

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

CA 162/08
5139897

BETWEEN ABBEY STONE LTD
 Applicant

AND RICKY JOHN BYRON
 Respondent

Member of Authority: Philip Cheyne

Representatives: Nick Speirs, for Applicant
 Robyn Byron, for Respondent

Investigation Meeting: 24 October 2008 in Gore

Determination: 28 October 2008

DETERMINATION OF THE AUTHORITY

[1] Abbey Stone Limited employed Ricky Byron as a labourer from February 2008 until he resigned without giving any notice on Sunday 12 October 2008.

[2] There is a written employment agreement signed by the parties that includes a provision for either party to terminate the employment on four weeks notice. Abbey Stone wants an injunction requiring Mr Byron to return to work and work out the notice period. During the investigation meeting Abbey Stone said that it would be satisfied if Mr Byron was required to work out two weeks notice.

[3] At the heart of the problem is the employer's claim to have paid Mr Byron annual leave in advance totalling \$718.00 gross. It is not as straight forward as that since the payment for time not worked arose from Mr Byron taking time off work when his child was born thinking that he would be entitled to paid parental leave under the statutory scheme. Abbey Stone continued to pay him on the understanding that he would repay the advance once the money had come through from IRD. During this leave Mr Byron discovered that he was not entitled to any payment from

IRD so he tried to return to work early. Abbey Stone declined to take him back early, having engaged a temporary replacement. There was then some discussion about treating the time off as an advance of annual leave.

[4] Now that Mr Byron has left the employment without notice, Abbey Stone wants to have him work, with the wages due for that work being offset against the annual leave advance. That would avoid the potential difficulty of enforcing a judgment against Mr Byron.

[5] Forfeiture of wages (if stipulated), damages (if any) or a penalty rather than an injunction are generally the appropriate remedies for a proven breach in this situation. In this case the without notice resignation was preceded by Abbey Stone standing down Mr Byron from paid work for a period of time because he failed to turn up for agreed work on a Sunday and because he breached an expectation that he would not drink enabling him to get his driver's licence. There is a problem with Abbey Stone properly accounting for all the deductions made from Mr Byron's wages pursuant to an attachment notice. It seems that more has been deducted than remitted to the appropriate agency. Mr Byron says that he resigned without notice because of these matters and because of his concern that he would not be paid for time worked during the notice period. In the circumstances, ordering Mr Byron to work for Abbey Stone Limited for a further two weeks is more likely to exacerbate the employment relationship problem rather than remedy it.

[6] For the foregoing reasons I decline the application for an injunction.

[7] I note that Mr Byron requested a copy of his time and wage records from Abbey Stone Limited during the course of the investigation meeting and I explained to Mr Speirs that Abbey Stone Limited is legally obliged to provide a copy.

[8] Neither party was legally represented so there may be no issues about costs but I will reserve the point just in case.

Philip Cheyne
Member of the Employment Relations Authority