

The facts

[3] Mr Abbott informed the Authority in his statement of problem that on 23 April he discussed with Ms Maumau while they were out driving that he had applied for another job and how he would have liked to take it if it had been offered to him. Mr Goodyer informed the Authority in the respondent's statement in reply that he was informed by Ms Maumau that what Mr Abbott actually said was that he planned to only be at the respondent for a short time until something better came along. This is consistent with a statement from Ms Maumau that says that Mr Abbott said the job was only short term until the job he really wanted came up (15 August 2008).

[4] Mr Goodyer told the Authority in his written statement that Mr Abbott was planning to leave for a job as a digger [digger-driver-added orally]. Mr Abbott denied that he ever accepted another job.

[5] Mr Goodyer was concerned enough about the applicant's commitment to work for the respondent to cause him to follow the comment up because the company needed to provide Mr Abbott with 2-4 weeks training. Mr Goodyer decided to get an explanation from Mr Abbott about Mr Abbott's conversation with Ms Maumau. Mr Goodyer and Mr Abbott disagree on who initiated the conversation, but Mr Abbott claimed Mr Goodyer accused him of dishonesty and lying and told him to finish up and leave by 10.00am. Mr Abbott formed the view that he was being "fired". Mr Abbott says that there was a heated discussion. Mr Goodyer says he suggested that Mr Abbott take time to cool down. Mr Abbott says he asked Mr Goodyer if he was firing him, and he says that Mr Goodyer replied "*Yes I am*". Mr Goodyer denied saying that, and instead says that when the Mr Abbott asked him that question more than once, he said: "*No, I am not firing you*".

[6] Ms Maumau says that Mr Abbott asked Mr Goodyer "*are you firing me?*" Ms Maumau says Mr Goodyer replied "*no I am not firing you...*".

[7] Later Mr Abbott says he asked Mr Goodyer for a dismissal letter and Mr Goodyer agreed to provide one.

[8] On 1 May Mr Abbott and his partner met with Mr Goodyer and provided Mr Goodyer with a hand written letter setting out his side of the story-(Goodyer para 9 written statement). Mr Abbott says that Mr Goodyer told him to return the next day to get his letter confirming his dismissal. However, Mr Abbott says that the next day Mr Goodyer declined to provide him with the letter, but did not deny dismissing him. Mr Goodyer denied those claims.

[9] On 3 May Mr Brian Adshead, the branch manager, set about to make it clear to the applicant that he had not been dismissed and should return to work. Mr Abbott says that this was an attempt to smooth the matter and fix a problem of Mr Goodyer's making. He says he was confused about what was happening with his employment. He says that he was given notice to finish in a week on 7 May 2008. He says the respondent declined to provide a copy of the employment agreement. In the week 5-7 May Mr Abbott was sick. He arranged for his partner to provide a medical certificate.

[10] Mr Goodyer contacted the applicant and asked why he was not at work at the end of the medical certificate period. The applicant did not return to work because he considered he had been dismissed and indicated that he would not be returning to work for the respondent.

The issues

[11] What did Ms Maumau say to Mr Goodyer about what Mr Abbott said to her? Did Mr Goodyer accuse Mr Abbott of dishonesty and lying and tell him to leave? What did Mr Goodyer say to Mr Abbott? What were the circumstances that brought the employment to an end-was Mr Abbott dismissed or did he resign/leave his employment?

Determination

[12] The employment relationship problem arises out of Mr Abbott's understanding of what happened on 30 April. This is a matter requiring the assessment of evidence from Mr Abbott, Mr Goodyer and Ms Maumau. Mr Abbott was as emphatic as Mr Goodyer on what they remember happening. Mr Abbott genuinely believes what he says happened was true.

[13] Ms Maumau attended the Authority's investigation meeting and she was a witness who had nothing to gain or lose when giving her evidence. She confirmed that Mr Abbott discussed other employment and it is likely that whatever was said Mr Goodyer was concerned enough to want to talk with Mr Abbott about his commitment to work for Fresh Connection especially considering the training that was required.

