

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 193/09
5101344

BETWEEN MARINUS FREDERIK
 ANTONISSE
 Applicant

AND WHITE WATERS LIMITED
 Respondent

Member of Authority: Paul Montgomery

Representatives: Sarah McKenzie, Counsel for Applicant
 No appearance for Respondent

Investigation Meeting: 3 November 2009 at Invercargill

Submissions received: On the day

Determination: 9 November 2009

DETERMINATION OF THE AUTHORITY

[1] Mr Antonisse was employed by the respondent as 2IC farm manager on the company's dairy farm in Southland. The applicant says he was unjustifiably dismissed from his employment and he, his wife and three young children were told to leave their accommodation on the farm at short notice.

[2] The applicant seeks remedies of lost remuneration; holiday pay for the whole period of his employment in the sum of \$2,400 gross; reimbursement of the cost of a blood test required by his employer and of his filing fee; and compensation of \$12,000 together with costs.

[3] The respondent, through Mr Hans Vernooij, a director and shareholder of the respondent, has failed to provide a statement in reply to the applicant's statement of problem, did participate in telephone conferences in relation to the Authority's process to resolve the issues, but failed on two occasions to attend mediation.

[4] On the first occasion, the respondent, through its advocate Mr Jonathan Fairclough, advised the date was not convenient just 24 hours before the agreed and scheduled mediation. The mediation was rescheduled, the applicant attended with his counsel and the mediator from Dunedin was also in attendance. The respondent failed to attend. The applicant says he took time from his employment and paid for counsel's services, both of which were at a cost to himself.

Essential facts

[5] The respondent company is registered in New Zealand. Mr Johannes Antonius Vernooij (Hans) and Mr Jan Martinus Xistus Vernooij, a resident of The Netherlands, are both directors of the company.

[6] Mr Antonisse is an immigrant from The Netherlands and prior to his engagement by the respondent had worked on the company's dairy farms as a farm worker in 1999 and 2000. In late December 2006, Sofia Vernooij, the wife of Mr Hans Vernooij, approached the applicant to ask if he would be interested in the role of farm manager. The applicant and his wife met with Mr and Mrs Vernooij and the applicant was offered the position with his wife being offered relief milking duties as required. They asked for an employment agreement setting out the details of the respondent's offer and were told they would receive one once they had begun work. They never, in spite of repeating the request, ever received those documents.

[7] The applicant began work on 14 January 2007 on an annual salary of \$45,000 and his wife did occasionally relief milk for the respondent. Initially, the applicant says everything worked out between the parties. He says his clear understanding was he would assume full farm management duties when Hans left to go to Holland which occurred in February 2007.

[8] Sofia Vernooij remained on the farm and matters between the parties took a significant turn for the worse.

[9] Two farm workers were already employed, Aaron and Ashley, and they were to assist the applicant to run and maintain the operation in Hans' absence. Mr Antonisse says Mrs Vernooij frequently took these two workers away from their tasks and hired two other workers, Reuben and Lindsay, to do relief milking instead of providing that work to his wife as undertaken.

[10] To be direct, the applicant says all four had substance abuse problems and were frequently disabled and could not assist in milking and other tasks on the farm.

[11] The applicant raised this matter with Mrs Vernooij whom he says, hurled both physical objects and foul mouthed abuse at him in the milking shed. Mr Antonisse says he was also threatened with physical violence at the hands of Mrs Vernooij's son, Peter Abraham, who was at the time imprisoned.

[12] Given the situation, the applicant emailed Hans in Holland. Mr Vernooij telephoned the applicant and advised he had *sorted it out* with his wife. Mr Antonisse said things improved for a while until the applicant told Mrs Vernooij he was struggling to cope with the workload and with calving approaching, was largely without help or support. He was told to shut up as *she was the owner*, and recommenced her foul mouthed personal abuse of the applicant. He says *she was always calling me degrading names and insulting me*.

