

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2016] NZERA Christchurch 211
5587805

BETWEEN RAYMOND COTTON
Applicant

A N D ROGERS MOTORS LIMITED t/a
INTERFREIGHT CARRIERS
Respondent

Member of Authority: David Appleton

Representatives: No appearance from the Applicant
Tony Shaw, Counsel for Respondent

Investigation Meeting: 29 November 2016 at Timaru

Submissions Received: None from the Applicant
None from the Respondent

Date of Determination: 30 November 2016

DETERMINATION OF THE AUTHORITY

- A. The applicant not having turned up to the investigation meeting, I
dismiss the claim against the respondent in its entirety.**
- B. Costs are reserved.**

Employment relationship problem

[1] Mr Cotton claims that he was unjustifiably dismissed on or around 7 September 2015 by the respondent. The respondent denies that it dismissed Mr Cotton, and asserts that Mr Cotton abandoned his employment.

The investigation meeting

[2] Mr Cotton was originally represented by Mr Tim Jackson of Quentin Hix Legal Limited. Mr Jackson was present at the case management conference call which took place on 16 August 2016. During that call, the date of the investigation meeting was set down for 29 November 2016.

[3] A Notice of Investigation Meeting was sent by the Authority to Mr Cotton, via Mr Jackson, on 16 August. A CourierPost receipt confirms that the letter containing the Notice of Investigation Meeting was delivered to “Tim”, presumably Mr Jackson. That Notice stated the date, time and venue of the investigation meeting. It also stated the following:

If the Applicant does not attend the investigation meeting, the matter may be dismissed and costs may be awarded against the Applicant.

[4] On 22 September, Mr Jackson lodged and served Mr Cotton’s brief of evidence. On 19 October 2016, Mr Jackson wrote to the Authority to advise that his firm no longer acted for Mr Cotton. Mr Jackson gave details of Mr Cotton’s address and telephone number.

[5] On the morning of 29 November, after waiting 10 minutes for Mr Cotton to arrive after the arranged start of the Investigation Meeting, I asked Ms Allan, the Senior Authority Officer for the Authority’s Christchurch office, to contact Mr Cotton by telephone to enquire as to his whereabouts. She did so, and he told her that he would be at the meeting in ten minutes.

[6] When he had not arrived after ten minutes, I asked Ms Allan to advise Mr Cotton that if he was not there by 10.00 am, his application to the Authority would be dismissed. Ms Allan did so. Mr Cotton said he was “on his way”. Mr Cotton did not turn up at 10.00 am, and indeed, had still not arrived by 10.10 am, when the Investigation Meeting closed.

[7] In deciding to dismiss Mr Cotton’s application, I took the following into account:

- a. Mr Cotton’s representative was well aware of the date and time of the investigation meeting;

- b. Mr Cotton's representative is highly likely to have advised Mr Cotton when his application was going to be investigated;
- c. Mr Cotton lives just 5 minutes' drive from the venue of the investigation meeting;
- d. When Ms Allan called Mr Cotton the first time, he did not say that anything was impeding his arrival; he said he would be there in 10 minutes;
- e. When Ms Allan called Mr Cotton the second time, to advise him of the risk of his claim being dismissed, he neither objected, nor said he could not be there in a further 10 minutes time;
- f. The respondent was represented by counsel, and his waiting for the applicant was costing the respondent for dead time;
- g. Giving Mr Cotton an additional 30 minutes to arrive, when no explanation for the lateness was given by him, was a sufficient indulgence.

[8] In all the circumstances, it was appropriate to dismiss Mr Cotton's claim.

Costs

[9] Mr Shaw made an application for costs on behalf of the respondent. He is to produce a memorandum of costs setting out the costs incurred by the respondent, the costs sought by it, and the basis of the latter. He should do this within 14 days of the date of this determination. Mr Cotton shall then have 14 days from receipt of Mr Shaw's memorandum to reply in writing. The Authority will then make its determination of costs by consideration of the papers.

David Appleton
Member of the Employment Relations Authority