

[4] Mr Blackie's work involved caring for the horses and progressively getting them used to people then breaking them in. Mr Blackie had worked at Shelby Park previously as a contractor, breaking in horses.

[5] Mr Blackie says he observed another male staff member inappropriately touch a junior female staff member. He says he spoke to the male employee and told him to watch his behaviour and to back off from the way he had treated the junior female employee.

[6] Mr Blackie says that on or about 31 October 2008 the same female employee reported to him that she was being harassed by the male employee. She told Mr Blackie that he had grabbed her bottom and would throw horse manure at her.

[7] Mr Blackie says he reported the complaint to Mr Skinner who laughed and said he would talk to the employee concerned. The next day the female employee complained to Mr Blackie that Mr Skinner had approached her and accused her of making up stories. She was upset that she was being called a liar and was not believed. Mr Blackie told the employee he would approach Mr Skinner about the issue, which he did.

[8] On approaching Mr Skinner Mr Blackie says he was told if he wasn't happy in his job he could leave. Mr Blackie says Mr Skinner told him to leave the complaint in his hands. Mr Skinner then complained that Mr Blackie's production was only about 80%.

[9] The next day Mr Blackie asked Mrs Skinner if anything had been done about the female employee's complaint. Mr Blackie says Mrs Skinner told him she had been lying. Mr Blackie told Mrs Skinner what he had observed before she made the complaint but he says Mrs Skinner did not believe him.

[10] On Thursday 6 November 2008 Mr Skinner told Mr Blackie that he wanted nothing more to be said about the complaint and that if he [Mr Blackie] persisted he would "sack the bitch".

[11] Mr Blackie says this caused him to feel unhappy and disappointed and he felt concerned for the female employee.

[12] A couple of hours after the discussion Mr Skinner witnessed an incident involving Mr Blackie and another employee. Mr Blackie was dismissed as a result of this incident. Mr Blackie claims his dismissal was unjustified and seeks remedies.

[13] Mr Skinner says that Mr Blackie was dangerous with the way he handled the yearlings and that his attitude was not appropriate. In support of his contention Mr Skinner provided me with a letter from Mr Jason Lowe, a Veterinarian employed by Matamata Veterinary Services Ltd. Mr Lowe says that on 5 November he witnessed Mr Blackie kicking a horse under the belly. He says Mr Blackie then turned the horse around so that he [Mr Lowe] was caught directly behind the horse in the corner of the stable. Mr Lowe says this was extremely dangerous and could have resulted in serious injury.

The Dismissal

[14] Section 103A requires an employer to justify a dismissal by establishing both how the employer acted and what actions the employer took. Failure to establish either or both of the tests means that a dismissal will not be justified. The consideration of how an employer acted requires the Authority to scrutinise the process. Where the process is shown to be fundamentally or manifestly unfair it is likely to lead to an employer not making a fair and reasonable decision to dismiss on the merits of the allegations against the employee.¹

[15] On 6 November, after Mr Blackie had discussed the sexual harassment complaint with Mr Skinner, Mr Blackie and the male employee about whom Mr Blackie had complained, were releasing two horses into a paddock. It was intended that the horses be released simultaneously. Mr Blackie says that he accidentally let his horse go before the other employee which caused the other employee's horse to try and break away. One of the horses ended up running through the fence and injured itself. Mr Blackie apologised to the other employee.

[16] The incident was witnessed by Mr Skinner, who immediately approached Mr Blackie told him he would pay him two weeks wages and he should quit. Mr Blackie clarified with Mr Skinner that Mr Skinner was dismissing him.

¹ *Lewis v Howick College* [2010] NZEMPC 4 at [45].

[17] About an hour later Mr Blackie was again approached by Mr Skinner who asked him when he was leaving. Mr Blackie reminded Mr Skinner that he had said he would give him two weeks notice. Mr Skinner told him he should leave the following day. Mr Blackie arrived at work the following morning but was told to leave immediately.

[18] In his written evidence Mr Skinner told the Authority he made the decision to dismiss Mr Blackie following reports from his veterinarian Mr Lowe about the number of horses which had been injured during Mr Blackie's employment, alleged abuse of Ms Cave, and alleged threats apparently communicated to Ms Cave about what Mr Blackie would do to the male employee about whom he had made a sexual harassment complaint.

