

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 349/09  
5140751

BETWEEN                      ROBERT & SALLY BLOCK  
   Applicants

AND                              BROOMFIELD TRUST  
   Respondent

Member of Authority:      Vicki Campbell

Representatives:           Robert Gordon for Applicant  
   Louise Foley for Respondent

Investigation Meeting:    9 June 2009

Submissions Received:    25 June 2009 from Applicant  
   30 June 2009 from Respondent

Determination:              1 October 2009

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**DETERMINATION OF THE AUTHORITY**

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[1] Mr Robert and Mrs Sally Block commenced employment on the farm owned by the Broomfield Trust on 1 June 2008. They were each employed separately and were provided with copies of individual employment agreements which they refused to sign. After being in employment for five weeks Mr and Mrs Block claim they were dismissed or alternatively, forced to resign from their employment thereby constructively dismissed. Mr Merv and Mrs Sue Broomfield deny the claims.

[2] The issues for determination are whether:

- Mr and Mrs Block were actually dismissed; or
- If not actually dismissed whether they were constructively dismissed;
- If there was a dismissal, either actual or constructive, was it unjustified?;
- If the Blocks are successful in their claim what, if any remedies should be awarded?

**Were Mr and Mrs Block were actually dismissed**

[3] It was common ground that Mr and Mrs Block were not experienced farm managers and that this was discussed prior to them being employed. Mrs Broomfield undertook to provide support for them in their role and consistent with that she approached Mr James Findlay, a Farm Management Consultant to assist in this respect.

[4] The Blocks were each provided with a written employment agreement for signing. Mr Block refused to sign his agreement as the title of Farm Manager appeared in the agreement and he did not want to have that title given the previous agreement that he be employed to assist in the farm management. At the investigation meeting Mr Block confirmed that this was the only issue he had with the employment agreement.

[5] Mrs Block also refused to sign her agreement, although at the investigation meeting she confirmed that she had no issues with her written agreement.

[6] Mr and Mrs Block also complain that the state of the house was such when they moved in that they could not live there safely. I find that issues with regard to the house were raised early on in the employment relationship with Mrs Broomfield and that these were addressed. Mr Dench, the previous occupant was required to return to the house to clean it thoroughly. Further, Mrs Block was told that she could obtain the services of a commercial cleaner if she felt the house was still not clean enough. It was common ground that Mrs Block did not avail herself of the opportunity to have a commercial cleaner attend and clean the house.

[7] On 25 June Mr Findlay made a farm visit to assess how things were going given that the Blocks had been employed on the farm since 1 June. Mr Findlay met with the Broomfields and the Blocks and discussed various issues with regards the farm and its management.

[8] Following the farm visit, Mr Findlay provided a full report of his visit in writing. In his report, which I find was emailed to Mr Block's email address, Mr Findlay identifies tasks that need to be completed to ensure the farm continues to operate effectively. At the end of his report Mr Findlay comments on the fact that both Mr and Mrs Block are inexperienced and had acknowledged to him that they require considerable assistance through the calving period in particular.

[9] Mr Findlay says, and I accept his evidence, that there was no indication by the Blocks of any discontent. He says there were no indications of lack of training, assistance or suitable equipment to complete their farming tasks.

[10] On 29 June Mr Block says he wrote to the Broomfields setting out a number of complaints he had about the farm and the tools and equipment he had been provided to do the job. Mr Block describes much unhappiness at the state of the tractor.

[11] I find that by the time Mr Block wrote this letter, a new tractor had been ordered but not delivered until the last week or so of Mr Block's employment. The evidence with regard to the tractor is contradictory, Mr Findlay's report of 25 June notes a new tractor was present, however, in his written evidence he says Mr Broomfield advised him on 3 July that a new tractor had been ordered but was delayed. In any event, I am satisfied the tractor that was present on the farm was in working order and could be used to do the jobs required of Mr Block.

[12] On that same day, 29 June, Mrs Block had left the farm as she was unwell. Mrs Block was diagnosed with bronchitis and was not due to commence work again until 4 July. Mr Block when advising the Broomfields that Mrs Block was unwell, requested permission to take three days off.

[13] On 3 July Mr Block says he wrote once again to the Broomfields expressing discontent with the equipment and complaining of abuse by the Broomfield's son. The evidence shows that there was an interaction between Mr Block and Mr Broomfield junior, with respect to feeding the cows. However, I am satisfied that Mr Block's recollection of this incident is exaggerated and have preferred Mrs Broomfield's evidence of the event which took place in her presence. Mrs Broomfield told me Mr Broomfield junior told Mr Block to lift his game plan and do his job instead of blaming his mother for everything. It is common ground that Mr Block stormed off after this comment.

