

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 109
5386129

BETWEEN HEMAYATULLAH
HAQIQZAI
Applicant

A N D NEW ZEALAND MUSLIM
ASSOCIATION
Respondent

Member of Authority: Rachel Larmer

Representatives: John Coyle, Advocate for Applicant
Jenna Riddle, Counsel for Respondent

Investigation Meeting: 20 March 2013 at Auckland

Date of Determination: 28 March 2013

DETERMINATION OF THE AUTHORITY

- A. The parties agree the Authority does not have jurisdiction to hear Mr Haqiqzai's dismissal grievance because he failed to raise his personal grievance within 90 days of his dismissal.**
- B Mr Haqiqzai's employment was terminated by letter dated 9 November 2011. Because he was summarily dismissed for serious misconduct his employment ended that day (i.e. on 9 November 2011).**

Employment relationship problem

[1] Mr Haqiqzai was employed by the New Zealand Muslim Association (NZ Muslim Association) on 11 March 2011 as an Iman¹ and Teacher based at the

¹ Priest.

Avondale Islamic Centre. He previously worked for the NZ Muslim Association as a Part-time Teacher and Assistant Iman from October 2002 until his fulltime appointment in March 2011.

[2] Mr Haqiqzai has a number of different claims before the Authority. He claims he was unjustifiably dismissed and is also entitled to unpaid wage arrears. He claims the NZ Muslim Association unlawfully deducted wages from his final pay and failed to pay him for alternative days' holidays. Mr Haqiqzai also seeks penalties against NZ Muslim Association.

[3] The NZ Muslim Association disputes the Authority's jurisdiction to hear Mr Haqiqzai's unjustified dismissal claim because it says he did not raise his dismissal grievance within 90 days of his employment being terminated, as required by s.114(1) of the Employment Relations Act 2000 (the Act).

[4] Mr Haqiqzai claims his employment ended on 20 March 2012. NZ Muslim Association disputes that. It says it summarily dismissed Mr Haqiqzai by letter dated 9 November 2011 and did not employ or pay him subsequent to that.

[5] There is no dispute that Mr Haqiqzai did not raise his dismissal grievance with NZ Muslim Association directly. He instead relies on the service of his Statement of Problem on NZ Muslim Association to effect the raising of his dismissal grievance. There is no dispute that service did not occur until 22 June 2012.

[6] Mr Haqiqzai's position has always been that he raised his dismissal grievance within the 90 day time period required by s.114 of the Act. This preliminary investigation meeting was held to determine first what date Mr Haqiqzai's employment terminated and second whether he raised his dismissal grievance within 90 days of the termination of his employment.

[7] However, in closing submissions Mr Coyle conceded that even if Mr Haqiqzai's evidence regarding the date of termination was accepted he still had not raised his dismissal grievance within 90 days. At that point he withdrew Mr Haqiqzai's objection to NZ Muslim Association's claim the Authority did not have jurisdiction to hear his dismissal grievance.

[8] Given the parties are in agreement that the Authority does not have jurisdiction to hear Mr Haqiqzai's dismissal grievance, the 90 day issue no longer

requires determination. However, because Mr Haqiqzai is claiming wages arrears for the period 10 November 2011 to 20 March 2012 the parties still wanted the Authority to determine as a preliminary issue the date of termination.

What date did Mr Haqiqzai's employment end?

[9] There is no dispute NZ Muslim Association issued Mr Haqiqzai with a letter dated 9 November 2011 which said his employment was ended "*with immediate effect*" because it considered he had engaged in serious misconduct which fundamentally undermined the employment relationship. Mr Haqiqzai was informed he had to vacate the accommodation which had been provided with his employment by 6 February 2012 and that failure to do so would result in an application to the Tenancy Tribunal.

[10] The termination letter also stated:

"You are put on notice that if you in any way attempt to participate in the administration of the Avondale Branch, leading prayers, conducting meetings, participating in the Madrassa, or give any speeches or talks the NZMA views to be inciting problems, you will no longer be welcome on the premises and will be served with a trespass notice."

[11] It is also not in dispute that the NZ Muslim Association:

- a. employed Mr Haqiqzai from 11 March to 9 November 2011, notwithstanding concerns it had previously expressed in March 2011 over the legitimacy of his employment
- b. issued Mr Haqiqzai with notice of his final pay by letter dated 10 November 2011
- c. did not pay Mr Haqiqzai after 9 November
- d. served a Trespass Order on Mr Haqiqzai on 28 December 2011 warning him to stay away from the Avondale Islamic Centre
- e. applied for and obtained from the Tenancy Tribunal an eviction order against Mr Haqiqzai

- f. evicted Mr Haqiqzai from the accommodation on 3 April 2012
- g. applied to the Tenancy Tribunal to recover the rent arrears from Mr Haqiqzai.

[12] Despite this series of events Mr Haqiqzai claims the summary dismissal letter dated 9 November 2011 did not actually terminate his employment. His belief is based on his allegedly being asked to stay on as Imam by members of the Avondale congregation who he says had appointed an “*Interim Avondale Committee*” to look after the affairs of the Avondale Branch.

