

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Larry Selwyn Dye (Applicant)
AND Coromandel Hotels Ltd (Respondent)
REPRESENTATIVES Larry Selwyn Dye In person
No appearance for Respondent
MEMBER OF AUTHORITY Janet Scott
INVESTIGATION MEETING 4 October 2005
DATE OF DETERMINATION 7 October 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

Mr Dye submits he was unjustifiably dismissed from his employment. To remedy his alleged grievance he seeks lost remuneration and compensation pursuant to s.123(1)(c)(i) of the Act.

There was no appearance at the investigation meeting by or on behalf of the respondent. I am satisfied the respondent has been served with the Statement of Problem and Notice of Investigation Meeting.

The meeting was delayed to allow for the situation that the respondent had been unavoidably detained. However, as there was neither an appearance for nor contact from the respondent to explain its absence I have proceeded to hear and determine the matter in accordance with Clause 12 of the Second Schedule of the Employment Relations Act 2000.

Applicant's Story

Mr Dye gave evidence that he was employed by the Coromandel Hotel when it was taken over by the respondent in mid June 2004. His employment continued under the new owners Stan and Mandy Hill.

Mr Dye was employed as a barman at the rate of \$14 per hour. He worked approximately 37 hours per week from 11 am till 5.30 pm or 6 pm, Monday to Friday. He said relationships with his employer Mr Hill and the Hotel Manager, Mrs Petherick were amicable.

Mr Dye said that during November Mrs Petherick approached him to ask if he would be willing to increase his hours given the busy Christmas period was coming up. He said he was happy to consider an increase in his hours over this period.

On 8 or 9 December as he was about to knock off work Mrs Petherick advised him that the hotel owner Mr Hill wanted to have a discussion with him. He met with Mr Hill who said "Here are your new hours. From Monday you'll work Wednesday, Thursday, Friday and Saturday from 3pm till close (2am)." Mr Dye said to Mr Hill he wasn't going to work those hours on a full-time basis. He said it would kill him. Mr Hill replied "those are your hours". Mr Dye said he told Mr Hill they would talk about it the next day.

The following day he turned up for work at 10.55 am for an 11.am start. Mrs Petherick told him there was no need for him to change for work as he was no longer required. She had his final pay ready and waiting.

Mr Dye said he asked if there was anything they could work out to avoid him losing his job. Mrs Petherick told him that he could talk to Mr Hill. She advised him to telephone Mr Hill at 2.30pm that day. Mr Dye phoned Mr Hill as advised, only to be told he was not available. He left a contact number but Mr Hill did not return his call.

Mr Dye wrote to Mr Hill on 16 December asking to meet with him to resolve his concerns about the way his employment was terminated. Mr Hill did not respond and Mr Dye has brought his problem to the Authority for resolution.

Mr Dye said he had never been dismissed before. He found it distressing to be put out of work for no reason just before Christmas. He said that Coromandel is a small town and people asked why he had been dismissed. He could not offer any explanation. Neither could he find alternative work at that time of year. He was forced to go on a sickness benefit because he had a bad knee and work he was able to do – bar work – was simply unavailable at that time.

Determination

I am satisfied that Mr Dye was a credible witness.

His dismissal was substantively and procedurally unfair. It is not permissible to make a unilateral change to a worker's terms of employment of the magnitude suggested here and Mr Dye's disinclination to agree to such a change did not provide justifiable grounds to dismiss him in the manner he was dismissed.

If it was the position that the employer genuinely needed to restructure his business operations with the effect that changes needed to be made to Mr Dye's hours then there is a right way and wrong way to go about such changes involving consultation and agreement. If there is no agreement after consultation then termination (on the basis that Mr Dye was surplus to requirements) was a possibility. However, the respondent was bound to consult, consider alternatives and treat Mr Dye fairly particularly if dismissal was a possibility. Summary dismissal without notice was entirely unjustified.

Mr Dye was unjustifiably dismissed from his employment. He has a personal grievance against his former employer.

Remedies

Lost remuneration

While Mr Dye went on a sickness benefit after losing his job with the respondent I find this was not a case of him being unavailable to work (thereby disentitling him to any remedy under this head). Rather it is the case that there was no available work at that time that he could do e.g. bar work. In the circumstances of this case Mr Dye is entitled to three months lost remuneration.

I therefore direct the respondent to pay to Mr Dye the sum of \$6,734 gross (\$14 X 37 hours X 13 weeks) to reimburse him for remuneration lost as a result of this dismissal.

Compensation for humiliation, loss of dignity and injury to feelings

This termination was grossly insensitive and unfair. It was aggravated by the failure of the employer to have any dialogue with the worker. He was tossed aside like a piece of scrap.

I direct the respondent to pay to the worker the sum of \$5000 to compensate him for the injury caused to him in this matter.

Costs

The applicant was not legally represented in this matter so costs are not an issue.

Janet Scott
Member of Employment Relations Authority