



New Zealand Employment Relations Authority Decisions

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Burt v Alltrade Autoparts (NZ) Ltd (Auckland) [2007] NZERA 81 (16 March 2007)

Determination Number: AA78/07 File Number: 5070251

Under the [Employment Relations Act 2000](#)

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND OFFICE

BETWEEN Owen Burt (Applicant)
AND Alltrade Autoparts (NZ) Ltd (Respondent)
REPRESENTATIVES Applicant in person

Parweez Azam (director) for Respondent

MEMBER OF AUTHORITY Y S Oldfield

INVESTIGATION MEETING 2 February 2007

DATE OF DETERMINATION 16 March 2007

DETERMINATION OF THE AUTHORITY

[1] Mr Burt has a long history of employment with the respondent company but has worked with the current owners only since they bought the business as a going concern in May 2006. Mr Burt is not a qualified mechanic but told me he has been fixing cars for thirty years and can do most of the work of a mechanic. Mr Burt's grievance is that on the morning of Monday 31 October 2006 he arrived at work to be told that he was dismissed. He says that he was given no reasons, and that this dismissal was unjustified. He seeks reimbursement and compensation for hurt and humiliation.

[2] Mr Azam told me that Mr Burt's work was satisfactory but there was a problem with his attitude. He said Mr Burt did not want to take direction and showed no respect either to him as his boss or to the other workers. He says he did warn Mr Burt on three occasions (twice in July and once in September) about the following matters: use of bad language, failing to do as instructed and taking stock (tyres) without permission. He says that tyres were taken on three occasions altogether without prior authorisation.

[3] From Mr Azam's point of view, matters came to a head the Friday before the dismissal. Once again, he said, Mr Burt removed some tyres from the workshop without asking him first, even though he was in the office nearby at the time. Mr Azam did not personally observe Mr Burt taking the tyres but it was reported to him by another worker who did.

[4] Mr Azam felt this was a flagrant breach of his previous instructions that Mr Burt was expected to obtain permission before taking stock for his own use. Mr Azam told me that when Mr Burt arrived on the Monday morning he and his co-owner in the business (Mr Tahir) confronted him with the allegation that he had taken the tyres the Friday before. He says Mr Burt did not deny taking the tyres and offered either to pay for them or return them. Mr Azam was not satisfied with this and dismissed Mr Burt. He says he was clear to Mr Burt that the matter of the tyres was the reason for the dismissal.

[5] Mr Burt denies that he was warned about taking tyres although he does not deny that it was discussed with him previously. He confirmed to me he had taken the tyres as described on this occasion. He told me that a few days before he was dismissed he arranged with Mr Tahir that he would replace the tyres on his vehicle and pay for them later. He says he heard Mr

Tahir mention this to Mr Azam. Then, on the Friday, he openly swapped the bald tyres on his vehicle for new ones before driving off home.

[6] Although Mr Burt had originally told me that he was not given a reason for his dismissal, during my investigation he conceded that the issue of the tyres was raised in the brief meeting on the morning of 31 October and he says he responded

by saying that he had asked Mr Tahir's permission the week before. He says that Mr Azam was doing most of the talking and Mr Tahir made no response. Mr Tahir did not attend to give evidence at the Authority's investigation meeting and Mr Azam disputes that Mr Burt said anything about being given permission.

[7] On balance I have concluded that Mr Burt did think he had permission. In coming to this conclusion I have taken into consideration the undisputed fact that Mr Burt changed four tyres on his car in full view of anyone in the workshop at the time, in a manner consistent with thinking he had permission to do so. I also consider it more likely than not, on balance, that he would have at least mentioned that he thought he had permission during the final brief meeting. Mr Azam did not take notes of the meeting, his recall was not good and Mr Tahir did not attend my investigation meeting. In these circumstances I have given Mr Burt the benefit of the doubt.

[8] At my investigation meeting Mr Azam produced written documentation of the warnings he says he gave Mr Burt. Mr Burt told me, and I accept, that he was never shown these records. I accept that Mr Azam spoke to Mr Burt about the issues in question but I am not satisfied that he explained to Mr Burt that his job could be in jeopardy.

Determination

[9] This is a small employer with five staff in total. It is not expected to conduct itself with the degree of expertise and formality that might be seen in a larger enterprise with access to specialist employment relations advice. However, certain minimum standards of fairness are nonetheless expected and in this case, the employer's conduct falls short of those minimum standards on two counts.

[10] The first is that Mr Burt was not properly warned. Although Mr Azam did talk to Mr Burt about the concerns he had I am not satisfied that he told Mr Burt that his job could be at risk if those concerns were not fixed. The second reason is that I am not satisfied that the employer considered Mr Burt's explanation for the conduct that led to his dismissal. I conclude that by 31 October Mr Azam had simply come to the end of his tether and felt he had to assert himself. As far as he was concerned, the employment relationship was over, and he was no longer prepared to listen to Mr Burt. The disciplinary meeting was not conducted with an open mind or with the care that should have been shown when an employee of many years service was at risk of losing his job.

[11] I conclude that Mr Burt's dismissal was unjustified. That is not the end of the matter however. I am also obliged to take into consideration contributory conduct on his part. Mr Azam's chief complaint about Mr Burt related to his attitude: his lack of respect and refusal to do as he was told. Mr Azam is much younger than Mr Burt and had purchased the business only a matter of months before these events. During my meeting with the parties, I saw ample demonstration of just the attitude Mr Azam complained of. Mr Burt simply did not seem prepared to acknowledge that Mr Azam owned the business now and was his new boss.

[12] I am satisfied that in this way Mr Burt contributed to the situation which gave rise to his personal grievance and that remedies should be reduced accordingly. In all the circumstances I consider that it is appropriate to reduce remedies by 50%.

[13] Mr Burt worked 40 hours a week at \$12.50 an hour giving him a weekly wage of \$500.00. By way of remedies he seeks \$7,000.00 lost earnings (14 weeks) and \$5,000.00 compensation for pain, suffering and embarrassment. At the time of my meeting with him, he

said he still had not found permanent work and put this down to his age (51) and lack of computer skills.

[14] Subject to 50% reduction for contributory conduct, Mr Burt's claims are reasonable. The respondent is therefore ordered it make the following payments to Mr Burt:

- i. \$3,500.00 gross in lost earnings, and
- ii. \$2,500.00 compensation for hurt and humiliation pursuant to [s.123](#) of the [Employment Relations Act 2000](#).

Y S Oldfield
Member of Employment Relations Authority