

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 170/09
5134038

BETWEEN

GREG GOODFELLOW
Applicant

AND

BUILDING CONNEXION
LIMITED t/a ITM BUILDING
CENTRE
Respondent

Member of Authority: Paul Montgomery

Representatives: Anjela Sharma, Advocate for Applicant
Maree Kirk, Counsel for Respondent

Investigation Meeting: 7 May 2009 at Nelson

Submissions received: 8 and 15 July 2009 from Applicant
8 and 24 July 2009 from Respondent

Determination: 9 October 2009

DETERMINATION OF THE AUTHORITY

[1] Mr Goodfellow, the applicant, was employed by the respondent in Takaka as branch manager. At the time of the events giving rise to these proceedings, Mr Goodfellow had been employed for approximately seven years.

[2] The applicant claims he was unjustifiably dismissed as the result of an email he sent to his general manager, Mr Philip Woolf, on 28 May 2008. He says the email did not constitute a resignation as it was conditional upon a reply from Mr Woolf regarding the action taken by the company in respect of a trade customer of the respondent.

[3] Mr Goodfellow seeks a declaration that he was dismissed and the dismissal was unjustified. He also seeks remedies of lost remuneration, compensation for hurt and humiliation and costs.

[4] The respondent says there was never a dismissal but that Mr Goodfellow tendered his resignation which was relayed to the Board. The Board accepted the resignation. The company says it met its obligations to the applicant in paying him in lieu of notice and his unpaid leave entitlement.

[5] The parties attempted to resolve the issues in mediation but were unable to do so.

Essential facts

[6] A trade customer of the company, a builder to whom I will refer as Mr A, had developed a history of dilatory payment of his accounts with the company. There is no need to detail the matter except to indicate Mr A received trade discounts on his purchases but regularly featured in the aged debtors' ledger owing considerable sums. As branch manager, Mr Goodfellow was responsible for debtor control and became considerably irritated by Mr A's flouting the agreed terms of trade. The situation developed to the point of Mr Goodfellow placing Mr A on *stop credit* until his outstanding account was settled. A little later, Mr Goodfellow placed the overdue account in the hands of a collection agency. However, for reasons not entirely clear to the Authority, Mr Woolf, the general manager, instructed the agency to take no action. It appears likely Mr Woolf was prepared to try and retain Mr A as a customer.

[7] Mr A was pricing a residential project for a North Island customer and brought a list of materials he required for the job to the branch for pricing. Mr Goodfellow had Mr Brown advise Mr A the price would be non-competitive as the list was priced at retail rates because Mr A's account was on stop credit and did not qualify for trade rates. Mr A complained to Mr Woolf about the situation.

[8] Mr A also had his solicitor write to the respondent complaining about his treatment by Mr Goodfellow and seeking compensation for the loss of the opportunity when the North Island customer decided to place his project in another builder's care. A confidential settlement was arranged between the respondent and Mr A and it was this that triggered an email trail.

[9] On Wednesday 28 May 2008 Mr Woolf, prior to leaving for a 4.30pm appointment, sent an email to Mr Goodfellow which read:

We, the company, have reached an agreement with Mr A which has been agreed to total confidentiality with the parties.

In case I don't catch you before you leave, can you ensure all staff treat Mr A with the respect we do for others. There is considerable work to do to restore relationships with him and we need all players contributing.

I have an appointment at 4.30 and not sure what time I will be back/away tomorrow.

[10] A little later, Mr Brown brought further news of the confidential settlement arrangement with Mr A which he had gleaned while out working in his role as a company representative. He advised Mr Goodfellow of what he had been told and Mr Goodfellow then emailed Mr Woolf:

It's a pity Luke had to hear on the grapevine what is going on. We are going to be laughing stock of Takaka over this if we as a company have paid out on this, as manager of Takaka I don't wish to any part of this, so if we have I would like to know so I can pass on my resignation.

*Cheers,
Greg*

[11] Mr Goodfellow then completed his day's work and left for the West Coast where he and his wife were building a holiday home. He had taken annual leave from Friday, 30 May to Tuesday, 3 June. On his return to work on the Tuesday, he found a reply from Mr Woolf dated Friday, 30 May which read:

I have received your email below and wish to advise the Board has accepted your resignation effective immediately. Could you please supply a signed resignation confirming this. The company will pay out four weeks salary plus any accrued holiday leave as per your employment agreement. Could you please return any company owned items.

