

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 62
3167463

BETWEEN

CODY JOYCE
Applicant

AND

ULTIMATE SITEWORKS
LIMITED
Respondent

Member of Authority: Alastair Dumbleton

Representatives: Lawrence Anderson, advocate for the Applicant
Danny Gelb, advocate for the Respondent

Investigation Meeting: 27 October 2022

Submissions received: 3 and 11 November 2022

Determination: 9 February 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Cody Joyce has applied to the Authority for an investigation and determination of a problem arising from the way his employment with Ultimate Siteworks Ltd (USL) ended.

[2] He claims he was dismissed by USL and the dismissal was unjustified. If the Authority upholds his claim, Mr Joyce seeks orders that USL pay him compensation and reimburse him for lost wages, and he seeks an order for payment by USL of his representation costs and expenses.

[3] USL denies that it dismissed Mr Joyce and claims his employment ended by mutual agreement.

[4] If it is found by the Authority that Mr Joyce has a grievance and is entitled to recover compensation and lost wages, USL seeks to have \$1,648 set-off from the amounts awarded, being the value of certain losses to the company it claims were caused by him. That sum is subject to reduction, as Mr Joyce gave back some items of USL's property at the investigation meeting on 27 October 2022.

[5] Although as expected the parties did undertake mediation to try and resolve matters between them, a determination of the Authority must now be given.

[6] At the investigation meeting the Authority heard evidence from witnesses including Mr Joyce, his partner Justine Brown, and USL directors Grayson Rowe and Lisa Davidson. The witnesses were questioned by the Authority and advocates Lawrence Anderson and Danny Gelb. Written submissions were provided by the advocates.

[7] This determination is given in accordance with s 174E of the Employment Relations Act 2000 (the ER Act) and does not therefore fully record all the evidence or information considered by the Authority, or the submissions received.

Text messages exchanged

[8] A message from Mr Rowe to Mr Joyce limiting his use of a company ute or truck, led to a series of texts and the end of the employment relationship.

[9] Mr Joyce had been employed as a digger operator for three months before his employment ended in January 2022. The relationship he had with USL was amicable and productive, until the exchange of messages led USL to conclude that Mr Joyce had decided to take a job with another employer and leave without working the two-week period of notice he was required to give under his employment agreement.

[10] The decisive messages between Mr Joyce and Mr Rowe and Ms Davidson, were shown to the Authority. One message leads to another and they must all be read as a stream flowing from start to finish. The language and style generally of text messages may lead to misunderstanding of expression, so the Authority has looked to see what

clarification was sought where the parties could have been unsure what was meant. The Authority must read the messages as they are likely to have been received and understood at the time they were sent, and they must be read against a background of disgruntlement that quickly evolved between the parties.

[11] It is not uncommon for employment relationships to turn sour over seemingly minor things. In this case it appears Mr Joyce became upset when he was told by Mr Rowe to stop using his work truck or ute for his own personal requirements, when not working or travelling to and from work. This had been Mr Rowe's response to Mr Joyce reporting damage to the truck, which occurred while he was using it for his personal needs.

[12] The terms of his employment allowed USL to withdraw personal use of the vehicle from Mr Joyce.

[13] He became unhappy about having to move his partner's car out of storage, so he could use it for his private purposes instead of the company vehicle.

[14] On 5 January, Mr Grayson texted his perspective of Mr Joyce's problem

Not really my issue sorry mate

[15] Next day Mr Joyce texted back

Are you serious bro well I'm going to have to hand my notice in then I can't park my car here coz your trucks here but I can't use the truck to get around wow

[16] Mr Grayson replied, evenly

Alg bro you gotta do what you gotta do

[17] A little uncertainty then crept into the communications. It seemed to USL, reasonably in the view of the Authority, that Mr Joyce on 8 January asked if he could work out only one weeks' notice before leaving for a new job he represented he had obtained.

..... could I work first week back then head off just coz new job doesn't start for two weeks after I tell them I've handed notice in so I'll just start with them week after I've worked with you

[18] On 8 January, Mr Grayson's response to this request was

At the end of the day I think it's just cleaner and easier bro if you don't come back

[19] Although Mr Grayson's message could have been clearer, it must be read in the overall context of developments and preceding communications about them. The message was a response to Mr Joyce asking if he could work for one week of the notice period instead of the required two. Mr Grayson's message was his way of saying no to only one weeks' notice as proposed by Mr Joyce.

[20] Ms Davidson then stepped in on 14 January, seeking clarification from Mr Joyce

Can you please confirm for us whether you have resigned. If you have resigned please confirm whether you are able to work your two weeks notice. If you have resigned and are not able to work your two weeks notice, your employment will end today and the accountant will prepare a final wash up calculation.

[21] Mr Joyce maintained he had not resigned but had been dismissed.

[22] In the view of the Authority this stance of Mr Joyce was not reasonable in the circumstances where implicitly he was told his job was there if he had not resigned. He was told if he had resigned he could work out two weeks' notice and be paid, otherwise his job would be regarded as at an end. Mr Joyce had a range of options but instead clung to the notion that he had been dismissed.

[23] On 17 January, Ms Davidson again sought clarification from Mr Joyce

Hi Cody

We understood from your text message on 8th January that you had a new job and wanted to give us one week notice instead of

the full notice period required in your agreement. We advised you by return text message that we did not agree to the reduced notice period.

You have never been told by us that we terminated your employment.

If you have not resigned, then we need you to confirm that you are available for work. If you do not intend to work then you will be deemed to have abandoned your employment in accordance with your employment agreement.

Thanks

Lisa

(underlining added)

[24] It can reasonably be expected that parties to an employment relationship will seek clarification of communications between them, so that any misunderstandings they may have caused or contributed to can be rectified. Under s 4 of the ER Act, the parties have a good faith obligation to be 'responsive and communicative'.

[25] In her message Ms Davidson summarised key events accurately. Mr Joyce continued to maintain he had been dismissed and left the job.

[26] The Authority concludes that he resigned without being under any compulsion to do so. USL could not stop him if that was what he wanted.

[27] Mr Joyce accepted in his evidence that it had not been clear to him at the time that he had been dismissed, and it was clearly explained by Ms Davidson that he could continue working for USL.

[28] The suggestion floated before the Authority that USL contrived to get rid of Mr Joyce is fanciful. There was no sham and he had no reasonable basis for believing that he had been dismissed. There had been no issue in the employment relationship until Mr Joyce damaged his work truck and was told to stop using it privately. As Mr Grayson said in his text message, the use Mr Joyce made of his partner's car was not USL's problem.

Conclusion

[29] The Authority concludes from its investigation that Mr Joyce was not cast from the employment by USL but chose to depart freely, without any inducement by unfair or unreasonable action or conduct of his employer. The Authority finds he was not dismissed and accordingly he does not have an unjustified dismissal grievance or any other type of grievance.

[30] Given this result, there is no need to determine USL's claim to set off the value of items retained or misused by Mr Joyce.

Costs

[31] USL is entitled to a contribution to its advocacy costs. If Ms Gelb and Mr Anderson cannot agree on the amount, the Authority will determine costs based on the usual daily rate awarded in cases such as this one.

[32] If an application becomes necessary, it is to be made within 14 days of the date of this determination, and any reply is to be given within a further 14 days from the date of application.

Alastair Dumbleton
Member of the Employment Relations Authority