[19] In answer to questions at the Authority investigation meeting Mr Skinner conceded that all three points set out in his evidence and which he says he relied to make his decision to dismiss were not actually known to him at the time he made the decision.

[20] During Mr Blackie's employment he had two informal meetings with Mr Skinner where his performance was touched on. The first meeting was around the coffee table in the stables. Mr Skinner advised Mr Blackie that he was not impressed with the number of injuries occurring to the horses but nothing more was said.

[21] The second meeting took place in the paddock while Mr Blackie and Mr and Mrs Skinner were helping a horse which had become cast in the paddock. Mr Skinner told Mr Blackie his attitude wasn't good, but did not elaborate on this.

[22] Mr Blackie was dismissed without any notion of procedural fairness. There was no indication at the time of the dismissal why Mr Skinner decided to dismiss Mr Blackie. No allegations had been put to Mr Blackie and the evidence used by Mr Skinner to substantiate the dismissal at the investigation meeting was all gathered post dismissal and therefore could not have been the reason for dismissal.

[23] Standing back and considering the respondent's actions and how it acted objectively, I find a fair and reasonable employer in the circumstances of this case would not have dismissed Mr Blackie without first undertaking a full and fair investigation of all the allegations against him. I have concluded that Mr Skinner did have issues with Mr Blackie's performance and in particular, the number of injuries to

horses was of considerable concern. However, Mr Blackie was entitled to be informed of these issues, provided with a full and fair opportunity to discuss them with his employer and all of this in the knowledge that dismissal was a possible consequence.

[24] Mr Blackie was unjustifiably dismissed and is entitled to remedies.

Arrears of wages

[25] Mr Blackie says he has not been paid for one week of the two weeks notice he was supposed to have received and seeks to be reimbursed for this week. I am satisfied on the balance of probabilities that Mr Blackie was told he would be paid two weeks notice. He is entitled to be paid one week's notice which remains unpaid.

Shelby Park Limited is ordered to pay to Mr Blackie \$700 net being one weeks pay in lieu of notice pursuant to section 131 of the Employment Relations Act 2000.

Remedies

[26] Mr Blackie has claimed lost wages of \$19,956 net arising out of the fact that it took him until May 2009 to find alternative employment. The amount claimed includes the one week's notice which has been awarded to Mr Blackie in paragraph [29] of this determination. Mr Blackie gave compelling evidence as to the attempts he made to find alternative employment. He was successful in finding some part-time work and this has been taken into account in the amount he is claiming for reimbursement of lost wages. Mr Blackie also claims \$5,000 for hurt and humiliation associated with the dismissal. I am satisfied Mr Blackie has made out his claims for lost earnings and compensation related to the dismissal.

[27] I have given consideration as to whether Mr Blackie's remedies should be reduced in accordance with section 124 of the Act and have concluded that in this case remedies will be reduced by 25%. There was a significant amount of time spent in the investigation meeting on the number of injuries sustained by the horses during the time Mr Blackie was engaged as the Farm Manager. The incident which led to Mr Blackie's dismissal also resulted in an injury to the horse under Mr Blackie's control. I have no doubt that for Mr Skinner, who witnessed this event, this was the straw that broke the camels back.

[28] Mr Blackie had day to day management of the farm and was responsible for the safety and welfare of the horses. There was compelling evidence at the investigation meeting that Mr Blackie was responsible for some of the injuries to the horses and that this was of considerable concern to Mr Skinner when he approached Mr Blackie on 6 November. I am satisfied the award of remedies must recognise Mr Blackie's contributory conduct to the events which led to the dismissal.

Taking into account the one week's pay in lieu of notice awarded to Mr Blackie, Shelby Park Limited is ordered to pay to Mr Blackie the following:

- i. \$14442.00 net lost earnings (which excludes the one weeks notice awarded in paragraph [29]);**
- ii. \$3,750 compensation for hurt and humiliation**

Costs

[29] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, Mr Blackie may lodge and serve a memorandum as to costs within 28 days of the date of this determination with any submissions in reply being lodged within 14 days of receipt. I will not consider any application outside that timeframe.

Vicki Campbell
Member of Employment Relations Authority