[13] Mr Haqiqzai acknowledges there was conflict between the Interim Avondale Committee and the NZ Muslim Association over who had the right to run the Avondale Branch of the NZ Muslim Association which resulted in lawyers becoming involved in the dispute. Mr Haqiqzai’s view was that the Interim Avondale Committee could and should run the Avondale Branch, notwithstanding the NZ Muslim Association’s view that it had responsibility for its local branches.

[14] Mr Haqiqzai’s position is that his employment did not end on 9 November because the (then) Chair of the Interim Avondale Committee, Mr Fateh Ahmed subsequently asked him to continue as Iman at the Avondale Mosque. Mr Haqiqzai claims he was told by local members to disregard his notice of termination because the administration of the Avondale Branch was in dispute.

[15] Mr Haqiqzai claims he continued his duties as Iman from 10 November 2011 to 20 March 2012 but admits his “*employment was fraught with major difficulties due to the power struggle between the Committees involved.*”

[16] Mr Haqiqzai says he relied on the Interim Avondale’s Committee’s advice that he should continue as Imam at the Avondale Islamic Centre because in practice staff were always hired by the local branch committees. Mr Haqiqzai says he had always reported to the local committee which was running the Avondale Islamic Centre rather than NZ Muslim Association and that it was the local branch committee which had appointed him as Iman.

[17] Mr Haqiqzai says he continued as Imam because he likened the situation to that the issue that had occurred in March when NZ Muslim Association had initially

said it would not be proceeding with his employment but then subsequently backed down under pressure from the Avondale Branch to change its mind.

[18] Mr Haqiqzai claims that as a result of the conflict over the running of the Avondale Branch a public meeting was held on 20 March 2011. NZ Muslim Association says the public meeting was not about Mr Haqiqzai and his employment was never even discussed. Mr Haqiqzai claims his employment ended the day of the public meeting when he agreed to step aside as Iman until the next annual general meeting was held by the NZ Muslim Association.

[19] I make the following findings:

- a. Mr Haqiqzai's employment ended on 9 November 2011
- b. The letter dated 9 November summarily dismissed Mr Haqiqzai with effect from 9 November 2011
- c. NZ Muslim Association was the legal entity which employed and dismissed Mr Haqiqzai
- d. NZ Muslim Association did not say or do anything which could reasonably have lead Mr Haqiqzai to have viewed his employment as continuing or as having been reinstated subsequent to his dismissal on 9 November
- e. NZ Muslim Association took active steps which were inconsistent with an intention to continue the employment relationship. These included but were not limited to issuing notice of his final pay, terminating his wage payments, banning Mr Haqiqzai from the Avondale Islamic Centre, attempting to prevent him from undertaking any of his usual activities at the Avondale Branch, issuing him with a trespass order, and applying for an eviction order.
- f. The "*Interim Avondale Committee*" is not a legal entity and does not have any power to hire or fire staff without NZ Muslim Association's express authority to do so.

- g. The Interim Avondale Committee does not have the power to override the NZ Muslim Association's decision to dismiss Mr Haqiqzai or to rescind its termination notice.
- h. The Interim Avondale Committee does not have any power or ability under the NZ Muslim Association's Rules to legally commit the Association to employment law obligations (such as compliance with legislation) or financial commitments (such as the payment of Mr Haqiqzai's wages) without NZ Muslim Association's authority to do so.
- i. The dismissal situation was entirely different from that which had occurred in March 2011 when the NZ Muslim Association agreed to continue to employ and pay Mr Haqiqzai from March onwards whilst it investigated its concerns around his engagement.
- j. Just because some members of the Avondale Islamic Centre may have wanted Mr Haqiqzai to remain as their Iman, that did not prevent NZ Muslim Association's dismissal from taking effect.
- k. The supposed desire of local members for Mr Haqiqzai to continue as Imam did not mean Mr Haqiqzai had legally been reinstated subsequent to his summary dismissal.
- l. Changes to Mr Haqiqzai's status had to be agreed to or authorised by NZ Muslim Association. It is very clear the Association stood by its dismissal of Mr Haqiqzai notwithstanding pressure from the local branch to change its position.

[20] I do not accept Mr Haqiqzai's claim he continued in employment until 30 March 2012 because it flies in the face of the overwhelming evidence that his employment was ended by NZ Muslim Association on 9 November. The decision by Mr Haqiqzai to frequent the Avondale Islamic Centre from 9 November onward was a unilateral decision he made with was contrary to his former employer's stated wishes. Mr Haqiqzai's frequenting of the Centre did not change his dismissed status and I find it did not impose any employment related legal obligations on NZ Muslim Association.

[21] I find that Mr Haqiqzai's employment ended when he was dismissed without notice by letter dated 9 November 2011.

Costs

[22] The NZ Muslim Association as the successful party is entitled to a contribution towards its legal costs in so far as they relate to the two preliminary matters only. The parties are encouraged to resolve cost by agreement but if that is not possible then costs will be dealt with by an exchange of memoranda.

[23] NZ Muslim Association has 21 days to file its cost memorandum, Mr Haqiqzai has 21 days to file his memorandum, with NZ Muslim Association having a further 7 days to file its memorandum in response.

Rachel Larmer
Member of the Employment Relations Authority

