

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2024] NZERA 358
3254639

BETWEEN CORTEZ DOUGLAS
 Applicant

AND DIRECT PROPERTY SERVICES
 LIMITED
 Respondent

Member of Authority: Geoff O’Sullivan

Representatives: Jacqueline Pearse, counsel for the Applicant
 No appearance for the Respondent

Investigation Meeting: 22 March 2024 at Napier

Submissions and other
Information Received: 22 March 2024

Determination: 18 June 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Cortez Douglas, commenced employment as a part-time cleaner with Direct Property Services Limited (DPS) on 7 August 2023. When he commenced his employment, he was not provided with an employment agreement, and over the three week term of his employment he worked 36 hours for his first week, 40 hours in his second week, and 20 hours in his third week.

[2] On 22 August 2023, Mr Douglas received a text from DPS advising him his employment was finishing, with his last day of employment being Friday 25 August 2023. Mr Douglas says the termination of his employment this way was unfair and unjustified. He says he should have received at least one week’s notice, plus the employer KiwiSaver contribution of three percent on the wages he was paid. He also

claims holiday pay on his gross earnings, compensation for hurt, humiliation, and injury to feelings, reimbursement of the filing fee he paid to lodge his statement of problem, and costs of the daily tariff. Mr Douglas also initially sought a penalty for Direct Property Services' failure to provide an employment agreement. He, however, advised the Authority at the commencement of the investigation meeting, that he was no longer pursuing a penalty.

[3] Emmanuel Giannakis is the shareholder and director of DPS. The company has not fully participated in the proceedings and has not filed a statement in reply to Mr Douglas' statement of problem. Mr Giannakis, however, did participate in a case management conference call, confirming that he would file a statement in reply together with any documents and evidence supporting the company's decision. Despite this, no documentation has been received.

The Authority's investigation

[4] The commencement of the investigation was delayed some 15 minutes in case Mr Giannakis or any representative of DPS intended to attend the investigation meeting but were running late. I am aware that DPS had been served a copy of the statement of problem, participated in at least the case management conference call, and had been served a notice of hearing. Following the adjournment, I decided to proceed on the basis that DPS was well aware as to where and when the investigation meeting was being held and was well aware of the date and time of the investigation meeting.

[5] The Authority heard from Mr Douglas who gave his evidence under affirmation. He explained that in 2023, whilst on a farming course, he heard that DPS was hiring young people as cleaners to work at the Heinz Watties site in Hastings. He filled in paperwork regarding his tax code, KiwiSaver, and read through the induction guide. He wasn't given a copy of an employment agreement.

[6] Mr Douglas commenced work on 7 August 2023. It was his first job and, in his own words, he was "stoked" to be working. He had been on a farming course which he had decided to curtail to take up the employment opportunity.

[7] Mr Douglas tells me that he understood he was to be paid each week and after two weeks he had not been paid. This was stressing him out because he was borrowing money from his mother for his bus fare and for food, which he did not like doing. He enquired as to when he would get paid and was told that there was a pay delay.

[8] On Tuesday 22 August 2023 he received a text whilst he was working, from Kerry Simpson, Area Manager for Direct Property Services. Mr Douglas had not met this person previously. The text was as follows:

Hi Cortez,
After talking with Melanie Mitchell
we have come to the decision
about your trial period with Direct
Property Services.
Unfortunately we won't be offering
you a contract with Direct
Property Services.
I have sent you an email over this
matter.
Your last day with Direct Property
Services at King Street will be this
Friday 25/08/2023.
Thank you for your time and I wish
you all the best in the future.
Thanks.
Direct Property Services
Area Manager
Kerry Simpson

[9] Mr Douglas gave compelling evidence regarding the effect the loss of his job had on him. He knew that if he had stayed on the previous farming course, he would have had a job at the end, but now he had nothing to show for his work. He had no money and as at the date of termination of his employment, he had not received all his pay. He described it like a "boulder on my shoulder," saying that he was sad all of the time.

[10] Mr Douglas told me he felt his reputation had been ruined and that the issue had badly affected his confidence. His statement of problem, and indeed his evidence, did not contain a figure that Mr Douglas was claiming for humiliation, injury to feelings, and loss of dignity. He asked that the Authority assess that figure based on the evidence he had given should the Authority determine that he had been treated unfairly and unjustifiably dismissed.

Analysis

[11] The evidence produced to the Authority was straightforward. First, Mr Douglas had not received or signed an employment agreement prior to starting his employment with DPS. Secondly, the fact of the dismissal was proved as it was in writing and contained in the text from Kerry Simpson. That text, received on 22 August 2023,

referred to a trial period. In the absence of any other process, it seems clear that DPS was terminating Mr Douglas' employment based on a perceived trial period.

[12] Section 67A of the Employment Relations Act 2000 (the Act) does allow for the inclusion of a trial period under certain circumstances. However, the first requirement is that the employment agreement must contain a valid trial period for a period of 90 days or less. In this case there was no written employment agreement and, accordingly, there could be no valid trial period.

[13] As indicated above, the first Mr Douglas knew his employment was in jeopardy was when he received the text terminating his employment. There was no other process. Considering the tests in s 103A of the Act, it was not open to a fair and reasonable employer to terminate Mr Douglas' employment this way. The dismissal is therefore unjustified and Mr Douglas is entitled to a consideration of remedies. Mr Douglas did include a claim for disadvantage in his statement of problem, but at the investigation meeting it appeared this was claimed in the alternative should the Authority not have found that the dismissal was unjustified. The claim for unjustified disadvantage was not continued.

[14] During his period of employment, Mr Douglas worked on average 32 hours per week at \$25.00 an hour. He was eventually paid up till the date of the termination of his employment but he was not paid holiday pay. It took Mr Douglas eight weeks to start in new employment. Accordingly, he is entitled to compensation for lost wages totalling \$6,400.00 gross. He is also entitled to a further \$192.00 holiday pay calculated at eight percent of his gross earnings of \$2,400.00.

[15] Mr Douglas has also asked for compensation for humiliation, loss of dignity, and injury to his feelings. I accept he provided heartfelt evidence in respect of his claim for compensation under this heading. I consider a sum of \$15,000 appropriate.

Orders

[16] Within 28 days from the date of this determination, Direct Property Services Limited is to pay to Cortez Douglas the following:

- (a) A sum of \$6,400.00 less PAYE, compensating Mr Douglas for the time it took him to find alternative employment.
- (b) A sum of \$198.00 in account of holiday pay.

- (c) A sum of \$15,000 as compensation for humiliation, loss of dignity, and injury to feelings suffered by Mr Douglas.

Costs

[17] Mr Douglas was represented by Counsel and it is appropriate that costs should follow the event and Mr Douglas has been successful in his claim of unjustified dismissal. Direct Property Services Limited is to make a contribution of costs in the sum of \$1,125.00. As is the case in respect of the above payments, payment of costs is to be made within 28 days from the date of this determination.

Geoff O'Sullivan
Member of the Employment Relations Authority