

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Lawrence Baker (Applicant)
AND Dawson's Catering (N.Z.) Limited (Respondent)
REPRESENTATIVES Dylan Marriott, Advocate for Applicant
Andrew Swan, Advocate for Respondent
MEMBER OF AUTHORITY Vicki Campbell
INVESTIGATION MEETING 4 July 2005
DATE OF DETERMINATION 5 July 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Lawrence Baker was employed by Dawson's Catering (N.Z.) Limited as Manager of the Maritime Room.

[2] Mr Baker attended a meeting with his employer, ostensibly to ask for a pay review. Mr Baker says that during that meeting his employer raised with him serious concerns about his work performance. Mr Baker says he attended a further meeting a few days later during which he was dismissed from his role as Manager of the Maritime Room. Mr Baker says he was asked to undertake the same or similar duties elsewhere, at the same rate of pay, but for lesser hours each week. The affect of which was a reduction in his weekly take-home pay. Mr Baker says this meeting contributed to stress he was experiencing at work and he went on sick leave from which he has never returned. Mr Baker says the actions of his employer in changing his duties amounts to an unjustified constructive dismissal.

[3] Dawson's Catering denies Mr Baker was constructively or actually dismissed. Dawson's Catering also says Mr Baker raised his personal grievance with Dawson's Catering outside the requisite 90 day limitation period contained in s.114 of the Employment Relations Act 2000.

[4] After convening a telephone conference call with both parties, the Authority determined that the most efficient way to proceed with this matter was to investigate and determine the 90 day issue. Accordingly this determination is confined to resolving that issue only, with the substantive grievance to be dealt with at a later stage.

[5] The key issue to be determined is whether Mr Baker raised his grievance with his employer within 90 days pursuant to s.114 of the Act.

Was the grievance raised within 90 days?

[6] It is common ground that in February 2005 Mr Baker took a period of sick leave. On 12 February 2005 Mr Baker visited with Mr Dylan Marriott, who works in the field of stress research. Mr Marriott wrote, via email, to Mr Alex Ross, a Director of Dawson's Catering on 13 February 2005 stating that he had met with Mr Baker on matters relating to his employment. Mr Marriott requested a meeting to discuss concerns Mr Baker had about an employment problem.

[7] Mr Ross and Mr Marriott attempted to contact each other by telephone but were largely unsuccessful until 17 February 2005. On that day, Mr Marriott spoke with Mr Ross. It is common ground that the telephone conversation was amicable. It is also common ground that Mr Marriott told Mr Ross that Mr Baker had an employment problem and requested a meeting, but Mr Ross preferred to discuss the situation regarding Mr Baker on the phone at that time.

[8] Mr Marriott advised Mr Ross that in his view, Mr Baker had been dismissed from his position in the Martime Room. It is common ground that the word *...dismissed...* was used by both parties to the conversation. Mr Marriott says he told Mr Ross that based on what he had been told by Mr Baker, Mr Baker would be able to sustain a personal grievance. Mr Ross does not recall whether Mr Marriott used the words personal grievance.

[9] Section 114(2) of the Act provides that a grievance is raised with an employer when the employee has taken reasonable steps to make the employer aware that the employee alleges a personal grievance "*...that the employee wants the employer to address.*"

[10] I am satisfied that when Mr Marriott spoke with Mr Ross and advised him that Mr Baker felt he had been dismissed he was raising a grievance that he wanted the employer to address on behalf of Mr Baker.

I find Mr Baker raised a grievance for unjustified dismissal from his position as Manager of the Maritime Room with Dawson's Catering (NZ) Limited, and did so within 90 days of the action giving rise to the grievance occurring.

Direction of the Authority to mediation

[11] Mr Baker is entitled to have his grievance investigated and resolved by a determination of the Authority, if that is necessary. Prior to my determination on the 90 day issue, the parties have not attempted mediation. Mr Baker has now had the 90 day door opened for him.

[12] The parties to this matter are directed to use mediation using the services of a Mediator provided by the Department of Labour, and attempt, in good faith, to reach an agreed settlement of their differences. This direction is made pursuant to s.159(1)(b) of the Employment Relations Act 2000.

[13] Costs are reserved.

Vicki Campbell
Member of Employment Relations Authority