



# New Zealand Employment Relations Authority Decisions

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## Al-Kabban v VPharmacy Limited (in receivership) AA325/10 (Auckland) [2010] NZERA 610 (19 July 2010)

Last Updated: 4 November 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 325/10 5288290

BETWEEN

AND

NAWAFF AL-KABBAN Applicant

VPHARMACY LTD (IN REC) Respondent

Member of Authority: Representatives:

Investigation Meeting: Determination:

Dzintra King

Marie Devoy, Counsel for Applicant No appearance for Respondent

16 July 2010

19 July 2010

### DETERMINATION OF THE AUTHORITY

#### Employment Relationship Problem

[1] The applicant, Mr Nawaff Al-Kabban, says he has been unjustifiably dismissed by the respondent, VPharmacy Ltd (In Rec).

[2] Receivers were appointed in February 2010 and the receivers indicated they would not participate in mediation or appear at the hearing.

[3] On 29 October 2009 Mr Iskander told Mr Al-Kabban that the company would not be able to keep him on. Mr Iskander said he was having trouble with the business. Mr Al-Kabban said he told Mr Iskander that he didn't want him to risk losing the business and gave him a hug.

[4] Mr Al-Kabban said he had been aware that the business was in financial difficulties.

[5] Mr Al-Kabban had been working five days per week.

[6] In November 2009 Mr Al-Kabban communicated by text with a couple of his previous colleagues and learned that another pharmacist had started work after his employment had finished and that she was working four days a week.

[7] At that stage, Mr Al-Kabban felt that his dismissal had been unjustified. Had Mr Al-Kabban not learned that there had been a replacement he would have accepted the termination.

[8] The respondent did file a Statement in Reply. There is also a letter from the company's then representative stating that the respondent did not employ anyone to replace Mr Al-Kabban but that a contractor had been employed to do pharmaceutical

work on Sundays.

[9] The text messages I sighted were to the effect that a pharmacist was working four days a week. As I have no evidence from the respondent I accept the evidence of Mr Al-Kabban and the evidence of the text messages.

[10] Although Mr Al-Kabban accepted the dismissal at the time it took place he was clearly distressed by what had happened and his plans to hold an engagement party were disrupted. Alternative working arrangements were not discussed with Mr Al-Kabban who said he would have considered a reduction from five to four days' work. A fair procedure had not been followed and the dismissal was unjustified.

[11] It appears that Mr Al-Kabban could have continued in employment but was not given the opportunity to do so. Given that, when remedies are considered he is entitled to be reimbursed for lost remuneration as well as compensated for humiliation and distress.

[12] Mr Al-Kabban is to be paid the sum of \$3,000 pursuant to s 123 (1) (c) (i) [Employment Relations Act 2000](#).

[13] As the replacement worker worked four days I have calculated the lost earnings based on \$35 per hour for an eight hour day, that is, \$280 per day, for four days. Mr Al-Kabban found alternative employment the week prior to Christmas 2009, a period of ten weeks. Mr Al-Kabban is to be paid the sum of \$11,200

[14] Mr Al-Kabban is to be reimbursed his \$70 filing fee. Should he wish to claim costs he should file a memorandum within 14 days of the date of this determination.

Dzintra King

Member of the Employment Relations Authority

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