[13] Hans returned from Holland for a brief period and Sofia continued to work in the milking shed with the abuse and threats continuing. He left for Holland in June 2007 returning a little before calving began in August 2007.

[14] On 7 September 2007, the applicant and Sofia were in the shed milking when Sofia told the applicant she was going to arrange for the applicant's mother-in-law to get beaten up because Sofia believed Ashley was to get a written warning and the rumour had been tracked to the applicant's mother-in-law.

[15] The applicant says Sofia told him she would arrange for her son *to come and beat the crap out of me. I knew Pete was out of jail by this time and knew a bit about his reputation ... I was really concerned ... I really took the threat seriously and feared for my wife's and her Mum's safety and also my own safety and our kids*.

[16] The applicant told Sofia he was going home in the face of the threats. When he arrived, Hans was in the orchard adjacent to the applicant's accommodation. Sofia followed Mr Antonisse home and a heated argument ensued between Mr and Mrs Vernooij. They left without approaching Mr and Mrs Antonisse.

[17] The following day, Mr Vernooij sent an email to the applicant raising a minor litany of personal criticism and advising the applicant was to look for another job as

the respondent was going to replace him. Later, in another email from Mr Vernooij, the sender, stated that *he took it that I resigned but I never (did)*.

[18] On 9 September 2007, Mr Antonisse attended a doctor and was put on two weeks' sick leave and prescribed antidepressant medication. He advised his employer and also sought advice from the Southland Community Law Centre. On receiving a letter from the Centre, Hans advised he wanted a blood test undertaken as he believed the applicant *had leptospirosis, another virus or was on drugs*.

[19] The applicant agreed to undergo the test provided the respondent paid the \$80 cost. Hans agreed to this arrangement. The test was clear. Hans failed to pay Mr Antonisse the \$80 as promised.

[20] The applicant, having been dismissed, was refused sick pay, holiday pay or any notice and consequently was left in a very serious financial situation. His wife's family took them in while he sought another job, family in Holland sent him some funds for food for the family and for fuel to collect the belongings the family had had to leave at the farm as they did not have the funds for petrol to collect them.

[21] In a burst of philanthropic concern, Mr and Mrs Vernooij stuffed the family's remaining belongings into plastic rubbish bags and left these on the porch of the house.

[22] The applicant began work for another employer six weeks after the loss of his job with the respondent but at a salary \$5,000 lower than that he enjoyed with White Waters.

The issues

[23] To resolve this employment relationship problem, the Authority needs to make findings on the following issues:

- Was the applicant dismissed by the applicant; and
- If so, was the dismissal justified; and
- If not justified, did the applicant contribute to the circumstances giving rise to the dismissal; and

- If unjustified, to what remedies is the applicant entitled?

The test

[24] The test for justification in this matter is set out in s.103 of the Employment Relations Act 2000 and its amendments. The question of whether the dismissal was justifiable needs to be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.

The investigation meeting

[25] The respondent was not present nor represented at the investigation meeting. The Authority's records show receipts for the delivery of every notice sent to the respondent. After checking with the Senior Support Officer managing the file's administration, it was clear that no belated contact had been made to explain the absence of Mr Vernooij or a representative. Accordingly, I proceeded with the investigation.

[26] The Authority heard evidence from the applicant and his wife in person and was assisted by Ms McKenzie's questions to Mr and Mrs Antonisse and her brief oral submissions.

Analysis and discussion

[27] There is no doubt Mr Antonisse was employed by the respondent. The email correspondence to the Authority confirms this and at no time has Mr Vernooij denied that this was so.

[28] In an email sent to counsel for the applicant at 6.15 am on 2 November 2009 but not copied to the Authority, Mr Vernooij wrote:

He there Sarah/to whom it may concerned herewith my reluctant reply. I have explained my situation to tony gallen before and i still think this is a domestic/alcohol related problem and should not be here.

