

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2024] NZERA 254  
3242119

BETWEEN EVAN HALLETT  
Applicant

AND TAUHARA FARMS LIMITED  
PARTNERSHIP  
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Roland Samuels, advocate for the Applicant  
David McLeod, advocate for the Respondent

Investigation Meeting: 8 February 2024 in Taupo

Submissions and Further Information Received: 8 February from the Applicant  
8 and 16 February 2024 the Respondent

Determination: 2 May 2024

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] Mr Hallett was employed as a herd manager for Tauhara Farms Limited Partnership (TFLP) from 1 April to 28 July 2023. TFLP employed a number of staff at several farms including Broadlands Road where Mr Hallett was employed as a dairy herd manager.

[2] Mr Hallett claims a personal grievance in relation to how his employment ended. He says he was dismissed on notice when he received the letter terminating his employment under the 90-day trial period clause in his individual employment agreement (the agreement), which TFLP later purported to withdraw on the basis it was defective.

[3] Mr Hallett also claims he was disadvantaged by TFLP in not raising any concerns with him prior to deciding to terminate his employment under the trial period

clause, failing to respond to his requests to meet to discuss TFLP's concerns and issuing a defective notice of termination.

[4] Mr Hallett seeks lost wages, compensation and also penalties for breaches of the dispute resolution clause in the employment agreement and the duty of good faith to maintain a productive employment relationship.

[5] TFLP says it did not dismiss Mr Hallett because it withdrew its termination of Mr Hallett's employment, once it realised the 90-day trial provisions in the employment agreement were defective. Instead, Mr Hallett resigned when he sent a text message on 28 July 2023 saying his employment would cease immediately.

[6] In addition, TFLP responded with counterclaims that Mr Hallett breached the terms of the employment agreement when he failed to give two weeks' notice on resignation, pay an invoice for five weeks rent and left the property in an unacceptable standard. TFLP seeks penalties against Mr Hallett for these alleged breaches.

### **The Authority's investigation**

[7] For the Authority's investigation, written witness statements were lodged from Evan Hallett, Lawrence Walden, Manager of Broadlands Farm, and Mark Johnson, Farm Supervisor for TFPL. Mr Johnson's evidence was given by way of sworn affidavit and the other witnesses answered questions from myself and the representatives under oath or affirmation.

[8] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **Mr Hallett's employment at TFPL**

[9] The employment relationship problems arose after TFPL took steps to address concerns it had early in the employment relationship about Mr Hallett taking unplanned leave at the last minute. Being so early in Mr Hallett's employment, he had not accrued any annual holiday or sick leave. The employment agreement provided for other leave as follows:

Other leave – requests for other leave with or without pay may be considered on their merits at the reasonable discretion of the Employer.

[10] Mr Hallett found himself at the last-minute needing to take time off in quick succession to care for his children and to support his partner who was pregnant at the time. He sent text messages to Mr Walden on 22 June and 23 June 2023 saying he could not be at work those days because their babysitter was unavailable, and his partner had to work. He accepted at the time he took the days off it would be unpaid. Mr Walden informally discussed the first two absences with Mr Hallett on 28 June which coincided with a yearly barbeque and hui with the team. Mr Walden said he thought Mr Hallett understood after they talked that he had to be at work on his rostered days on. Mr Hallett described that conversation as “a bit of a growling” but said it was casual and he understood he was not allowed to do that again. They both agreed that conversation went well.

[11] The day after their casual conversation, Mr Hallett did not come back to work in the afternoon and did not advise Mr Walden he was again taking some last minute leave. They had a heated conversation about that the following day. They both described it as a frank exchange but one in which they reached agreement. Mr Walden had conveyed he did not think Mr Hallett would work out at TFPL and Mr Hallett agreed that TFPL was not working out for him but he asked to be given some respect and time to find a job before he left.

[12] On 11 July, despite what appeared to be a mutual understanding that Mr Hallett would resign in time, TFPL sent Mr Hallett the letter terminating the employment relationship under the 90-day trial period. Termination was on notice, with the notice period ending on 25 July 2023.

[13] Mr Hallett was surprised and took some advice before sending Mr Walden a text message saying the 90-day period had already ended so TFPL could not end employment using the trial period. TFPL explained at the investigation meeting that the 90-day period had not run out due to delays in Mr Hallett’s start date, but it accepted the wording of the trial period clause in the employment agreement was deficient and for that reason TFPL unilaterally withdrew Mr Hallett’s termination.

