

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 115  
3297479

BETWEEN                      STEPHEN GRANT CARRUTH  
Applicant

A N D                              BASCIK TRANSPORT LIMITED  
Respondent

Member of Authority:        David G Beck

Representatives:              Applicant in person  
No submission from the Respondent

Investigation Meeting:        On the papers

Submissions Received:        22 November 2024 from the Applicant  
None from the Respondent

Date of Determination:        25 February 2025

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment dispute**

[1]        Stephen Grant Carruth resigned from employment as a truck driver with Bascik Transport Limited (Bascik) on 28 February 2024 and his last working day was completed on 6 March 2024. The individual employment agreement covering Mr Carruth had a notice period of four weeks. Mr Carruth in a statement of problem of 14 May 2024, claims that he was not paid out three weeks remaining in his notice period. Mr Carruth is seeking to have the matter resolved as a disputed interpretation of his individual employment agreement pursuant to s 129 of the Employment Relations Act 2000 (the Act).

[2]        As remedies Mr Carruth seeks payment of three weeks remuneration, he considers is owed together with holiday pay and interest on that amount. In addition, Mr Carruth is

claiming \$2,000 as compensation for the distress he says was caused by the financial stress of not receiving income during his full notice period.

[3] In contrast, Bascik in a statement in reply of 28 May 2024, says Mr Carruth does not have a valid personal grievance, asserting there was a mutual agreement to curtail the full notice period and the earlier date of the ending of the employment relationship

### **The Authority Process**

[4] The Authority first directed the parties to mediation that took place on 5 July 2024 but the matter remained unresolved.

[5] The parties then agreed during a teleconference held on 9 September 2024, that the disputed matter be determined “on the papers” being written submissions from both parties. The Authority timetabled submissions up to 22 November 2024.

[6] Mr Carruth provided a personal statement on 3 November 2024 and a written submission on 22 November 2024.

[7] Bascik did not provide a submission by the due date and were afforded an extension until 13 January 2025 to lodge a submission. None was received and no further extension sought. In determining the matter, I will have regard to Mr Carruth’s personal statement and submission and assertions set out in Bascik’s statement in reply.

[8] Pursuant to s 174E of the Act, I make findings of fact and law and outline conclusions on matters to resolve the disputed issues and make orders but I do not record all evidence and submissions received.

### **Issue**

[9] The matter for determination is whether Bascik was obliged to pay Mr Carruth his notice period in full (i.e. an outstanding three weeks’ remuneration) and if so, has Mr Carruth established he should be compensated for the distress he says he experienced by the curtailing of the notice period.

## **How this dispute arose**

[10] Mr Carruth commenced employment with Bascik in Cromwell on 25 September 2023 as a truck driver. Mr Carruth's employment was the subject of an individual employment agreement that all parties signed on 25 September 2023.

[11] By way of a hand delivered letter of 28 February 2024 to his depot manager, Mr Carruth indicated:

Dear Mike,

I am done.

I wish to resign from my employment with Bascik Transport.

You/Bascik Transport can decide on the length of worked notice, i.e. whether you wish for me to work out the contracted Notice Period as defined in my Employment Contract – or not. I will agree with whatever you want.

Regards

Stephen Carruth

11 am 28/02/24

[12] It was common ground that Mr Carruth in providing his depot manager (Mike) the letter of resignation, was asked what he would like to do, that he responded with a preference for finishing his employment that afternoon. Mike, in reply, indicated he would have to check this out with Bascik's Southern Regional Manager (Trevor). In the interim, receiving no immediate response, Mr Carruth worked the remainder of the day.

[13] Early the next day, Mr Carruth met with Mike who advised Trevor had accepted the resignation and was willing to let Mr Carruth decide the length of his notice period he wished to work. Mr Carruth says Mike then in response to a belief expressed by Mr Carruth that it was Bascik's decision, gave two choices – either he finishes at the end of the day (29 February) or work till the end of 6 March. Mr Carruth says he opted for the latter end date. However, at the time Mr Carruth says he did not appreciate that this entailed him only being paid up to and including 6 March (he says he thought he would be paid his full notice period).

[14] Later on 29 February (6pm), Mr Carruth emailed Mike setting out what he recalled of their conversations of that day and the previous one, and it confirmed Mr Carruth had agreed to “work until finish time on Wednesday 6 March” albeit that Mr Carruth stated he had formed the impression this was Bascik’s preferred option. Mr Carruth then stated he had checked his individual employment agreement and observed the resignation notice period was explicitly four weeks (a fact, Carruth asserts he was not aware of when he decided to opt for 6 March). Significantly, the email did not, having viewed his employment agreement notice provision, indicate a dispute existed and Mr Carruth did not take this opportunity to indicate he wished to resile from the agreement that he finish work on 6 March.

