

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 179A/07
5072642

BETWEEN MICHAEL HOLLANDS
 Applicant

AND JAM MARKETING PTY
 LIMITED
 Respondent

Member of Authority: Dzintra King

Representatives: Applicant In Person
 No Appearance by Respondent

Investigation Meeting: 15 June 2007

Further Evidence Sought 27 June 2007

Determination: 31 July 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 15 June I determined that the applicant was an employee. I also heard evidence from the applicant regarding his dismissal.

[2] Subsequently, I gave the respondent, who had not attended the 15 June Investigation, an opportunity to provide any evidence relating to the dismissal. A deadline of 6 July was given. No contact has been made by the respondent. I will therefore determine the matter of the unjustified dismissal on the applicant's uncontested evidence.

[3] In addition to remedies for his unjustified dismissal Mr Hollands also seeks a penalty of \$5,000 for failure to provide an employment agreement; and that the penalty be paid to the applicant.

Employment and Dismissal

[4] Mr Hollands was employed to sell timeshare properties on a salary plus commission basis in August 2006. On Saturday 2 September 2006 Mr Hollands phoned to let his employer know he was ill and would not be in that day.

[5] On the following day he went to work, spoke with prospective clients and was then called to the office of Andrew Hunter. Mr Hunter told Mr Hollands that he was sorry but that he would have to let Mr Hunter go. Mr Hollands was told that it was not that he was doing anything wrong but that his face did not fit and he was a round peg in a square hole. Mr Hunter told him that the owners had decided that Mr Hollands did not fit the mould. Mr Hunter said it was unfortunate and that what had happened to Mr Hollands was “brutal, but that’s just the nature of the business”. Mr Hollands was told to collect his things and go. Mr Hollands stood over while he did so and then walked him to the door.

[6] Mr Hollands said the whole thing took five minutes. It was a great shock because he had previously been assured that he was doing well and would do well in the future. To be dismissed like that was shattering. Mr Hollands went to bed for two days in shock and his self confidence was deeply eroded. He found it very hard to sleep and the incident kept running through his mind.

[7] Mr Hollands was given no indication that his employment was at risk and was given no opportunity to comment. The decision was predetermined. The dismissal was unjustified and Mr Hollands has a personal grievance.

Remedies

[8] Mr Hollands is entitled to be compensated for the humiliation and distress he suffered as a result of his unjustified dismissal. He seeks \$15,000. The manner in which the dismissal was effected was, as its perpetrator aptly said, “brutal”, and it is not surprising that Mr Hollands was very distressed. The respondent is to pay him the sum of \$8,000 pursuant to s. 123 (1) (c) (i) Employment Relations Act 2000.

[9] The respondent failed to provide an employment agreement. A defence to the unjustified dismissal claim asserted in the Statement in Reply was that Mr Hollands was a contractor. Mr Hollands said he and the other employees were told on their first day of attendance that an employment contract was being prepared but it never materialised. Mr Hollands filled out an employee information form. I am satisfied that the company intended to provide employment agreements but failed to do so. Pursuant to s 136 (1) Employment Relations Act 2000 the respondent is to pay a penalty of \$3,000.00. The full amount of the penalty is to be paid to the Employment Relations Authority to thereafter be paid into the Crown bank account.

[10] Mr Hollands obtained other employment on 13 November. He is entitled to be paid lost remuneration for the intervening period of ten weeks. The respondent is to pay the sum of \$5,000 to applicant.

Costs

[11] Mr Hollands is entitled to costs. He sought legal advice regarding his claim. Mr Hollands should forward details of any expenditure incurred in the seeking and obtaining of legal advice to the Authority. Upon receipt of this material I will make a costs determination.

Dzintra King

Member of the Employment Relations Authority