

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

**CA 48/07
5048345**

BETWEEN Blake William Higgins
AND 360 Degrees Limited (in receivership)

Member of Authority: Helen Doyle

Representatives: Michael Kirkland counsel for the applicant
 No representative for the respondent

Investigation Meeting: Friday 20 April 2007

Determination: 30 April 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Blake Higgins, says that he was unjustifiably disadvantaged and unjustifiably constructively dismissed from his employment with the respondent on 12 July 2006.

[2] The respondent company, 360 Degrees Limited is currently in receivership and is involved in the business of furniture manufacturing. The receivers were provided with the notice of investigation meeting and the copy of the statement of problem and statement in reply.

[3] One of the receivers, Wayne Deuchrass, wrote to the Authority on 4 April 2007 advising that whilst his fellow receiver was on leave at the time of the investigation meeting on 20 April 2007, he would be available the day of the investigation meeting. A support officer from the Authority telephoned Mr Deuchrass on the morning of 20 April 2007. He was unable to attend the meeting as he had other meetings to attend.

[4] I decided that as there had been an opportunity for the respondent to be represented as described above, I would proceed to hear evidence from Mr Higgins and from his father and thereafter determine the matter.

Background

[5] Mr Higgins commenced employment with the respondent on or about February 2006. He was aged 21 years and was employed in the factory to carry out furniture assembly and odd jobs. There was no written employment agreement. Mr Higgins' mother is the partner of the director of the respondent company, Noel Daniel.

[6] An issue arose after Mr Higgins pay had been reduced by a small amount. Mr Higgins believed that this was because he had taken an extended lunch break two days earlier although his pay had been reduced by more than the 45 minutes he was late.

[7] Mr Higgins said that he discussed the situation with a colleague on 12 July 2006. He said that his concerns about the docking of his pay got back to the foreman Ray. Mr Higgins said that Ray stood close to him, gave him the fingers and poked him in the chest.

[8] The interaction between Ray and Mr Higgins came to Mr Daniel's attention. Mr Higgins said that he was asked to go into Mr Daniel's office to talk to him. Mr Higgins said that he explained that Ray had poked him in the chest and had given him the fingers. Mr Higgins said that Mr Daniel then told him how useless he was and that he would not have got the job if it was not for his mother.

[9] Mr Higgins said that he left the office to get his lunch box and Mr Daniel followed him. He said that Mr Daniel pushed him three or four times against a solid concrete wall hurting his back and head and into a table with a sharp edge, against which his hand was cut. Mr Higgins said that whilst this was occurring Ray came along and threatened to punch him in the face.

[10] Mr Higgins was then able to telephone his father Brian Higgins. Mr Higgins told his father that he was being beaten up and his father arrived at the factory about ten minutes later. Mr Higgins said that when he went to leave with his father Mr Daniel yelled out *don't bother coming back*. Brian Higgins took his son away from the workplace and bandaged his hand.

[11] Mr Higgins denied the allegations in the statement in reply that he had become offensive, abusive or aggressive. Mr Higgins said he did tell Mr Daniel that he did not have to listen to his put downs and he did yell at him to stop pushing him into the wall but that was the extent of any answering back or yelling. He denied that he had resigned.

[12] Mr Higgins did not return to the workplace. He was also required to leave his mother's house where he had been living and he was sad that she thought he was to blame for the situation.

Determination

[13] I have treated the unjustified disadvantage claim as the same claim as that of unjustified constructive dismissal.

[14] I accept Mr Higgins' evidence that he was treated in an abusive manner by Mr Daniel and threatened by another employee Ray. Mr Higgins was entitled to raise an issue about his pay slip. In this case I find that the treatment Mr Higgins received from Mr Daniel was a breach of the general implied obligation that an employer has not to act in a manner calculated to destroy or damage the relationship of trust and confidence between employer and employee. It was foreseeable that Mr Higgins would not return to work, given the seriousness of the breach which involved a physical assault together with the verbal advice from Mr Daniel not to bother returning as he left with his father. There was no justification for the dismissal.

[15] I find that Mr Higgins has a personal grievance that he was unjustifiably constructively dismissed on 12 July 2006. He is entitled to remedies.

Contribution

[16] I do not find that Mr Higgins contributed to his personal grievance.

Lost wages

[17] Mr Higgins was without employment from 12 July 2006 until 16 November 2006 which is a period of 18 weeks. I am satisfied that Mr Higgins did take steps to obtain other employment by sending out his Curriculum Vitae, looking in the paper and on the internet for work. He was not successful in finding work until November 2006.

[18] Mr Higgins was in receipt of \$12.50 per hour when he worked at the respondent company. Mr Higgins said he would work at least 40 hours per week which would be \$500 gross per week.

[19] Mr Higgins is entitled to 18 weeks lost wages at the rate of \$500 gross per week. I order 360 Degrees Limited (in receivership) to pay to Blake William Higgins the sum of \$9,000 being lost wages under s.123(1)(b) of the Employment Relations Act 2000.

Holiday Pay

[20] Mr Higgins did not know if he had received his holiday pay. He should check that he has received a payment of 6% of his gross earnings being holiday pay. If that has not been paid then I reserve leave for Mr Higgins to return to the Authority to have that calculated. The Authority will require Mr Higgins to provide the amount of his gross earnings.

Compensation

[21] I am satisfied that the dismissal was very stressful to Mr Higgins. He lost his job and his home effectively at the same time and he had to live in a less satisfactory situation as a result. Mr Higgins has claimed the sum of \$7,500 and in the circumstances I am of the view that this is a suitable award.

[22] I order 360 Degrees Limited (in receivership) to pay Blake William Higgins the sum of \$7,500 without deduction being under s.123(c)(1) of the Employment Relations Act 2000.

Costs

[23] Mr Kirkland said that he thought Mr Higgins' costs would be in the vicinity of \$1,500. There was a telephone conference to attempt to get the parties to mediation and then a further telephone conference to set the matter down for an investigation meeting. Whilst Mr Higgins was willing to go to mediation the respondent was not able to be contacted by the Mediation Service to arrange a date and this involved correspondence between Mr Kirkland and the Authority. I have taken these matters into account together with the investigation meeting itself which was a short one. I am of the view that a suitable award for cost would be \$1,500.

[24] I order 360 Degrees Limited (in receivership) to pay to Blake William Higgins the sum of \$1,500 being costs.

Summary of findings and orders

- I have found that Mr Higgins was unjustifiably constructively dismissed.
- I have ordered 360 Degrees Limited (in receivership) to pay to Blake Higgins the sum of \$9000.00 for lost wages.
- The Authority has reserved leave for Mr Higgins to come back if there are issues about holiday pay.
- I have ordered 360 Degrees Limited (in receivership) to pay \$7500.00 to Blake Higgins for compensation.
- I have ordered 360 Degrees Limited (in receivership) to pay costs in the sum of \$1500.00

