

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 355/08
5121974

BETWEEN TONY BURLINSON
 Applicant

AND WELLMAN GROUP LIMITED
 Respondent

Member of Authority: Dzintra King

Representatives: Applicant In Person
 Shane Brady, Advocate for Respondent

Hearing: 2 September 2008

Determination: 13 October 2008

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Mr Tony Burlinson, says that he has been unjustifiably dismissed by the respondent, Wellman Group Ltd.

[2] The respondent accepts that Mr Burlinson was dismissed but says the termination for redundancy was justified.

[3] Mr Burlinson was employed from 25 February 2008 until 6 March 2008 as a sales representative.

[4] On 6 March he arrived at work at 7.30am. Shortly afterwards, Mr Shane Brady, the Managing Director, told Mr Burlinson that as not much work had come in he was no longer required. He told Mr Burlinson he would pay him up to Friday 7 March, the next payday.

[5] No employment agreement had been signed. Mr Brady said that during the initial interview it had been verbally agreed that Mr Burlinson would be on trial for two weeks and therefore an employment agreement was not drawn up at that stage.

[6] Mr Burlinson sought legal advice and Mr Brady agreed to pay one month's salary in lieu of notice, the amount to be paid weekly.

[7] Mr Brady said he still intended to pay the month's notice.

[8] It was also agreed that Mr Burlinson could use the company vehicle and phone to follow up another employment opportunity. There had been discussions about the possibility of future on-site work or project management if the company's position improved.

[9] Mr Brady said Mr Burlinson rang back and wanted an additional \$250 compensation for the car. Mr Brady said he was angered by this further request and told Mr Burlinson he would only pay him until 7 March.

Decision

[10] The dismissal was unjustified. Mr Burlinson was not consulted nor was he was given any notice that his employment was at risk.

[11] I accept Mr Brady's evidence that Mr Burlinson has not been replaced and that he and another employee have picked up what additional work there is available.

[12] The suddenness of the dismissal, coupled with the lack of opportunity for input into after a strikingly short period of employment was, understandably, traumatic and very upsetting for Mr Burlinson.

[13] The respondent is to pay Mr Burlinson one month's pay in lieu of notice. Mr Burlinson is also to be paid \$4,000 pursuant to s123 (1) (c) (i) Employment Relations Act 2000.

[14] Holiday pay has not been paid. The respondent is to pay Mr Burlinson 8% of his earnings. If there is any difficulty in calculating this leave is reserved to return to the Authority.

[15] Interest on the unpaid holiday at the rate of 9.6% is also to be paid. The interest is to run from the date of termination until such time as the payment is made in full.

[16] There is no question of contribution on Mr Burlinson's part.

[17] Mr Burlinson spent \$300 obtaining legal advice. He is entitled to be reimbursed that amount. He is also to be reimbursed the \$70 cost of his filing fee.

Dzintra King

Member of the Employment Relations Authority