

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Troy Charteris (Applicant)
AND Kaituna Pastoral Farms Limited (Respondent)
REPRESENTATIVES David Bruce, Advocate for Applicant
Kim Stretton, Advocate for Respondent
MEMBER OF AUTHORITY Ken Anderson
INVESTIGATION MEETING 8 February 2006
DATE OF DETERMINATION 16 March 2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] Mr Charteris claims that he was unjustifiably dismissed, on or about 1 October 2004. He asks the Authority to find that he has a personal grievance and award him the remedies of loss of wages and compensation.
Kaituna Pastoral Farms Limited (“Kaituna”) say that Mr Charteris was not dismissed and that he left his employment, by mutual agreement, within an agreed notice period at the end of a period of temporary employment.

Background

- [2] Kaituna Pastoral Farms Limited (“Kaituna”) is a substantial dairy farming business owned and operated by Mr Alan Titchmarsh. At the material times, Mr Ian Mathison was employed as the Farm Manager and Mr Douglas Roberts was employed as the Farm Supervisor.
- [3] Upon the instructions of Mr Titchmarsh, on 21 August 2004, the following advertisement appeared in the Bay of Plenty Times:
- “**Casual Farm** workers required on Dairy Farm between Whakatane and Te Puke for Tractor Driving, Fencing, Weed-spraying and Casual Farmwork [sic].
Work for experienced and unexperienced [sic] just must be responsible and reliable.”
- [4] Mr Charteris responded to this advertisement,¹ was interviewed by Mr Roberts and commenced employment on 30 August 2004.
- [5] The evidence of Mr Charteris is that he was not told by Mr Roberts that the work was only for

¹ While his evidence is that this not the advertisement he responded to, I conclude that it most probably is.

a short period of time. The contrary evidence of Mr Roberts is that during the interview with Mr Charteris, he made it clear that the work was on a casual basis and was available for a short time only. Mr Roberts also says that there was only a budget for a set amount of time to be worked.

- [6] While I conclude that the employment was temporary in nature rather than casual, I also accept the evidence of Mr Roberts that Mr Charteris was aware that he was only being employed for a short period of time. Indeed, upon being questioned at the investigation meeting, Mr Charteris acknowledged that the engagement was for six weeks to two months with indefinite hours of work.
- [7] While Mr Charteris was largely employed to carry out the work indicated in the advertisement, because another employee was off work with an injury, Mr Charteris also worked in the cowshed milking cows. As there was no suitable accommodation available on the farm for Mr Charteris and his family, he occupied a hut on the farm while his family remained in Rotorua.
- [8] At an early stage of the employment, there was some discussion between Mr Charteris and Mr Roberts about whether Mr Charteris would be interested in being trained for a Herd Manager's job that was available with Kaituna. The evidence of Mr Charteris and Mr Roberts is at odds as to the meaning and intended outcome of this discussion. This has considerable relevance to the overall circumstances pertaining to the status of the employment of Mr Charteris, and the eventual cessation of his employment.

The evidence of Mr Charteris

- [9] The evidence of Mr Charteris is that one week after he started work with Kaituna, Mr Roberts mentioned that Mr Charteris would be suitable for the trainee farm manager's job that was available. Mr Charteris says that some further discussion followed about this position in regard to training and salary and that Mr Roberts and Mr Mathison were in agreement that he could do this job. The further evidence of Mr Charteris is that because there was an opportunity to learn and advance his skills in farm management, he accepted this position.
- [10] Mr Charteris says that a meeting was held at the farm on 24 September 2004 and that the purpose of the meeting was to inform the other staff and their families that Mr Charteris had been appointed as a trainee herd manager as of 4 October 2005. The evidence of Mr Charteris is that because he and his family would be moving into a house on the farm, other arrangements had to be put in place regarding the accommodation of other staff. It is the evidence of Mr Charteris that it was intended that an employment agreement would be signed that day and that the salary for the trainee position would be \$30,000.
- [11] Mr Charteris says that on 29 September 2004, he was due to go to Rotorua in order to move his family into the house on the farm. However, at approximately 12:00pm that day, Mr Roberts told him that; ["he didn't think that I was capable of growing grass and the position was no longer available. I said that my family was ready to move here and we had an agreement with you. He said to me that he would try and get me another job and that he was sorry and he gave me a week's notice, which was then extended to two weeks when I said to him he couldn't do that."]
- [12] Mr Charteris says that he only worked one day of the notice period but; ["felt insulted let down and uncomfortable there so I packed my bags and left."]

