

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Bob Braddock (Applicant)
AND Wellington Demolition (2002) Limited (Respondent)
REPRESENTATIVES D Gould for Applicant
B Young for Respondent
MEMBER OF AUTHORITY G J Wood
INVESTIGATION 10 June 2005
MEETING
DATE OF 10 June 2005
DETERMINATION

ORAL DETERMINATION OF THE AUTHORITY

The Facts

1. Mr Bob Braddock claims that his suspension without pay for initially two weeks, which has now continued for 15 weeks, constitutes an unjustified dismissal. The facts set out below have been derived from an investigation meeting held today where Mr Braddock, his partner Rachelle Davies and two former colleagues, Nicholas Dahm and Brian Kelly, gave evidence. I have accepted the evidence of the witnesses at the investigation meeting as they have given plausible answers to all the questions put to them.
2. Although Wellington Demolition (2002) Ltd (Wellington Demolition) was represented, no witnesses attended on its behalf, although its two directors had been expected. No explanation for this has been made available. I note that the non-attendance of the directors appears consistent with the fact that Wellington Demolition has failed to attend mediation on this matter twice and did not furnish a statement in reply until the day before the investigation meeting.

3. Wellington Demotion operates, as its name implies, a demolition business based in Wellington. Its directors are Mr Brian Gray and his wife Marlene Gray. Mr Braddock was employed in August 2004 as operations manager to reduce the workload of Mr Brian Gray. Mr Braddock was on a three month trial and was paid \$20 per hour. He worked on average around 60 to 70 hours per week. The three month trial period came and went without attention, perhaps in part because Mr Brian Gray suffered a major stroke about that time.
4. Although Mr Braddock's employment continued without incident, the Grays' son, Mr David Gray, returned to assist with the running of Wellington Demolition after his father's stroke. Initially Mr David Gray and Mr Braddock worked well together. In fact no direct criticisms of Mr Braddock's performance were ever made, to his face at least.
5. Mr David Gray became more and more involved in the day-to-day running of Wellington Demolition. This caused Mr Braddock to call a meeting with Mr Gray's parents, the two directors of Wellington Demolition, about his position. He was told by Mr Brian Gray that he was in charge of Mr David Gray. Mr Braddock also became concerned about payments to creditors being late and Mrs Gray's involvement in this. He also had concerns about a job being under-resourced and under-staffed because Wellington Demolition had tendered too low for it.
6. Mr Braddock's concerns were heightened when he became aware of Mr David Gray countermanding his instructions while he was away on leave. One of the witnesses, Mr Dahm, left as a result of this and then went on to try and recruit Wellington Demolition employees on behalf of his new employer. When Mr Braddock returned to Wellington, but whilst still on leave, he went to see Brian and Marlene Gray about his concerns and asked three questions of them.
7. The first was whether the company was being sold or closing and he was told that it was not. He then asked whether he was still the operations manager but he received no answer to this question. He then asked whether Mr David Gray was in fact his boss and received contradictory answers in this regard. He also told the Grays at this

meeting that Mr Dahm had been recruiting for an opposition company. He then told the Grays that he was still on his leave and left.

8. The next day a staff meeting was held which Mr Braddock had not been made aware of. When he arrived late to the meeting he was told that he was suspended for two weeks. When he asked why he was told he would be given reasons in writing later. His suspension was to be unpaid. Mr Braddock was required to return all company property immediately and had to call his partner to collect him. He was shocked by the turn of events.
9. Mr Braddock never received the reasons from Wellington Demolition for several weeks. When they arrived, through letters between solicitors, the claims were that he was not keeping to time with particular jobs, that he had allowed company property to be removed without getting payment for it, that he had spread rumours about the financial state of Wellington Demolition and that he had attempted to recruit staff off them.
10. Mr Braddock disputed these claims. I accept his assurances, which were supported by witnesses at the meeting, that these claims were not correct, except that the job in question was running behind time, for the reasons given above. The fact is that Mr Braddock has not started working in an opposition demolition business, nor started one of his own.
11. One result of the suspension was no doubt that Mr David Gray now has an even larger say in the running of Wellington Demolition but, at the same time, Mr Braddock was made unemployed, until he got a new job at a lesser salary three weeks ago.
12. As well as the financial pressures that this has placed Mr Braddock under, it has also affected his confidence and his relationship with his partner. Furthermore, Mr Braddock's reputation has been put at risk through unfounded comments that he was sacked for stealing and/or trying to poach Wellington Demolition staff.

Determination

13. In reality, the suspension of Mr Braddock quickly turned into an effective dismissal, if it was not one right from the beginning. This is shown by the fact that no attempt has

been made by Wellington Demolition to try and pursue any of the issues that it claimed led to Mr Braddock's suspension, such as by conducting a formal investigation.

14. The suspension and dismissal are unjustified in substance and procedure. There is no evidence that Mr Braddock was guilty of the claims made against him and no process involving Mr Braddock was followed by Wellington Demolition whatsoever.

Remedies

15. Mr Braddock is therefore entitled to substantial remedies without any deduction for fault on his part. Although it may be that Wellington Demolition is in financial difficulties, there is insufficient evidence about that for any deduction to be made on that account.
16. I accept that Mr Braddock has been substantially affected by his dismissal and award \$15,000 in this regard. I also accept that he has lost \$14,900.11 net in remuneration to date and make an award in his favour of that sum. While Mr Braddock has been forced to take a lower paid job at present, I am confident that with time and with the benefit of this determination he will soon be able to earn a living at a similar level to that which he enjoyed beforehand, taking into account that the hours that he worked at Wellington Demolition were unlikely to be sustainable in practise. I therefore award three months' future loss of income being \$7933.42 net. Mr Braddock is also entitled to a contribution towards his costs. The sum of \$2,000, plus expenses of \$200, is reasonable in all the circumstances, I determine.

Summary of Orders

17. I therefore order the respondent, Wellington Demolition (2002) Limited, to pay to the applicant, Mr Bob Braddock, the following sums:
 - (a) \$15,000 compensation under s.123(c)(i);
 - (b) \$14,900.11 net in lost remuneration;
 - (c) \$7,973.42 net in future lost remuneration;
 - (d) \$2,000 in costs; and

(e) \$200 in expenses.

G J Wood
Member of Employment Relations Authority