[14] The Broomfield's deny receiving either the 29 June or the 3 July letters. Mr Block told me he put the 29 June letter into the Broomfield's letter box but has not provided any explanation for how the second letter was delivered. I am not satisfied either letter was actually received by the Broomfield's. Neither letter is referred to by Mr Block during the meeting on 4 July and no follow up was made by Mr Block when he did not receive any response from the Broomfield's.

[15] Mr Broomfield was concerned about Mrs Block's absence and Mr Block's ability to cope on his own. He contacted Mr Findlay who suggested a meeting for the following day to discuss what assistance was required to get through until Mrs Block returned to work.

[16] Mr Findlay then contacted Mr Block and they discussed the pressure Mr Block was feeling with trying to cope on his own. Mr Findlay says he did not discern any indication that Mr Block was upset or that he was looking to leave his job. He says it was an amicable discussion with some ideas as to how the business could continue operating in Mrs Block's absence.

[17] However, before that meeting could take place Mrs Broomfield says she witnessed an exchange between Mr Broomfield and Mr Block at about 7.45am on 4 July, following which Mr Block departed abruptly. Mrs Broomfield says Mr Block was not happy. Mr Broomfield advised his wife that during the exchange Mr Block had resigned.

[18] After seeking advice, the Broomfields approached Mr Block at the house at about 10.00am. They asked Mr Block if he still wished to resign from his job and advised him that his resignation would need to be confirmed in writing. Mr Block told Mr and Mrs Broomfield that he would not put anything in writing and that they would now have to deal with his lawyer.

[19] Mr Findlay managed the meeting at 1.00pm that afternoon which was held in the cow shed. During the meeting Mr Findlay sought confirmation from Mr Block that he had resigned. Mr Block would not confirm that he had resigned, but advised Mr Findlay that he had handed in his notice.

[20] The meeting discussed some options which included:

- the employment of additional staff to assist over the calving period;
- allow Mr Block to be employed off the farm with a manager being employed for the season to assist Mrs Block;
- continue as they were with more input from Mr Findlay and Mrs Broomfield to assist the Blocks to lift their farming skills to full management level; or

- accept Mr Block's resignation and address questions about Mrs Block's employment.

[21] The Blocks requested some time to discuss the options in private. About 20 minutes later they returned and advised the Broomfields and Mr Findlay that they wished to resign. Mrs Block also acknowledged at that time that she believed she and Mr Block had damaged the trust between them and the Broomfields. Mrs Block, while hugging Mr and Mrs Broomfield apologised for lies told and the abusive language that Mr Block had used from time to time towards Mr Broomfield.

[22] I find there was no actual dismissal of Mr and Mrs Block.

### **Were Mr and Mrs Block constructively dismissed?**

[23] Constructive dismissal arises in situations where an employee believes they have no option, other than to resign. There are three categories of constructive dismissal:

- the employer gives the employee a choice between resigning or being dismissed;
- the employer embarks on a course of conduct with the deliberate and dominant purpose of coercing an employee to resign; or
- a breach of duty by the employer leads to an employee to resign.

[24] I find that at the meeting on 4 July 2008 Mr and Mrs Block were provided with options to continue their employment on the farm or to resign. This does not fit the first of the three categories of constructive dismissal.

[25] There is no evidence that the Broomfields embarked on a course of conduct with the deliberate and dominant purpose of coercing a resignation. Indeed, the evidence demonstrates that Mrs Broomfield took steps to ensure the Blocks were supported throughout their employment. Offers of extra help were made by the Broomfields and declined by Mr Block. Also, additional equipment was ordered and made available to Mr Brock, but was not utilised by him. For example Mr Broomfield arranged for a new spreader to be delivered to the farm. Mr Brock did not use this spreader even when more magnesium was delivered to the farm.

[26] I find the evidence has not shown there to have been any breach of duty on the part of the Broomfields. It is not enough for Mr Block to rely on inconsiderate conduct or a general unhappiness with the work environment. The conduct complained of must be repudiatory or dismissive. As already stated Mrs Broomfield took steps to provide support and assistance to Mr and Mrs Block during their brief employment and at the final meeting on 4 July were attempting to address Mr Block's heat of the moment resignation and to find a way forward.

[27] I find Mr and Mrs Block were not constructively dismissed. I can be of no further assistance to them.

### **Costs**

[28] 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, the Broomfield Trust may file and serve a memorandum as to costs within 28 days of the date of this determination with any submissions in reply to be lodged within 14 after receipt. I will not consider any application outside that timeframe.

Vicki Campbell  
Member of Employment Relations Authority