The evidence of Mr Roberts

- [13] Mr Roberts accepts that he mentioned to Mr Charteris that Kaituna was looking for a Herd/Production Manager and enquired from Mr Charteris as to his interest in such a position. Mr Roberts says that he told Mr Charteris that the role would require training in regard to stockmanship, animal health and pasture management and that he was only “sounding out” Mr Charteris as to if he could possibly be interested in training for this role. Mr Roberts says that as he had only known Mr Charteris for about a week at that time, he was not in a position to know whether he would be able to do such a job and would not have made an offer of the position.
- [14] The further evidence of Mr Roberts is that it became apparent to him that Mr Charteris would not be suitable for the herd manager’s position and he discussed this with Mr Titchmarsh. It is common evidence that Mr Charteris and his wife moved into the house occupied by another worker on the farm for the weekend beginning 25 September 2004. Mr Roberts says that Mr Charteris had “hired” the house but it seems more probable that it was a consensual arrangement between Mr Charteris and the other employee whom was away from the farm for the weekend.
- [15] However, Mr Roberts says that Mr Charteris told him that he was trying out the house before he moved in and that Mr Charteris appeared to be making the assumption that he was to be given the herd manager’s position. Mr Roberts talked about this with Mr Mathison and they decided that it would be prudent to call a meeting of all the staff in order to clarify what the actual staffing arrangements were to be and to; [“get things back on track.” Mr Roberts also says that he was concerned that Mr Charteris was; [“running his own little ship” and was taking over the organisation of the work that other staff were to do.
- [16] The evidence of Mr Roberts as to the time of the meeting taking place on 24 September 2004 and the people in attendance, is consistent with that of Mr Charteris. However, Mr Roberts says that the other staff were informed that the status quo would remain in regard to the management of the farm. Mr Roberts categorically disputes that Mr Charteris was told that he was to become a trainee manager and would be able to move his family into the farm house.
- [17] The evidence of Mr Roberts is that on Wednesday 29 September 2004, he did discuss with Mr Charteris that it had been decided that he was not experienced enough for the manager’s position. Mr Roberts says that the discussion then led into talking about the problems that existed with the other staff, and then at the end of the conversation, Mr Charteris shook his hand and thanked him for being “upfront” about the manager’s position. Mr Roberts says that he told Mr Charteris that there would be work available for two more weeks and then Mr Charteris would have to finish. He also offered Mr Charteris assistance in finding another position.
- [18] Mr Roberts says that by agreement, Mr Charteris had Thursday and Friday off to move his family. Mr Roberts says that he subsequently discovered that Mr Charteris had given notice of moving out of the house that his family occupied and he had told his family they would be moving to the farm.
- [19] The evidence of Mr Roberts is that Mr Charteris did not attend work on Monday 4 October 2004, as he was unwell and worked the morning of Tuesday 5 October, but the weather was too bad to work for the rest of the day. Mr Roberts says that Mr Charteris phoned him on Wednesday 6 October to say that he had job interviews that day. Then on Thursday 7 October 2004, Mr Charteris came to work, then conveyed that he had found another job and wanted to

finish his employment that day, and this was amicably agreed.

Analysis and Conclusions

- [20] The matters that have to be determined are twofold. Firstly was Mr Charteris dismissed? Secondly, was he given an undertaking that he would be appointed to the position of Herd Manager and was the appointment subsequently withdrawn?
- [21] I find that Mr Charteris was not dismissed and that the period of temporary employment that he was engaged for simply came to an end. While Mr Titchmarsh deemed the employment of Mr Charteris to be casual in nature – that is not so, as it appears that Mr Charteris was working up to 60 hours each week and that the engagement was for a period of six to eight weeks.
- If the employment relationship had been accurately recorded in an employment agreement, as required by section 66 of the Employment Relations Act 2000, this dispute would probably not have arisen.
- [22] I find that while there was some discussion about the possibility of Mr Charteris being suitable to be trained for the position of Herd Manager, that is as far as it went. There was never any formal, or even informal, offer of the position made to Mr Charteris, and given the nature and the responsibility of the position, it is clear that Mr Charteris would not have been an appropriate person for such a position.
- [23] Nonetheless, I have no doubts that Mr Charteris had a most definite perception that he was to be appointed to the position and that this perception was genuinely held. Unfortunately, his perception was sadly misconceived and as a result, Mr Charteris felt that he had been badly let down, in addition to the consequent affect on his family situation.
- [24] While it could be said that Mr Roberts and Mr Mathison should have been more aware of the perception that Mr Charteris had, and then taken earlier steps to enlighten Mr Charteris as to the real nature of the situation, given the short time frame involved, their failure to act does not attract a finding of fault.

Determination

- [25] I find that Mr Charteris was not dismissed and that an agreed period of temporary employment came to an end. Mr Charteris does not have a personal grievance and the remedies that he seeks are declined.

Costs

- [26] Costs are reserved. The parties are invited to reach a resolution of this matter. In the event that a resolution is not achieved, submissions may be made to the Authority for an order, within 21 days of the date of this determination.

Ken Anderson
Member
Employment Relations Authority