

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 351  
3253619

BETWEEN REX HEAD  
Applicant

AND ARMOURGUARD  
SECURITY LIMITED  
Respondent

Member of Authority: Peter Fuiava

Representatives: Applicant in person  
Brenda Christiansen and Aahat Nanda for the  
Respondent

Investigation Meeting: 28 May and 11 June 2024 in Auckland

Date: 14 June 2024

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**DETERMINATION OF THE AUTHORITY**

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**What is the employment relationship problem?**

[1] Rex Head, a retiree, says he was offered employment as a security guard for Armourguard Security Limited (Armourguard or the company) and that he was unjustifiably dismissed. The essential issue is whether an offer of employment was made by Armourguard because it denies ever employing Mr Head.

**How did the Authority investigate?**

[2] The investigation meeting was originally scheduled for 28 May 2024 but did not proceed because Mr Head failed to attend at 10 am. Ms Christiansen, Armourguard's representative and her colleague, Ms Nanda, did appear on time and were excused at 10.35 am when Mr Head failed to show. I was in the process of dismissing the claim when I was subsequently advised by an Authority Officer that Mr Head had telephoned at approximately 12 pm and apologised for his non-appearance that morning. He explained that he was delayed because of traffic and was not able to find either a carpark or the venue.

[3] While inconvenient for the respondent, I gave Mr Head the benefit of the doubt and rescheduled the investigation meeting to 11 June 2024.

[4] Mr Head had indicated in an earlier case management conference that he was not sure how to provide text messages on his mobile phone to the Authority. Arrangements were made for him to visit the Authority's Auckland Office in person so that all information relevant to his case could be taken and forwarded to Armourguard for its information. At the resumed investigation meeting, Ms Christiansen confirmed that she had sufficient time to consider the new information provided by Mr Head.

[5] For the Authority's investigation an undated hand written statement from Mr Head was lodged. He was the only witness to give evidence at the investigation meeting and answered questions under affirmation from me and Ms Christiansen. At the end of the meeting, the representatives made oral closing submissions.

[6] As permitted by s 174E of the Employment Relations Act 2000 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 Head's case**

[7] Mr Head stated that he attended a job interview with Armourguard on 11 July 2023 and was interviewed by a Maori man in his mid-to-late 50s who had a moustache and a bit of a stomach. The interviewer had a laptop with him and allegedly said that Armourguard had a job for him at the Auckland railway station for four hours per day. This pleased Mr Head because he was not able to work longer than this.

[8] One week after the job interview in which Mr Head stated he was verbally offered a job, he visited Armourguard because he had not been contacted about his application. He was told that the company was getting his Certificate of Approval (COA) which is a training course designed to provide prospective security personnel a comprehensive understanding of the security industry in New Zealand.

[9] The COA is issued by the Private Security Personnel Licensing Authority (PSPLA) which is responsible for issuing licenses, disciplinary matters, and

maintaining a public register of all licensed private security operators. The PSPLA is administered by the Ministry of Justice (MOJ).

[10] Photographs taken of text messages from Mr Head's mobile phone show that he texted two different people in Armourguard: its recruitment team and a supervising staff member (Tanya) who Mr Head met by chance at the Papatoetoe Library.

[11] On 11 July 2023, Mr Head received a text from the recruitment team which provided him with a link to apply for his COA. The link takes the user to the PSPLA website where an online application for a COA could be made.

[12] On 21 July 2023, Mr Head texted the recruitment team to ask whether there was any movement on his job application because it seemed to be 'taking [them] ages'. The recruitment team responded later that same day with the advice that they were still waiting to hear back from the MOJ.

[13] On 22 July 2023, Mr Head texted whether the company needed \$170 from him being the registration fee for a COA. There was no response from Armourguard.

[14] On 24 July 2023, Mr Head texted the recruitment team to advise that he had been told by MOJ that they had not heard from Armourguard about his COA application. Mr Head wanted to know what was going on but the company did not respond.

[15] Sometime between late July to early August 2023, of his own accord, Mr Head completed a COA course with a third-party provider known as 'Vision.' He stated that he failed the first time round but with additional support from a mentor/tutor, passed the course on his second attempt.

[16] On 3 August 2023, Mr Head texted Armourguard's recruitment team to advise that he sent his details for his COA to the MOJ and would hear back from them in the next seven days. Mr Head wished to make an appointment with Armourguard once he got his 'blue card' or temporary COA which would have enabled him to work in the security industry while his COA application was being processed.

[17] A search of the PSPLA's public register shows that it received Mr Head's COA application on 3 August 2023 and that he currently holds a full permit valid to 9 November 2028. With his permit, Mr Head is able to work as a crowd controller or as a personal guard or a property guard.

[18] On 4 August 2023, the recruitment team emailed Mr Head thanking him for his time to meet about the security officer role. However, he was advised that it would not be taking his application any further.

[19] Mr Head immediately responded by email stating that he would be taking the matter to the Employment Court because he had been accepted as a security guard at the end of the job interview. Mr Head also stated that this was an ageism issue.

[20] At some point, Mr Head met Tanya, an Armourguard supervising officer who works at the Papatōetoe Library. He asked her what was going on with his job at the railway station and showed her the text messages he sent to Armourguard. While not a member of the recruitment team, she agreed to look into the matter for him.

