

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2024] NZERA 732
3285459

BETWEEN

TYLER HADLER
Applicant

AND

GARAGE 10 AUTOMOTIVE
LIMITED
Respondent

Member of Authority: Sarah Blick

Representatives: Hayley Johnson, advocate for the applicant
No appearance for the respondent

Investigation meeting: 3 December 2024 in Auckland and by audio visual link

Information and submissions received: At the investigation meeting from the applicant
None for the respondent

Determination: 10 December 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Tyler Hadler began working for Garage 10 Automotive Limited (Garage 10) in Māngere, Auckland, in July 2023. He worked as a service mechanic/workshop hand but after sustaining an injury in September 2023, he took time off work to recover. Mr Hadler says a return to work plan was agreed with Garage 10 via its director Jody Vincent in December 2023, with him due to return to work in January 2024.

[2] Mr Hadler arrived for work on the relevant day and was told he had to talk to Mr Vincent before he could start back. Confused by this, he sent text messages to Mr Vincent asking what was going on but received no response. A week later Mr Vincent finally responded by text message saying he had no job for Mr Hadler. Mr Hadler brings a claim for unjustified dismissal and seeks remedies.

[3] Garage 10 has not responded to the Authority's application nor has it participated in the investigation process, so its position on Mr Hadler's claim is unknown.

The Authority's process

[4] Garage 10 was served with Mr Hadler's application, the Authority's directions and notice of the investigation meeting at its registered office. It has never acknowledged the application or other documents or responded to any of the Authority's email correspondence sent to Mr Vincent. The Authority most recently sent an email reminder on 28 November 2024 with another copy of the notice of investigation meeting to two known email addresses of Mr Vincent.

[5] Garage 10 failed to attend the investigation meeting and the Authority proceeded with the meeting in its absence.¹ Mr Hadler attended the investigation meeting in person. He confirmed the contents of his witness statement under oath and answered the Authority's questions. His representative made brief closing submissions.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination does not record all the evidence and submissions received, and fully considered, during the Authority's investigation but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

The issues

[7] The issue for investigation and determination is whether Mr Hadler has a personal grievance for unjustified dismissal, and if so, whether remedies should be awarded to him.

Background

[8] The following information has been provided by Mr Hadler. He has also provided documents including text messages between himself and Mr Vincent.

[9] Mr Hadler became aware of a position at Garage 10 through his ex-partner's brother, who had an acquaintance or friendship with Mr Vincent. Mr Hadler says Mr

¹ Employment Relations Act 2000, Schedule 2, clause 12.

Vincent offered him a trial for a few days to see how he did and how he would fit in at Garage 10. At the end of the first day, however, Mr Vincent offered him the job. Mr Hadler reports being paid \$200 in cash for the trial. An hourly rate of \$22.50 was then offered and agreed.

[10] Mr Hadler formally started work at Garage 10 on 24 July 2023. Mr Hadler's day-to-day duties included tidying the workshop, servicing vehicles, any small jobs/repairs that were within his skillset, test driving vehicles, inspections, replacing brakes and suspension components, and picking up and delivering vehicles to and from customers. His regular hours were 8am to 5pm, Monday to Friday.

[11] He did not receive an employment agreement but says one was finally provided in November 2023, which he signed and returned to Garage 10. He has not kept a copy of the agreement, so the Authority has not seen it.

[12] Although there are text messages before the Authority in which Mr Vincent expresses frustration with Mr Hadler in relation to some absences from work, Mr Hadler confirmed this was not addressed with him as a performance or disciplinary matter.

[13] Mr Hadler says he injured his back on 11 September 2023 while at home, but attributes the injury to the tasks he was carrying out at work. After a number of weeks off work he started to receive weekly ACC compensation. Mr Hadler gave evidence that he was deemed fully unfit for work and that he provided medical certificates to Mr Vincent throughout his time off. Mr Hadler has shown the Authority a screenshot of one medical certificate dated 18 October 2023 he sent to Mr Vincent which stated he would be fit to return to work on 23 October 2023 full-time, on "light duties" for four weeks.

[14] On 23 October 2023 Mr Hadler returned to work for a day, and Garage 10 gave him the task of cutting tires. Mr Hadler says this posed a problem as his general practitioner had advised against repetitive movement, which that task involved. According to Mr Hadler, Mr Vincent contacted ACC and told it there were no other duties Mr Hadler could perform and arranged for Mr Hadler to have more time off.

[15] On 18 December 2023 Mr Hadler attended a meeting with Mr Vincent and an occupational therapist (who had been organised through ACC) at Garage 10's

workshop. Mr Hadler says a plan was agreed for him to return to work on Monday 15 January 2024, and he and Mr Vincent shook hands on it.

[16] Mr Hadler gave evidence that he and Mr Vincent were not in further contact prior to 15 January 2024. A text message from Mr Hadler shows he sent a message to Mr Vincent at about 7.45am on Monday 15 January 2024 saying:

Just making sure we are on the same page for me to return to work today? if so I'm ready to go. didn't want to show up without hearing from you and not to have any work for me and waste your time.

