

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2024] NZERA 346
3258019

BETWEEN EDDIE HUIA
 Applicant

AND PERFECT FIX LIMITED
 Respondent

Member of Authority: Antoinette Baker

Representatives: No appearance by the Applicant
 Andrew Townsend for Respondent

Investigation Meeting: 12 June 2024

Date of Determination: 12 June 2024

DETERMINATION OF THE AUTHORITY

[1] The Applicant, Mr Huia claims compensation of \$25,000.00 for unjustified dismissal together with costs from his previous employer, the respondent Perfect Fix Limited (PF). The sole director of PF is Andrew Townsend.

[2] After lodging initial documents and having his representative attend a phone conference call and agree to a date for an Investigation Meeting and a timetable for evidence, Mr Huia did not file evidence as directed. When followed up by the Authority Mr Huia's then representative confirmed they were trying to get hold of Mr Huia, and then later when

followed up by the Authority again, that they did not have instructions. This was only weeks from the scheduled investigation meeting on 12 June 2024. The Authority then contacted Mr Huia directly and re-sent the Notice of Investigation Meeting and prior Directions¹ that set out the issues for investigation and a timetable for evidence and the Investigation Meeting date. Mr Huia indicated to the Authority that he intended to continue his claim. Mr Huia did not appear at the scheduled Investigation Meeting. PF did appear. I have no reasons before me why Mr Huia was absent.² I delayed the commencement of the meeting to allow for any reasonable lateness and then proceeded without Mr Huia. Having read all material on the file from both Mr Huia and PF which included statements of problem and in reply with attachments, I heard affirmed oral evidence from Mr Townsend, based on that material. Mr Huia's non-appearance could lead me to dismiss his claim, something he has been informed of³. However, I gave an oral indication⁴ that the claim was dismissed after hearing from Mr Townsend. This determination sets out my reasons for this.

Employment Relationship Problem

[3] Mr Huia was employed for PF under what is documented in a signed individual employment agreement (IEA) to be a casual 'as and when required' basis. Mr Townsend gave oral evidence that while Mr Huia worked most workdays there could be times when no work was available. On 4 July 2024 while on a PF work site Mr Huia and a younger employee had a verbal and physical altercation. Mr Townsend was rung by the foreman and by the time he arrived on site Mr Huia and the other younger employee had left. Both employees sustained injuries. The second in charge on the site texted Mr Huia to say, 'Andy [Mr Townsend] doesn't want ya back bro give him a call'. Mr Huia's messaging shows that as a result of that text (and also as explained in his statement of problem) he formed the view he had been 'fired.'

¹ Directions of the Authority, 21 February 2024.

² Employment Relations Act 2000, Schedule 2, Clause 12 allows the Authority to proceed if any party fails to attend without 'good cause.'

³ Note 1 to Form 8 of the Employment Relations Authority Regulations 2000 and the Notice of Investigation Meeting.

⁴ Employment Relations Act 2000, ss 174, 174A, 174B.

[4] After arriving at the site, Mr Townsend rang the younger employee first and then Mr Huia who had been calling him. Mr Townsend says Mr Huia was 'abusive' on that call and Mr Townsend says he hung up because he was not prepared to be talked to like that. A text message after this from Mr Huia to Mr Townsend shows that Mr Huia did not agree he had been abusive when Mr Townsend said he had been.

[5] Mr Townsend says he had removed Mr Huia's gear from the site when he arrived because he did not want Mr Huia returning that day given what had apparently happened. Messages show that Mr Huia considered Mr Townsend had stolen his gear and threatened going to the police. Mr Townsend messaged three options to arrange the return of the gear. Mr Huia got his gear back.

[6] Mr Townsend for PF says that the person who sent the above mentioned text had no authority to dismiss Mr Huia and he had never seen that text until this matter was raised. Mr Townsend says he said something that day like 'I do not want him back on site at the moment' to that person although he did not do that as a directive that the person was to communicate this. Mr Townsend says he was aware he needed to investigate what had happened. He says this is what he told Mr Huia in the above phone conversation.

[7] Mr Townsend says PF needed to get advice about next steps because he had never in his years in the industry had an altercation on site like this. Mr Townsend says that PF was not able to get an appointment to see an employment representative until the following Monday which was approximately four working days after the altercation and the last communications with Mr Huia. Just after seeing a representative PF then received (on the same day) Mr Huia's raising of a grievance for unjustified dismissal through his then representative.

[7] PF through its representative answered the personal grievance saying that Mr Huia had not been dismissed and that PF wanted to meet to discuss what happened. Through his advocate Mr Huia said he had been dismissed and did not agree to meet. Mr Townsend says PF's position was communicated several times to Mr Huia's then representative, but Mr Huia continued to insist he had been dismissed.

[9] Mediation occurred sometime later and was unsuccessful.

Findings

[10] Considering the above I am satisfied based on what is before me and Mr Townsend's affirmed oral evidence that the following occurred:

- a. Mr Huia was employed as a 'casual as and when required' employee.
- b. There was a physically violent altercation on PF's worksite that involved Mr Huia and a younger employee and both sustained injuries.
- c. Mr Townsend likely removed Mr Huia's gear from site because he did not want Mr Huia returning that day risking further problems. I accept Mr Townsend's oral evidence when I asked him, that he was concerned about the nature of the altercation that appeared to have occurred but still needed to investigate.
- d. Mr Huia received a text message about Mr Townsend not wanting him on site from a person at the workplace who did not have the authority to 'dismiss' him. That person's message included that Mr Huia should call Mr Townsend. It was not reasonable to conclude that this person had the authority to dismiss Mr Huia.
- e. The phone conversation between Mr Huia and Mr Townsend likely did not go well.
- f. Mr Huia's statement of problem includes that he responded physically to what the young employee was saying to him.
- g. Mr Huia's subsequent text messages indicate his was angry about his gear being removed from site and demanded it back referring to it being theft and that he would involve the police if it was not returned.
- h. My findings at e. f. and g. are consistent with Mr Townsend's affirmed oral evidence that he was reluctant to further communicate with Mr Huia (before getting advice) because he was concerned about what reaction he would get.
- i. PF and Mr Huia both obtained representation in the days after the altercation occurred and when Mr Huia raised a personal grievance for unjustified dismissal the prompt response for PF was to confirm he was not dismissed, and it wanted to meet with him. Mr Huia did not agree that he had not been dismissed and continued to decline to meet PF.

- j. Despite Mr Huia being employed when work was available, PF chose to pay him an extra week beyond the day of the altercation when it became evident Mr Huia was not willing to meet and was not returning to the workplace.

Conclusion

[11] I am satisfied based on the above findings that Mr Huia was not likely dismissed from his employment and if the messaging was ambiguous about this from PF it was only for a few days, a delay likely caused by needing to obtain advice (for both sides) because Mr Townsend was concerned about how to handle Mr Huia's reactions. Mr Huia took an unreasonable inference that he had been dismissed from an employee who had no authority to give that message, he took an aggressive approach to Mr Townsend when talking with him after (in Mr Huia's own statement of problem) having earlier reacted physically to a younger employee who he considered had verbally abused him. It was in this context that PF made it clear he was not dismissed, and Mr Huia declined in my view unreasonably to discuss matters.

[12] Accordingly, based on the above and that Mr Huia did not appear to present his claim giving no reason for this, Mr Huia's claim of unjustified dismissal is dismissed. PF says that it does not pursue costs and wants to put this matter behind it. There is no order for costs.

Antoinette Baker
Member of the Employment Relations Authority