[21] On 22 August 2023, Mr Head texted Tanya for an update. She promptly responded by text message stating that she was sorry to tell him that the MOJ check did not pass and that's why they (Armourguard) had said 'no'. She further stated that it was just down to credit checks and that there was nothing that she could do. Mr Head texted back in frustration saying that he had received no reply for over a month from the company and had his temporary COA, which in his view he would not have got if there were concerns following the MOJ check.

[22] On the morning of 23 August 2023, Tanya responded by text stating that while she had seen Mr Head's COA, there were special requirements required for employment with Armourguard. The only thing she had been told was that the company's requirements were not met but this did not mean he could not work in security.

### **Armourguard's case**

[23] Ms Christiansen refutes the claims raised by Mr Head and submits that he has never been an employee or received an offer of employment from Armourguard. No

evidence of the alleged offer of employment has been provided and the claim is without foundation. No factual evidence was presented because it simply does not exist.

[24] In summary, Ms Christiansen says that Mr Head was pre-screened on 10 July, interviewed on 11 July 2023, and completed the company's pre-employment document comprising, among other things, an MOJ vetting form. On 4 August 2023, he was notified in writing that his application would not be progressed further. No reason was given as to why his application was declined as that is discretionary to Armourguard. Even so, Ms Christiansen says that Mr Head's age was not a reason for the decline but rather his criminal and driving convictions history and the potential reputational risk these posed to the company.

### **Findings**

[25] Mr Head's case is that a purely oral offer of employment was made to him. There are difficulties with the claim of a verbal offer of employment.

[26] First, is the self-reported nature of the claim and the absence of other corroborative evidence to support it. The interviewer no longer works for Armourguard and could not therefore support or deny the claims made by Mr Head who has never seen him again. Moreover, Ms Christiansen says that Mr Head was interviewed by two female members of staff both of whom were not Maori. If Mr Head is mistaken about the gender and ethnicity of his interviewer, he may have misunderstood what was said to him at his interview.

[27] Second, Ms Christiansen explained that it is not Armourguard's practice to make oral offers of employment which comes after a vetting check. At my request, Ms Christiansen provided me with a copy of the company's recruitment policy which records the following seven-step process when recruiting potential security staff:

1. Obtain company approval to recruit for the position
2. Advertise the role
3. Phone screen applicants
4. Applicants complete application form
5. Follow interview process
6. Check references
7. Make job offer to successful candidate

[28] While the possibility of an oral offer of employment being made to Mr Head cannot be completely discounted, the above process shows that offers of employment come at the end of a seven-step process which is something that the interviewing recruitment officer could reasonably have been expected to follow. The alleged verbal offer is inconsistent with how the recruitment process operates.

[29] To have offered Mr Head employment without first checking whether he has any relevant convictions makes no commercial sense when clients are expected to be able to trust security staff assigned by the company to either protect their person or their property. For example, employing someone to guard a bank who has a conviction for burglary or relates to dishonesty would be a poor selection decision that would adversely affect Armourguard's commercial reputation to the banking client if these were made known.

[30] Third, I find it unlikely that Mr Head could have been offered employment to work at one location specifically an Auckland railway station when Armourguard security staff are expected to work at various locations.

[31] Fourth, on its face, Mr Head's text message of 11 July 2023 to Armourguard's recruitment team in which he asked for information about his job application suggests that he was not offered a job. If this was the case, and it is not, he would be asking a different question altogether such as the start date of his employment or specifically where he would be working.

[32] Fifth, Armourguard's email of 4 August 2023 expressly states that it was not taking Mr Head's job application any further and it thanked him for applying. The email is the best evidence that no formal offer of employment, written or verbal, had been made to Mr Head.

[33] Sixth, at the time of the above email, Mr Head's text message of 3 August 2023 and the PSPLA public register both make clear that he did not have a COA at that time. Without a COA, it would have been premature of Armourguard to have made an employment offer to Mr Head who did not receive his temporary COA until on or about 10 August 2023.

## **Observation**

[34] It may be that the purpose of this proceeding was for Mr Head to have a better understanding of why he was unsuccessful with his job application. As it turns out, Ms Christiansen confirmed that it had nothing to do with his age but his traffic and criminal history which Armourguard received from the MOJ as part of the recruitment process.

[35] It is important to note that Mr Head acknowledges that he has criminal convictions most of which are from his youth when he was a 'young rebel.' Owing to the passage of time and there being no further offending for a significant period, Mr Head's criminal record is subject to s 7 of the Criminal Records (Clean Slate) Act 2004.

[36] It appears to have been a mistake for Mr Head's criminal record to be disclosed to a third party when it is subject to the clean slate scheme. However, as the recipient, Armourguard is not at fault and it cannot unsee what it has seen. It ultimately chose, in its discretion, not to progress Mr Head's job application.

## **Conclusion**

[37] For the reasons given above, the Authority finds that no offer of employment, oral or written, was made by Armourguard to Mr Head. It follows that he was never employed by the company and as he was never an employee, he could not have been unjustifiably dismissed. Mr Head's claim is unsuccessful.

## **Costs**

[38] As Armourguard was represented by its own staff and there being no evidence of external legal costs being incurred, no order for costs against Mr Head is made. Costs shall lie where they fall.

Peter Fuiava  
Member of the Employment Relations Authority