[14] Mr Hallett also asked for a meeting with Mr Walden to talk face to face about the issues that had led to the issuing of the termination letter. At that stage he had no knowledge as to what the issues were. Mr Walden did not respond directly, no meeting

occurred, and Mr Hallett kept working. Six days later on 17 July Mr Walden sent the letter purporting to withdraw the termination and advised of a disciplinary investigation into Mr Hallett's reliability arising from four absences from work and failure to accurately record his time on one occasion.

[15] The parties' representatives communicated. They disagreed on whether a termination could be withdrawn, and Mr Hallett's representative continued to seek a meeting to resolve the issues between them rather than a disciplinary investigation. In the face of TFPL refusing to meet informally and insisting the termination could be withdrawn, a personal grievance was raised on Mr Hallett's behalf on 24 July.

[16] Mr Hallett did not finish work until he sent the following text message on 28 July, three days after the end of the notice period set out in the termination letter:

My representative has advised that you are proceeding with the disciplinary meeting and not interested in resolving this matter. I have stayed on past the termination date of 25 July 2023 as a favour in the hope that we could resolve this in an agreeable manner without getting the courts involved. Please note that my employment will now cease effective immediately as per your termination letter of 11 July 2023 so there is no doubt that I do not accept your termination withdrawal letter, dated 17 July 2023. I will vacate the accommodation in 4 weeks.

[17] Mr Hallett's explanation for employment continuing beyond 25 July to 28 July was that he had remained hopeful the parties could resolve matters between them until he received the letter from TFPL on 28 July directing him to attend a disciplinary meeting. In any event, the employment relationship was terminated before a meeting was held.

[18] Mr Walden says Mr Hallett's absences became a problem for him very early on. The first time they talked about it Mr Walden was happy with how that discussion went, but the next day Mr Hallett took another afternoon off and did not let Mr Walden know. Mr Walden tried calling Mr Hallett multiple times and when he finally got hold of him he says Mr Hallett was defensive and deflected the issue by talking about the house being too cold. When they discussed it the next day, Mr Walden says Mr Hallett continued to be defensive and told Mr Walden he needed to go to an appointment for one of his children so he was going regardless.

[19] The issue for Mr Walden was that Mr Hallett let someone else know but they thought Mr Walden had okayed it. At this stage Mr Walden was concerned from a

health and safety perspective. He needed to know where people are on the farm and if they are not there, he also needs to know in case someone did not return at the end of the day. Mr Walden also preferred to be notified in advance although he accepted sometimes that was not doable but on the whole his point was he expected to be asked and not told. Mr Hallett did not ask and his responses to Mr Walden, were at times, defiant and rude.

[20] After the frank conversation when Mr Hallett indicated he would be resigning, Mr Walden then discussed things with Mr Johnson, Farm Supervisor. TFPL decided to rely on the 90-day trial period of the employment agreement to terminate Mr Hallett's employment. Mr Walden's evidence was also that there were other concerns about Mr Hallett that had been reported to Mr Walden. Those concerns were not raised with Mr Hallett. Mr Johnson took over the process of seeking advice for TFPL and drafting the termination letter for Mr Hallett.

### **Resignation or dismissal**

[21] I find Mr Hallett was dismissed. Objectively assessed TFPL's actions amounted to a clear sending away of Mr Hallett. The 90-day trial period could not provide justification, because TFPL accepted the trial period clause in the employment agreement was defective, but TFPL's actions were none the less a termination at the initiative of the employer.<sup>1</sup>

[22] While I note the points made by TFPL, a dismissal is not able to be revoked or withdrawn without agreement from the employee and Mr Hallett and his representative were clear there was no consent to withdrawal of the termination notice.<sup>2</sup>

[23] Despite employment ending three days after the date set out in the termination letter, I understand Mr Hallett's position to be that this was an extension by agreement. Although approaching it from a different perspective, TFPL accepted the employment relationship was ongoing in its letter of 28 July and by virtue of its submissions that employment ended by way of resignation, at the time, it appears there was agreement to employment continuing beyond 25 July.

---

<sup>1</sup> *Wellington Clerical Union* (1983) ACJ (AC) at 973.

<sup>2</sup> *NZ Labourers IUOW v Hodder & Tolley Ltd* [1989] NZILR 430.

[24] In these circumstances TFPL has been unable to justify its actions with regard to Mr Hallett's dismissal. In the absence of the 90-day trial period providing a justification for the dismissal, a fair and reasonable employer could have been expected to have raised concerns and given the employee a reasonable opportunity to respond to its concerns before dismissing or taking action against an employee.