[29] There was not a shred of evidence to support this proposition. It is an attempt by the respondent to disguise a blatant dismissal of a committed employee while on sick leave due to overwork in the respondent's interests as a *mutual agreement* to part

company. Mr Vernooij's behaviour, including failure to pay holiday pay when the house was vacated (as he had promised), and for the drug test he insisted on and agreed to pay for, is indicative of a person whose word is thoroughly unreliable.

[30] Mr Vernooij has had every opportunity to rectify the mess he has caused. His failure to provide evidence to the Authority on top of his failure to attend a scheduled mediation without excuse and his refusal to acknowledge palpable facts suggests a man who seeks out others to blame for his poor choices and their consequences.

[31] His attempt to blacken the applicant's reputation and found a possible justification for dismissal using a drug test he promised to pay for, but having been disappointed at its negative results failed to pay, appears to sum up Mr Vernooij's approach to life.

[32] On the evidence before the Authority, I am clear the major influence on the deterioration of the once sound employment relationship was the bizarre activities and interference of Mrs Vernooij. This person was Hans' wife at the relevant time but held no managerial, financial or governance interests in the respondent company.

Determination

[33] Returning to the issues set out above in this determination, I find:

- The severing of the employment relationship was not by mutual agreement. The applicant was dismissed and that dismissal was unjustified.
- The dismissal does not meet the requirements of the justification test set out above.
- The applicant did not contribute to the circumstances giving rise to his dismissal.
- The applicant is entitled to remedies which are addressed below.

Remedies

Lost wages

[34] Mr Antonisse secured alternative employment six weeks after his dismissal. The six weeks includes the two weeks' sick leave not paid by the respondent. His annual salary in the new position was \$5,000 below that with the respondent.

[35] In the circumstances, it is just to have the respondent pay the applicant in full for these six weeks and also the difference between the two salaries for a further seven weeks.

$$\$865.38 \times 6 = \$5,192.28 \text{ gross}$$

$$\$98.18 \times 7 = \$687.26 \text{ gross}$$

$$\text{Total } \$5,879.54 \text{ gross}$$

Holiday pay

[36] The applicant was never paid his holiday pay and took no annual leave in the course of his employment with the respondent, a period of eight months which, at 8% is \$2,400 gross.

Reimbursements

[37] The applicant is entitled to have his filing fee of \$70 refunded and his payment of \$80 for the blood test refunded also.

Compensation

[38] The evidence before the Authority establishes the applicant suffered serious humiliation in the form of abuse and physical threats to his safety in the final stages of his employment and the manner in which he was dismissed. This humiliation has been compounded by the behaviour of Mr Vernooij in attempting to divert attention from the fact that the applicant was summarily dismissed.

[39] Despite the relatively brief period of employment, I think it just to award the applicant the sum of \$8,500 in compensation for the hurt and humiliation he endured.

Summary of orders

[40] The respondent is to pay the applicant the following sums:

- \$5,879.54 gross lost remuneration;
- \$2,400 gross holiday pay;
- \$150 without deduction for reimbursements;
- \$8,500 without deduction as a compensatory payment for hurt and humiliation.

Costs

[41] The applicant is entitled to a contribution to his reasonably incurred costs. The applicant briefed counsel to represent him in the mediation which the respondent's principal did not attend and without giving any reason.

[42] The investigation meeting was relatively brief, the issues straightforward and only one four page statement of evidence was submitted to the Authority. In the circumstances, the tariff approach set out in *PBO Ltd (formerly Rush Security Ltd) v. Da Cruz*, [2005] 1 ERNZ 808 is appropriate.

[43] I order the respondent to pay the applicant the sum of \$2,000 as a contribution to his reasonably incurred costs. This is a little higher than usual for a 2 hour investigation meeting. But for the respondent's failure to appear at a scheduled mediation conference, I would have fixed costs at \$1,500.

Paul Montgomery
Member of the Employment Relations Authority