[12] Mr Goodfellow says he was shocked at the email:

I could not comprehend how he had construed my email to be a resignation. I was astounded ... that he seriously believed that my email was a resignation.

[13] Believing he was dismissed on 30 May, the applicant left the premises almost immediately. He says *I remember feeling numb inside*. He left his company vehicle at the branch and had one of the respondent's drivers take him home in a truck.

[14] On 3 June 2008, Mr Bowes, the chairman of the respondent's Board, wrote to the applicant and in the course of this letter said:

It is with regret that I confirm Philip's email to you of Friday regarding the acceptance of your resignation from Takaka ITM Building Centre, a branch of Building Connexion Limited. ... We made a judgment call, after due consultation, on how to settle the "Mr A" affair in the best interests of Building Connexion Limited. Given that you strongly disagree with the position taken by the Board on this, it seems you felt that resignation from Takaka ITM Building Centre was the best outcome for you personally.

We respect that decision, and wish you all the best in your future endeavours.

[15] On 6 June 2008, the applicant wrote to Mr Woolf. The letter reads:

Dear Philip,

This letter is to reinforce the email that I sent to you on 28 May.

As it states if you have paid out Mr A over Luke's actions I would forward my resignation.

You have not received a resignation from me but you have as far as I am concerned – jumped the gun.

The termination at 6.08 on Friday 30th of my contract has weighed heavily upon myself and my extended family. I find it almost unbelievable that I have been treated in such an unprofessional manner.

I have been an important member of your senior management team, although not always seeing eye to eye with you on a number of issues, the best interests [sic] of ITM have been foremost to me.

A response to this letter would be appreciated so we can both work out where we go from here.

*Yours sincerely,
G Goodfellow*

[16] Mr Woolf says he received this letter by mail on 13 June 2008 and that the envelope was postmarked 9 June 2008. Mr Woolf did not follow up this letter nor did Mr Goodfellow make further contact with Mr Woolf.

The investigation meeting

[17] At the Authority's investigation meeting, evidence for the applicant was presented by Mr Goodfellow in person and for the respondent Mr Woolf gave the company's evidence. There were uncomfortable moments for both men,

understandable in that they had previously been friends and colleagues for a number of years in a relatively close-knit rural community.

[18] The Authority thanks both witnesses for their openness in answering questions put by the Authority and by opposing counsel. I also record the assistance of Ms Sharma and Ms Kirk in the meeting and for their respective submissions which I have considered in determining this matter.

The test

[19] In circumstances where an applicant alleges he or she has been unjustifiably dismissed, the test as to justification is set out in s.103A of the Employment Relations Act 2000 and its amendments. The question of whether a dismissal was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal occurred.

Analysis and discussion

[20] The critical issue in this matter is whether Mr Goodfellow's email of Wednesday, 28 May 2008 at 4.26pm constituted a resignation freely given but conditional on confirmation of the respondent's settling with Mr A. Or, alternatively, did it constitute a threat to resign if Mr Woolf confirmed the company had settled a cash sum on Mr A.

[21] Ms Sharma urges the Authority to consider the principles set out in *Boobyer v. Good Health Wanganui* (unreported, Goddard CJ, 24 February 1994, WEC3/94). Ms Sharma insists that there is an onus on the employer to inquire whether a *resignation* given in the heat of the moment was, in fact, intended as a severance of the employment relationship.

[22] I respect that submission and the principles enunciated by the then Chief Judge. In summary, the Chief Judge was addressing *resignations* which may in fact not be signalling a reasoned intention to sever the relationship. Where such a resignation was given in the heat of the moment, the then Chief Judge affirmed the need for an employer, after a cooling off period, to inquire whether actual resignation was intended by the employee before accepting it as binding.

[23] The current situation appears to lie somewhat differently. Mr Woolf, in his email to Mr Goodfellow on 28 May 2008 at 4.13pm, made it clear a settlement with Mr A had been made. Therefore, the applicant was aware of this although clearly not aware of the details from that email.

