

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 180
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BETWEEN CHRISTOPHER JACKSON
Applicant

AND CAPITAL
COMMUNICATIONS
LIMITED
Respondent

Member of Authority: G J Wood

Representatives: Graeme Ogilvie for the Applicant
Tony Philp-Wright for the Respondent

Investigation Meeting: 27 October 2011 at Wellington

Determination: 16 November 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Mr Jackson, claims that he was not paid sufficient notice or holiday pay upon the termination of his employment for redundancy with the respondent, Capital Communications. Capital Communications denies the same.

[2] Mr Jackson had previously claimed a personal grievance for the way his redundancy was implemented, including a lack of consultation, but that claim was withdrawn after mediation, six weeks before the investigation meeting.

Factual Discussion

[3] The facts can be simply stated. Mr Jackson was employed as the sales manager for Capital Communications for seven years, between 2003 and December 2010. Unfortunately, his employment had to be terminated for redundancy because Capital Communications could no longer keep him employed, given the financial

implications of losing a contract with a major supplier for two-way radios, its core business.

[4] While the principal of Capital Communications, Mr Tony Philp-Wright, had a number of discussions with Mr Jackson about the prospect of redundancy, as a result of Mr Philp-Wright really not wanting to make such a hard decision it was not until 8 December 2010 that notice was formally given to Mr Jackson.

[5] Mr Jackson's employment agreement, which was signed by both parties, did not provide for a period of notice for termination. Mr Philp-Wright stated that he would give Mr Jackson two weeks' notice, as that was the regular pay period. Mr Jackson, however, considers that four weeks' notice would have been the absolute minimum required, being reasonable notice, which must apply in the absence of a stipulated period. Because the pay system operated partially in arrears and due to the late provision by Mr Philp-Wright of formal notice to Mr Jackson, the notice period given was in effect only two days rather than two weeks.

[6] Mr Jackson also disputed the holiday pay that he had been paid, believing that he had not had holidays on a number of the days claimed by Capital Communications. However, with the exception of three days, I accept Mr Philp-Wright's evidence that when the staff such as Mr Jackson told him they had had days off, then unless he was told it was sick leave, the days were categorised as annual leave. This was all recorded on pay slips paid to the staff, including Mr Jackson, which were usually received by them. Such pay slips also showed a running balance of annual leave outstanding.

[7] Although Mr Jackson did not regularly read the pay slips, I accept that Mr Philp-Wright correctly categorised leave taken by Mr Jackson throughout his employment, with the exception of three days in 2010 that should have been categorised as sick or domestic leave, but were recorded as annual leave. On those other three days either Mr Jackson or his wife was ill, and he was away from work.

[8] After Mr Jackson's employment ended, he was paid another two weeks' salary, although that may have been by mistake. In any event it is remuneration that must be taken into account when determining how much pay Mr Jackson is owed.

Determination

[9] I accept from the above that Mr Jackson is owed three days' pay for leave wrongly categorised as annual leave. On the other occasions, I conclude that Capital Communications' records demonstrate that Mr Jackson was paid for holidays at the time.

[10] Given that Mr Jackson was not given notice formally until 8 December 2010 and was paid for only two more days, plus another two weeks paid later by Capital Communications, he has been paid in essence only two weeks and two days notice. A worker's pay period is only one indicator, and not a decisive one, of what constitutes reasonable notice at the time of termination. In *Aoraki Corporation v. McGavin* [1998] 1 ERNZ 601, the Court of Appeal held that in the absence of a contractual stipulation, the general practice as to the period of notice does not support fixing this period of notice in excess of one month.

[11] In *Aoraki* Mr McGavin was a very high level manager in a firm of a substantial size and was entitled to a month's notice. Here I accept that Mr Jackson was a senior employee and had a long period of employment with Capital Communications. There was no redundancy compensation clause. In all the circumstances of this case I consider that four weeks' notice as claimed is appropriate.

[12] As Mr Jackson was paid \$192.30 gross per day, he is entitled to 11 times that amount, being eight days' additional notice and three days' unpaid annual leave.

[13] I therefore order the respondent, Capital Communications Limited, to pay to the applicant, Christopher Jackson, the sum of \$2,115.30 gross.

Costs

[14] Mr Ogilvie seeks \$2,500 as a contribution to Mr Jackson's costs of around \$3,600. He also seeks \$71.56 for the filing fee. While Mr Ogilvie is correct that there has been a lot of communication and wage records provided in this case, such is to be expected in a wage claim of this sort. Furthermore, a lot of preparation was involved with the personal grievance claim, which was not pursued.

[15] In all the circumstances of this case, which took less than two hours to investigate (but a lot more to prepare); I conclude that an appropriate contribution towards costs is \$750.

[16] I therefore also order the respondent, Capital Communications Limited, to pay to the applicant the sum of \$750 in costs and \$71.56 in disbursements.

G J Wood
Member of the Employment Relations Authority