[17] Not receiving a response, Mr Hadler went in to work. Mr Vincent was not at the workshop. Mr Hadler said he checked the sheet of client jobs for that day and saw his name was not on it. He then spoke to another co-worker who said he needed to talk to Mr Vincent before starting work. Mr Hadler reports being confused about what was happening. He sent a text message to Mr Vincent saying he had been into work and was told he should speak to Mr Vincent and would wait to hear back from him. He sent a further text to Mr Vincent that evening saying he had not heard back and would appreciate a response.

[18] Mr Hadler gave evidence that he also tried to call Mr Vincent a number of times to no avail. The Authority has been provided with a further text message which appears to have been sent on 18 January 2024, in which Mr Hadler says he was still waiting for a response and was worrying if his employment was going to continue or not.

[19] Mr Hadler sent further text messages the next Monday 22 January 2024, again asking for a response and also for a time and place to talk things over amicably. Mr Vincent responded on 22 January 2024, saying:

Hey Tyler I was not really here last week. Sorry I don't have your fit for work certificate or any communication from yourself or [name] rehab from last year. I was under the impression you were getting a fitness test after the meeting. Still heard nothing its been many weeks. Then again you just turn up on the 15th so a bit confused was supposed to be maybe be a paid [sic] by ACC or something for seeing if you were fit for work. I don't have a job here for light duty's [sic] as explained in the meeting. I'm sorry probably best to come grab your tool box when u can also. I don't have a job anymore for you.

[20] When asked by the Authority about Mr Vincent's stated impression that Mr Hadler was having a fitness test after the December 2023 meeting, Mr Hadler responded

that he did, and passed the test. He further stated it was only if he had not passed the fitness test that there would be an issue with the agreed return to work plan.

[21] On 22 January 2024 Mr Hadler contacted his representatives, who raised a personal grievance on 25 January 2024.

[22] Sometime later Mr Vincent and Mr Hadler arranged the pickup of Mr Hadler's toolbox and tools from the workshop. His toolbox with tools had been left outside for him.

Discussion

Whether Mr Hadler's dismissal was justified

[23] When the Authority considers justification for the actions of Garage 10 in the dismissal decision, it does so by applying the test of justification in s 103A of the Act. In determining justification of actions or a dismissal the Authority does not consider what it may have done in the circumstances. It is required to consider on an objective basis whether the actions of Garage 10 and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time of the dismissal or other action. Garage 10 could also be expected as a fair and reasonable employer to comply with the good faith obligations set out in s 4 of the Act.

[24] I accept Mr Hadler's unchallenged evidence, which is supported by the text messages provided. The evidence shows Mr Hadler was clearly dismissed by Garage 10, by at least 22 January 2024. Mr Hadler was entitled to have his employer put its concerns to him and to be provided a fair opportunity to respond and have any response fairly considered before the decision to dismiss him was made. In addition, the concerns had to be well founded. Garage 10 also failed to be responsive and communicative with Mr Hadler upon his return to work, in accordance with its good faith obligations. Garage 10 has not discharged its obligations under either s 103A or s 4 of the Act. The dismissal was clearly unjustified.

Remedies

[25] Mr Hadler is entitled to a consideration of remedies in relation to his unjustified dismissal.

Compensation under s 123(1)(c)(i) of the Act

[26] Mr Hadler seeks compensation of at least \$20,000 pursuant to s 123(1)(c)(i) of the Act. He gave compelling evidence about the effects his dismissal and pursuit of his grievance has had on him. These included the ending of his very long-term domestic relationship, losing his accommodation as a result, and significant effects on his mental health, self-esteem and motivation, which impacted his ability to find new employment.

[27] I have considered the extent of the harm Mr Hadler suffered, where it sits when compared with other cases, then stepped back and assessed what I consider a fair and just amount in the circumstances. Taking into account the circumstances and the general range of awards, a compensation award of \$15,000 to Mr Hadler is appropriate.

Reimbursement of lost income under s 123(1)(b) of the Act

[28] I consider it reasonable to award the equivalent of three months ordinary time remuneration in the circumstances. Taking into account Mr Hadler's hours and earnings during his employment, a reasonable assessment of lost income is \$11,700, as submitted by his representative.

Contribution

[29] The unjustifiability of Mr Hadler's dismissal was well-established in Garage 10's failure to follow statutory requirements. These obligations were not Mr Hadler's, and it is not appropriate to make deduction from the monetary remedies for reasons of contribution. No reduction is made.

Outcome

[30] Garage 10 Automotive Limited is ordered to pay the following amounts within 14 days of the date of this determination to Tyler Hadler:

- (a) \$15,000 as compensation under s 123(1)(c)(i) of the Act;
- (b) \$11,700 in lost wages under s 123(1)(b) of the Act.

Costs

[31] Mr Hadler was successful in his claim. The investigation meeting took half a day, attracting half the daily tariff amount of \$2,250. He does not seek an uplift from that. Taking account relevant costs principles applicable to the Authority, this amount

is awarded. Accordingly, within 14 days of the date of this determination Garage 10 Automotive Limited must also pay Tyler Hadler \$2,250 in costs, and \$71.55 being the Authority application fee.

Sarah Blick
Member of the Employment Relations Authority