[14] I have balanced the different nuances about what Ms Maumau and Mr Goodyer recall about what Mr Abbott said. I have decided that Ms Maumau is a reliable witness. Ms Maumau had nothing to lose and nothing to gain from the evidence that she has given. It was likely that whatever, Mr Abbott said during their discussion alerted Ms Maumau to cause her to raise Mr Abbott's comments with Mr Goodyer because there was a cost and time involved in training that was required to be given to Mr Abbott. Clearly she decided to raise a problem with Mr Goodyer. She witnessed the initial part of the meeting between Mr Goodyer and Mr Abbott.

[15] Mr Goodyer is no longer employed at Fresh Connection and left that employment for personal reasons. He emphatically denied dismissing Mr Abbott and says that he told Mr Abbott to take time to cool down. There were raised voices during their discussion.

[16] It is likely that Mr Goodyer did tell Mr Abbott to take time out and Mr Abbott has interpreted this to mean to leave. Mr Abbott's response was not reasonable given that Mr Adshead and Mr Goodyer contacted him later to find out if he was returning to work. Mr Abbott's situation is not helped when he acknowledged that he was confused about the situation regarding his employment and I find that he only concluded that he had been dismissed when Mr Goodyer checked with him as to whether or not he was returning to work after being sick. I am supported by the evidence that it was Mr Abbott who asked Mr Goodyer "*are you firing me*" and that Mr Goodyer replied "*no I am not firing you...*". It is unlikely Mr Abbott was dismissed at the time he says Mr Goodyer told him to leave because of the above evidence. I do not accept that Mr Abbott could reasonably conclude that he had been dismissed because of his initial confusion, Mr Adshead's intervention and that Mr Abbott says that he had lost trust and confidence in his employer. Mr Goodyer was adamant that he told Mr Abbott to take time and cool down, which I accept.

[17] I have to say that it does appear unclear what Mr Adshead's role was, but there is common ground that he did intervene in the matter. Any uncertainty about Mr Adshead's role is not fatal because Mr Abbott had an opportunity to engage and try and get some clarification over any confusion he had about his employment with Mr Adshead, considering the relationship Mr Abbott had with Mr Goodyer. Mr Abbott unreasonably failed to do that.

[18] Unfortunately Mr Adshead was not available to give evidence. However the evidence available was sufficient to support that he tried to clarify what had happened and to try and get Mr Abbott to return to work.

[19] I am further supported in my conclusions by:

- Mr Abbott's evidence that he left another employer without giving any notice. His reasons for not giving notice then were not adequate, I hold.
- That Mr Abbott provided a medical certificate during his employment and after the meeting. He would not have had to do that if he had been dismissed.
- Mr Abbott did not disclose to his employer an injury to his back that he says he received. He raised this for the first time during the Authority's investigation meeting.
- Mr Abbott did not have any witnesses to verify his evidence of seeing and overhearing what he claimed happened.
- Mr Goodyer says, and I have to accept, that he has never previously dismissed anyone else at Fresh Connection.
- Mr Goodyer never provided Mr Abbott with a dismissal letter.
- Ms Maumau was concerned enough to raise with Mr Goodyer the discussion between her and Mr Abbott because she had the job to train Mr Abbott.
- Ms Maumau did not change her evidence during the Authority's investigation meeting. She was consistent.
- Although there were nuances and differences in what Mr Goodyer told the Authority and in his written statement and the documents produced, those nuances and differences do not undermine the thrust of his

evidence. This was not enough to undermine his evidence on the balance of probabilities compared with Mr Abbott's evidence, I hold.

- Mr Abbott's decision to leave would not have been foreseeable to the employer because of the provision of the medical certificate. This is supported by Mr Adshead's involvement and Mr Goodyer checking on whether Mr Abbott was returning to work.

[20] I conclude that there was no dismissal.

Orders of the Authority

[21] Mr Abbott's claim is dismissed.

[22] Costs are reserved.

P R Stapp
Member of the Employment Relations Authority