



New Zealand Employment Relations Authority Decisions

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Da Silva v I Groomers NZ Limited (Christchurch) [2017] NZERA 1179; [2017] NZERA Christchurch 179 (24 October 2017)

Last Updated: 5 November 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2017] NZERA Christchurch 179
3009171

BETWEEN MICHAEL DA SILVA Applicant

A N D I GROOMERS NZ LIMITED Respondent

Member of Authority: James Crichton

Representatives: No appearance for Applicant

Navindran Naiker for Respondent

Investigation Meeting: 13 October 2017 at Ashburton

Date of Oral

Determination:

13 October 2017

Confirmation of Oral

Determination:

24 October 2017

ORAL DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

Employment relationship problem

[1] The applicant (Mr da Silva) alleges that he is owed wages for work performed during his engagement by I Groomers and that claim is resisted by I Groomers.

[2] I Groomers say that Mr da Silva abandoned his employment with them and that when the employer contacted Mr da Silva to discuss the termination of the employment, significant advances made to Mr da Silva during the employment needed to be taken into account in the calculation of his final pay.

[3] I am advised by I Groomers that Mr da Silva's entitlement to outstanding pay has been settled, although I Groomers maintain that because Mr da Silva retained property belonging to the employer after the employment came to an end, the employer suffered loss which they attribute to Mr da Silva's failure to return property to them.

The Authority's process

[4] When the claim was originally made by Mr da Silva, he had a lay advocate acting for him. At an early stage, that advocate sought leave to withdraw from the proceedings and did so.

[5] The Authority Officer managing the file took all reasonable steps to establish that Mr da Silva intended to persevere with his claim and in consequence would attend the Authority's investigation meeting. In particular, the Authority Officer spoke to Mr da Silva in the week of the Authority's investigation meeting and was assured by Mr da Silva that the latter would attend the investigation meeting.

[6] In the result when I attended at the appointed time and the appointed venue for the investigation meeting, I Groomers were represented but Mr da Silva was nowhere to be seen. I waited 15 minutes after the start time to see if Mr da Silva would attend; he did not.

[7] I was satisfied on the basis of the contact made by the Authority Officer that Mr da Silva knew about the fixture, and indeed had indicated his intention to appear. In those circumstances, I determined to proceed, conscious of the fact that the Notice of Hearing sent to parties (and specifically sent to these parties) contains a clear warning that if the applicant does not attend, the Authority may dismiss the proceeding without further notice to the applicant.

Determination

[8] At the investigation meeting, I spoke briefly to Mr Naiker the Director of I Groomers and explained to him that in the absence of the applicant, I was unable to investigate the applicant's employment relationship problem claim and because of that, I had no alternative but to dismiss the applicant's claim in its entirety.

[9] I discussed with I Groomers briefly the contention they advanced that Mr da Silva has cost them money, and I indicated to I Groomers that they could bring a claim against Mr da Silva if they sought to but that, given the particular

circumstances of the case, I was inclined to the view that that would be a fruitless exercise.

[10] On the basis of a non-appearance by the applicant, I was unable to investigate the applicant's claim concerning his employment relationship problem and accordingly had no option but to dismiss the claim completely. I now order the claim of Mr da Silva against I Groomers New Zealand Limited to be dismissed.

Costs

[11] There are no cost issues in the present matter but costs, if any, are to lie where they fall.

James Crichton

Chief of the Employment Relations Authority