

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

|                                |  |
|--------------------------------|--|
| <b>BETWEEN</b>                 | Koki Douglas (applicant)   |
| <b>AND</b>                     | Tim McColl t/a Tim McColl Contracting Limited (respondent)               |
| <b>REPRESENTATIVES</b>         | no appearance by or for the applicant<br>Steve Winter for the respondent |
| <b>MEMBER OF THE AUTHORITY</b> | Denis Asher  |
| <b>INVESTIGATION</b>           | Palmerston North, 8 February 2006  |
| <b>DATE OF DETERMINATION</b>   | 17 February 2006   |

**DETERMINATION OF AUTHORITY**

**Employment Relationship Problem**

1. Mr Douglas alleged that he had been subjected to sexual harassment and threatening, intimidating and abusive behaviour by Mr McColl – statement of problem received on 16 August 2005. He sought unspecified reimbursement and compensation by way of remedies.

2. Mr McColl denied the applicant's allegations and in turn made a number of serious allegations about Mr Douglas. These included Mr Douglas making false claims to OSH about the safety of the respondent's machinery which, on investigation, were found to be without substance. Mr McColl also alleged that the applicant brought personal problems to work involving his wife, another employee, which endangered the work site. The respondent said Mr Douglas had proven to be unreliable, dishonest and irresponsible and had recently been warned for failing to turn up to work and not giving notice of the same. He also said that Mr Douglas later walked off the job after being caught the previous day driving under the influence of alcohol and cannabis.
3. Mediation did not settle the parties' employment relationship problem. Mr Douglas subsequently confirmed by email dated 12 November that he wished to bring the problem on to an investigation.
4. By direction dated 22 November this problem was set down for an investigation in Palmerston North, commencing at 10.00 a.m. on Tuesday 8 February 2006, unless good reason was provided as to why the date was not convenient. No exception was taken by the parties to that date. A Notice of Investigation dated 1 December 2005 was forwarded to the parties.
5. The Authority's file records three subsequent telephone conversations by support staff either with Mr Douglas or a family member speaking on his behalf, in which the applicant – amongst other things – was reminded of the investigation date and my requirement that the parties provide witness statements and documents by specified times. An email was sent to the applicant's given address on 27 January 2006 confirming that the investigation would proceed on 8 February in Palmerston North, notwithstanding the parties' failure to provide witness statements and documents by the specified dates.

### **Failure to Attend**

6. Mr Douglas did not attend, nor was he represented at, the investigation on 8 February. No explanation was or has been provided for this non-attendance. I telephoned Mr Douglas' cell phone that morning and left two messages advising of

the investigation and asking that he contact either myself or the Authority's Wellington Office as soon as possible. The applicant has not made contact with the Authority as at the date of this determination.

7. I was satisfied from the information contained on the Authority's file that Mr Douglas was well aware of the investigation and, in the absence of any explanation for his non-attendance, it was appropriate to proceed: ss 160 & 173 of the Act applied.

### **Subsequent Steps**

8. By letters dated 8 & 9 February and an email dated 9 February, the Authority forwarded to the applicant a copy of a witness statement provided by Mr McColl for the 8 February investigation: he was invited to comment on it – ss 173 (2B) of the Act.
9. The same communication also made it clear to Mr Douglas that the respondent was asking his application be struck out, that it sought costs of \$1,500 and that the Authority thought it reasonable, because the witness statement reflected much of what was already set out in Mr McColl's statement in reply, that he – the applicant – respond to it and other matters no later than Thursday 16 February, as the Authority intended proceeding to make a determination thereafter. No reply has been received from Mr Douglas as at the date of this determination.

### **Key Facts**

10. From the evidence presented at the investigation, I am satisfied the key facts can be readily summarised as follows.
11. Mr McColl operates a general contracting company based in the rural area around Fielding and Kimbolton.
12. On 30 August 2004 Mr Douglas and Mr McColl signed an individual employment agreement: the applicant's position description was that of general labourer. While the IEA describes Mr McColl as the employer, it also makes reference to Tim McColl Contracting Limited.

13. As is made clear in the statement in reply and his witness statement, Mr McColl says he had various performance issues with the applicant. They include false claims to OSH about vehicle safety, complaints from the public about his dangerous driving in a company truck, Mr Douglas being caught by the Police on 31 July 2005 (while driving) under the influence of alcohol and cannabis and his later walking off the job on 1 August. Mr McColl says the applicant made false claims about staff members including walking in on Mr McColl having sex with another person. Mr McColl denies all of the allegations set out by Mr Douglas as attached to his statement of problem.

### **Discussion and Findings**

14. The applicant's allegations are directly or broadly denied by the respondent. There is no evidence of Mr Douglas ever raising his concerns with Mr McColl during his employment.
15. Mr Douglas has given no explanation for his failure to attend the investigation on 8 February: despite a clear opportunity extended to him by the Authority nothing has been heard from the applicant as at the date of this determination.
16. The investigation disclosed no reasons to favour Mr Douglas' claims over Mr McColl's direct evidence given by way of affirmation, or to doubt the latter's evidence.
17. I am therefore satisfied that Mr Douglas' claims are without substance and cannot succeed.

### **Determination**

18. I find against all of the claims by the applicant, Mr Koki Douglas, against the respondent, Mr Tim McColl: Mr Douglas' personal grievance is dismissed.

### **Costs**

19. The respondent was legally represented. He now seeks costs of \$1,500 exclusive of GST. While no invoice or details have been produced in support of the claim I am satisfied that the amount sought is a fair and reasonable contribution to Mr McColl's

costs: Mr Douglas is to pay as a contribution to Mr McColl's costs the sum of \$1,500 (fifteen hundred dollars).

**Denis Asher**

**Member of Employment Relations Authority**