evidence on this point was not entirely satisfactory because the payslips showed that the paid hours could vary from week to week. The last five pay slips, for example, up to 31 December 2008 showed average weekly paid hours of 33.41. It was up to the plaintiff to present evidence establishing any higher figure but the payslips produced do not do so.

[6] Based on a weekly paid hours figure of 33.41 hours with Clifford Lamar and a weekly paid hours figure of 24 hours with Scots, on my calculations the plaintiff's loss over the 26-week period when she was paid \$14.25 per hour compared with the \$12 per hour figure she would have earned with Clifford Lamar amounts to \$1,531.92. That figure is made up as follows:

*Possible earnings at Clifford Lamar:*

33.41 hours per week at \$12 per hour x 26 weeks: \$10,423.92

*Less the amount earned at Scots:*

24 hours per week at \$14.25 per hour x 26 weeks: \$8,892.00

TOTAL: \$1,531.92

Pursuant to s 123(1)(b) of the Employment Relations Act 2000, I award the plaintiff the sum of \$1531.92 as reimbursement for wages lost.

[7] The second matter I queried related to the claim for costs. The plaintiff was represented by her mother who acted very competently throughout. In my judgment, however, I indicated that it was not the practice of this Court to award costs in such circumstances. Nevertheless I did seek clarification as to whether the plaintiff had at some stage obtained legal assistance which may qualify for a costs award. Mrs Gyenge responded that the plaintiff had no legal invoices to present to the Court. She renewed her own claim for costs seeking an amount of \$7,590 based on 66 hours at a charge out rate of \$115 per hour. I mean no disrespect to Mrs Gyenge in reaffirming that, in my view, there are no exceptional circumstances in the present case which would justify a departure from the established principle disallowing costs to lay litigants, which in my view includes immediate family members.

### **Expenses and disbursements**

[8] In my judgment, I invited the plaintiff to file particulars of the claim she had made out for recovery of expenses and disbursements reasonably incurred in connection with the litigation. Additional expenses were necessarily incurred by the plaintiff because the first two hearing days were held in Auckland and then the case was adjourned to Tauranga. I am prepared to allow the following claims which have been submitted with appropriate receipts:

*Witnesses allowances and expenses:*

George Gyenge:	\$481.40
Simon Gyenge:	\$100.00
Kim Whyte:	\$28.80

*Disbursements:*

Court filing fees:	\$200.00
Court hearing fee:	\$1,001.76
Service fees:	\$64.40

Photocopying:	\$416.70
Accommodation and meals – Auckland (plaintiff and Mrs Gyenge):	<u>\$361.97</u>
TOTAL:	\$2,655.03

## **General**

[9] Mrs Gyenge has taken the opportunity in her submissions to attempt to reopen or have the Court review its decision disallowing certain other parts of the plaintiff's claim for relief. Those matters should have been fully explored in the evidence and it is not appropriate for them to be raised at this stage.

A D Ford

Judge

Judgment signed at 11.00 am on 10 February 2011