

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Paul Geerlings (Applicant)
AND Danny Bryan (Respondent)
REPRESENTATIVES Chris Moore for Applicant
Bryce Quarrie for Respondent
MEMBER OF AUTHORITY Alastair Dumbleton
INVESTIGATION MEETING 28 February 2005
DATE OF DETERMINATION 4 May 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant Mr Paul Geerlings was employed by the respondent Mr Danny Bryan as a farm manager at the beginning of June 2003. The employment was intended to be for a one year term but it ended after only 8 weeks, on or about 26 July 2003.

[2] The foundation of Mr Geerling's employment relationship problem is his belief that Mr Bryan ended the employment by dismissing him. Mr Geerlings claims that Mr Bryan told him to "fuck off" and to get out of the house on the farm that Mr Geerlings, his partner and their child occupied as part of the job. He claims that when this happened Mr Bryan confirmed to him "I sacked you", and that he had done so because "I just don't like you". The house was vacated a few days later and Mr Geerlings left the farm.

[3] Mr Bryan denies that he dismissed Mr Geerlings. He claims that Mr Geerlings decided to leave after an altercation over the way Mr Geerlings had performed a particular job Mr Bryan had asked him to do on the evening of 25 June 2003.

[4] The altercation arose after Mr Bryan had asked Mr Geerlings to drive his truck to an adjacent farm and help with putting another battery in a tractor there. Mr Bryan thought that Mr Geerlings would change the battery but Mr Geerlings thought that he was only needed to drive Mr Bryan back again to the home farm they had started from. After they reached the tractor Mr Geerlings thought too much of his time was being taken up waiting for Mr Bryan to change the battery, so he drove off without Mr Bryan who walked back to the home farm about five kilometres away.

[5] When Mr Bryan arrived after his walk he approached Mr Geerlings. In the exchange the two then had each emphasised what he had to say with frequent "f... this" and "f... that", and there were shrugs and grunts and similar non-verbal communications. Unfortunately there seems to

have been not much clear expression of decision or intention by either man.

[6] It is clear that Mr Bryan showed anger towards Mr Geerlings for not fully complying with a request to carry out a relatively simple task. Mr Geerlings seems to have thought that task had become an imposition on his time and so had simply and abruptly departed, leaving his employer Mr Bryan behind.

[7] Having heard the account given by each man about what was said during their altercation I am not satisfied that Mr Bryan did dismiss Mr Geerlings as the latter claims. Mr Bryan understandably declared that he expected his instructions to be followed. He made it clear that he was unhappy with Mr Geerlings attitude shown towards him in the way he had driven off. Mr Bryan I find told Mr Geerlings, in no uncertain terms as he said, that he was expected to do as he was asked by his employer and that this was a requirement of his employment.

[8] The two met again early next morning and again later that day. Both are agreed in their evidence that at one of these meetings Mr Bryan had asked a question, "what's it going to be Paul?" I accept Mr Bryans evidence that this was the first part of his enquiry which in full was, "what's it going to be – are you going to do what I say or what do you want?"

[9] Even if Mr Geerlings had thought that Mr Bryan had dismissed him the night before it should have been clear that next day Mr Bryan was confirming that the job was still there but that Mr Geerlings needed to follow his instructions. Mr Geerlings belief that he had been dismissed was not a reasonable one in the circumstances and he should at least have sought clarification about the situation. His evidence was that he had tried to talk to Mr Bryan "to swing things around", meaning to save his job or resolve the situation as he put it. I find that Mr Bryan was not preventing the rescue mission but had invited it.

[10] It seems to me that Mr Geerlings adopted a dogmatic attitude towards his job, as demonstrated by his view that he had not been employed to work away from the home farm or to change the battery in the tractor, even although it was a machine he used himself as part of his work. This attitude I find got in the way of resolving a minor difference in a sensible and reasonable fashion, as it should have been.

[11] I also accept evidence from Mr Bryan that Mr Geerlings had on earlier occasions been rash and impetuous in his behaviour. Once, he drove his V8 car furiously near the houses on the farm for no good reason, and another time he damaged a fence by driving a tractor through it to get close up to his car for a jump start. I consider that Mr Geerlings was not dismissed but decided to just walk off the job.

[12] I do not consider that there was any breach of the terms of employment serious enough to found a claim of constructive dismissal. At worst Mr Bryan became agitated and let off steam at Mr Geerlings, as suggested by the liberal punctuation of his speech with "f...ing this" and "f...ing that". Mr Bryan seems to have been unfazed by this mode of expression and used it himself. The request by Mr Bryan for help with the battery installation seems reasonable and was a trivial thing to be the cause of the problem. If Mr Geerlings had a particular concern with what he had been asked to do, he could have raised it with Mr Bryan instead of just driving off and provoking the altercation that followed.

Determination

[13] I find that the termination of Mr Geerlings employment was not brought about by dismissal, whether actual or constructive. His problem therefore is not one that Mr Bryan has legal responsibility for and his claims must be declined.

Costs

[14] Any question of costs should be discussed between Mr Moore and Mr Quarrie with a view to reaching some arrangement. If that cannot be done then application may be made in writing for the Authority to consider the question.

A Dumbleton

Member of Employment Relations Authority