[15] Without incident, Mr Carruth worked out his notice period but then upon discovering his final pay was only up to 6 March, he rang Bascik’s HR and Compliance Manager who emphasised a view that he had been correctly paid out. In an email exchange after their conversation on 7 March the HR and Compliance Manager provided an extract from Employment New Zealand’s website (with their emphasis in bold) that states:

#### **Notice component of the final pay**

##### **Employee gives required notice**

If the employee gives the required notice the employer must pay the employee to the end of their notice period. If the employer asks the employee not to work the full notice period then the employer must pay the employee instead of notice. Payment instead of notice can only be made if it’s in the employment agreement or is mutually agreed between the parties. **If the employee asks the employer to waive all or some of their notice period then, if the employer agrees, they won’t need to pay the employee for this time.**<sup>1</sup>

[16] The email concluded: “Essentially this means that if both parties mutually agree to a shortened notice period (in this case one week) then the employer is obligated only for that shortened notice period” and the manager offered to discuss the matter further.

[17] Mr Carruth then on 8 March indicated a view that Bascik was not acting in accord with clause 11.2(b) of his individual employment agreement and he invoked the employment agreement’s disputes procedure and in anticipation of the dispute not being resolved he foreshadowed an application for a personal grievance.

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<sup>1</sup> <https://www.employment.govt.nz/ending-employment/final-pay/>.

### **The relevant employment agreement provisions.**

[18] Clause 11.2 of Mr Carruth's employment agreement (Notice) provides:

(a) Either party must provide the notice as set out in Schedule 1 to this Agreement, in writing

(b) The Employer may, at the Employer's sole discretion, pay the Employee in lieu of the Employee working out all or part of the notice period.

[19] Clause 11.3 provided that the employer may recover a debt due from final pay if the required notice period was not given in full.

[20] Schedule 1 of Mr Carruth's employment agreement specified notice of resignation as being "4 Weeks".

### **Mr Carruth's submission**

[21] Mr Carruth's submission in summary, was that the relevant wording of the employment agreement (cl 11.2 (b)) provides Bascik must exercise their discretion on the length of the notice period and in allowing Mr Carruth the discretion to choose other specified options they were not exercising their prerogative to determine the period of notice. I take this submission to be that Bascik could not vary the provisions of the employment agreement as set out and in doing so no agreement existed and they are obliged to rectify this situation by retrospectively paying Mr Carruth a further three weeks in lieu of notice.

### **Bascik's perspective.**

[22] From the statement in reply Bascik suggested Mr Carruth had "made it clear to us" in his resignation letter that he wanted to end the working relationship as soon as possible. This view for Bascik was reinforced by the discussion on the day the resignation letter was delivered, when Mr Carruth indicated 'if it was up to him' he wanted to finish immediately. Bascik suggested that while they did not immediately accede to this suggestion, the following day a discussion occurred in which Bascik affirmed they were willing to end the relationship that day but were prepared (and preferred for practicality reasons) to allow Mr Carruth to

leave on 6 March. Bascik note Mr Carruth chose the latter option and raised no issue about being paid in lieu for the remainder of the notice period he was obliged to give. In effect Bascik and Mr Carruth varied the notice period required by mutual agreement.

[23] Bascik say when becoming aware of the difference in understanding in what had been agreed they offered that Mr Carruth return to work and complete the remainder of his notice period. Mr Carruth declined this offer.

### **Assessment**

[24] This in my view is not a dispute about the interpretation or application of a disputed term of an employment agreement. A factual analysis clearly demonstrates that the parties agreed to vary the requirement that Mr Carruth either work his notice period or allow Bascik to exercise a discretion to pay the notice in lieu.

[25] While I do not agree that the wording of the resignation letter is explicit on Mr Carruth seeking to leave immediately, he made that desire known in discussion with his immediate manager and the parties then mutually agreed to shorten the required notice period. Mr Carruth is not suggesting he was pressured into this agreement and it was mutually beneficial. I also note that in providing the option of Mr Carruth leaving immediately with no penalty, Bascik objectively acted more than fairly in all the circumstances, by not enforcing their right to compel Mr Carruth to work out his notice period. This was a 'win-win' situation. I appreciate Mr Carruth may have not thought through the implication of his choice but I am drawn to the fact that his initial choice was to leave immediately, and he was not financially disadvantaged by the choice to work a further week.

### **Finding**

[26] I find in answering the premise Mr Carruth made that Bascik must exercise their discretion as to the length of the notice period is they did do so, by offering to waive the full notice period to accommodate Mr Carruth. The point Mr Carruth misses, is the obvious purpose of such clauses that are common in employment agreements seen by the Authority, is they are designed to allow an employer to pay notice in lieu if a worker insists on working out

their full notice period. Here Mr Carruth expressed no intention or desire to work his full notice period and in such circumstances, it would be wrong to compensate him.

**Outcome**

[27] I determine that no remedies are appropriate.

**Costs**

[28] As both parties were self-represented no issues as to costs arise.

**David G Beck**  
**Member of the Employment Relations Authority**