[25] While TFPL points out it needed to address the concerns it had, which is why after purporting to withdraw the termination it wanted to investigate the concerns about Mr Hallett's reliability, it had already dismissed him so was in fact trying to conduct an investigation into matters it had already made a decision about.

[26] It also became apparent at the investigation meeting that there were other matters of concern with Mr Hallett's performance, that were never raised with him which is also inconsistent with the actions of a fair and reasonable employer.

#### *Disadvantages and breaches*

[27] The claims for disadvantage and breaches of good faith form part of factual matrix for the unjustified dismissal and I have not considered these separately. The claim for breach of the dispute resolution clause in the employment agreement is not made out. Clause 13 specifies it relates only to employment relationship problems other than disciplinary matters and TFPL specified with reference to its code of conduct that the concerns it wished to raise were disciplinary matters.

[28] I find that Mr Hallett's dismissal was unjustified, and he is entitled to an assessment of remedies.

#### **Remedies**

[29] Mr Hallett seeks lost wages. The Act permits reimbursement to the employee of lost wages in an amount that is the lesser of the sum equal to lost remuneration or to three months ordinary time remuneration. Mr Hallett's employment ended on 28 July 2023 and he commenced new employment on 24 January 2024. I accept that reimbursement is appropriate in circumstances where there has been an unjustified dismissal and the loss is a consequence of that.

[30] Mr Hallett had indicated he was going to resign so I cannot be certain the employment relationship would have lasted beyond three months. I consider an order for three months lost wages to be appropriate.<sup>3</sup>

[31] Mr Hallett seeks compensation for humiliation, loss of dignity and injury to feelings caused by the grievance. His evidence was that as a consequence of TFPL's actions his mental wellbeing and that of his partner dipped. I was provided with evidence of the steps they had to take to find emergency accommodation in order to move from the farm. There was also evidence of financial hardship requiring withdrawal of funds from KiwiSaver. I was also provided with a letter from their midwife about the impact of stress from the loss of employment and being forced into emergency housing causing complications during Mr Hallett's partner's pregnancy.

[32] Given my findings above, considering the finding of unjustified dismissal and the financial distress and health and housing issues experienced by Mr Hallett and his family and the general range of awards in similar cases, I consider an appropriate award of compensation under s 123(1)(c)(i) of the Act to be \$20,000.00.

[33] Under s 124 of the Act, Mr Hallett's contribution to the situation that gave rise to the personal grievance must be considered. Mr Hallett was unaware of his employer's concerns prior to it taking steps to terminate his employment. Having relied on the 90-day trial period to justify termination, once that fell away, the employer was unable to justify the dismissal. Mr Hallett has therefore not contributed to the personal grievance.

### **Counterclaim**

[34] TFPL raised three counterclaims. As I have found Mr Hallett was dismissed, the claim the employment agreement was breached when he failed to give two weeks' notice on resignation is not made out.

[35] The other two counterclaims relate to the property owned by TFPL and for which there was a service tenancy agreement with Mr Hallett. The employment agreement provided that the employee had use of the house for the duration of the

---

employment agreement and once the employment relationship was terminated the agreement was “deemed to no longer be in force...”.

[36] As the employment relationship had ended and service tenancies are within the jurisdiction of the Tenancy Tribunal,<sup>4</sup> the disputes between TFPL and Mr Hallett concerning the rental accommodation under the service tenancy agreement fall for consideration by the Tenancy Tribunal.<sup>5</sup>

### **Orders**

[37] Tauhara Farm Partnership Limited is ordered to pay Evan Hallett:

- (a) Lost wages in the amount of \$16,749.98 (gross); and
- (b) Compensation in the amount of \$20,000.00 as compensation for humiliation, loss of dignity and injury to feelings because of the unjustified dismissal.

### **Costs**

[38] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[39] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Hallett may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of this determination. From the date of service of that memorandum TFPL will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[40] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>6</sup>

Sarah Kennedy-Martin  
Member of the Employment Relations Authority

---

<sup>4</sup> Residential Tenancies Act 1986, ss 77(2)(c) and 83 and *FMV v TZB* [2021] NZSC 102 at [105].

<sup>5</sup> *Morunga v Waterford Holdings Limited* [2014] NZERA Christchurch 128 at [63].

<sup>6</sup> For further information about the factors considered in assessing costs see:

[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)