[24] When Mr Brown confirmed to Mr Goodfellow the settlement and the sum involved, Mr Goodfellow fired off that fateful email to Mr Woolf.

[25] At the very least, Mr Goodfellow's email makes it clear to his immediate senior report that if the information received from Mr Woolf and Mr Brown is correct, he will not be part of it and if correct, asks to whom he should hand his resignation.

[26] This bears a little closer analysis. Mr Goodfellow already knew from Mr Woolf's email that a settlement had been reached with Mr A. He knew at that stage no more than that. Further, Mr Woolf's email instructed him and *all players* to assist in repairing the relationship with Mr A. Once Mr Brown had returned from the sales beat and advised Mr Goodfellow of the sum involved, which would clear Mr A's delinquent account, Mr Goodfellow fired off his email to his superior.

[27] I think the email was intended as an honest, ungarnished protest at what the applicant saw as a capitulation to a recalcitrant debtor. He was, after all, commissioned by his employer to oversee profitability of the Takaka branch. Regrettably, Mr Goodfellow went a little too far. Instead of railing at what he had been told and asking for a meeting to discuss the issues and the circumstances, he asked to whom he should tender his resignation if the information he had was correct.

[28] Mr Goodfellow knew the information was correct. Mr Woolf also knew it was correct and the condition giving rise to Mr Goodfellow's resignation was already a done deal. He therefore passed Mr Goodfellow's resignation to the Board and, in the Board's correspondence, it was accepted.

[29] Of particular force was Mr Goodfellow's unambiguous statement that he would have no part in the deal. The Board accepted and respected his position and hence accepted his resignation.

[30] On the evidence before the Authority, neither Mr Woolf nor the Board were dissatisfied with Mr Goodfellow's performance in his role, nor were they critical of his principled stance on the Mr A issue. The Board, knowing the action it had taken

in respect of Mr A, inevitably fulfilled the condition which confirmed Mr Goodfellow's resignation.

[31] In such circumstances, the nicety of a written confirmation was seen as unnecessary. The condition set by Mr Goodfellow had been met, the die of his resignation was cast by that fact, a fact already known to Mr Goodfellow when he issued his email.

[32] Mr Goodfellow insists that he had not provided the written resignation as required under the employment agreement. That, he says, is evidence of his not having actually resigned. I think that is insufficient to save him, particularly as, on receipt of Mr Woolf's 30 May email when he returned to work on the following Tuesday, Mr Goodfellow did not go to Mr Woolf's office to clear the matter up at that early stage. I find it astonishing a man who says his employer took the wrong message from his email did not immediately attempt to address and resolve the issue but rather left his keys to the company car on his desk and had a truck driver take him to his home.

[33] I do not believe the email was equivocal but that it was in fact conditional. In *Boobyer*, Goddard CJ said that where the employee learns that the employer has misunderstood a resignation contrary to the employee's intention but does nothing within a reasonable time to correct the employer's impression, is likely to find him or herself in the situation in which Mr Goodfellow is now placed.

[34] The onus in a situation where there has been a misunderstanding of a communication from an employee to his employer lies with the employee. Mr Goodfellow did nothing until writing his 6 June letter to Mr Woolf.

[35] The email essentially said; if what I've heard is true I want no part of it and tell me who I hand my resignation to. The Board, having received that communication and knowing the settlement had been made, was justified in all the circumstances, and in particular Mr Goodfellow's insistence he wanted no part of it as branch manager, was entitled to come to the conclusion the email meant he was resigning.

The determination

[36] Mr Goodfellow was neither actively nor constructively dismissed. He resigned. While he says that was not his intention, he took no immediate steps to correct what he now says was a misunderstanding.

[37] This is yet another employment case illustrating the danger of unconsidered email responses leading to an unintended outcome. While it might be said Mr Woolf, as a friend of the applicant, could have held the email from the Board until he had had an opportunity to discuss the issues with Mr Goodfellow, as a representative of the employer, no such obligation applies. The initiative for the severance of the relationship came from the applicant and the obligation to correct any misunderstanding in respect of his communication lay with Mr Goodfellow.

[38] The applicant does not have a personal grievance and the Authority is unable to assist him further.

Costs

[39] Costs are reserved.

Paul Montgomery
Member of the Employment Relations Authority