

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2011] NZERA Christchurch 22
5302774

BETWEEN

BEAU KINGI
Applicant

A N D

NEW ZEALAND HEAT PUMP
CLEANING LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Georgina Burness, Advocate for Applicant
Marcus Wyatt, Advocate for Respondent

Investigation Meeting: 2 February 2011 at Christchurch

Date of Determination: 3 February 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Kingi) alleges that he was unjustifiably dismissed from his employment as a telephone marketer by the respondent (Heat Pump Cleaning). Heat Pump Cleaning resists Mr Kingi's claim on the basis that he was employed pursuant to the Employment Relations Amendment Act 2008 (the trial period legislation) and, as a consequence, pursuant to s.67B(2), a personal grievance may not be brought in respect of the dismissal.

Determination

[2] In a very brief investigation meeting, I satisfied myself that the factual matrix complied strictly with the terms of the trial period legislation and then indicated orally to the parties that the claim by Mr Kingi must be dismissed as it fell squarely within the provisions of s.67B(2).

[3] Mr Kingi sought to rely on the fact that he had previously been employed by another entity incorporated as Healthy Homes Ventilation Company Limited whose governing director was Mr Marcus Wyatt, the same person who was also the governing director of Heat Pump Cleaning, the respondent in the present proceedings. Mr Kingi sought to argue that the employer was one and the same and, as a consequence, he was not a new employee within the terms of the trial period legislation and thus could bring a claim of unjustified dismissal.

[4] I rejected that submission on the basis that the common director identified between the two legal entities was a commonplace in business affairs and that the important question was whether there were two legal entities employing Mr Kingi at different times.

[5] The answer to that second question is that there were indeed two separate legal entities which employed Mr Kingi. He was employed by Healthy Homes Ventilation Company Limited from 21 October 2009 down to 30 January 2010. In late January 2010, Mr Kingi was offered employment by the new entity, Heat Pump Cleaning, pursuant to the trial period legislation and he accepted that employment. I am satisfied then that, for the purposes of the employment by Heat Pump Cleaning, Mr Kingi was a *new* employee of that entity and that, as a consequence, he falls squarely within the terms of the trial period legislation.

[6] Heat Pump Cleaning offered Mr Kingi a written employment agreement which has been duly completed and signed by Mr Kingi and on behalf of the employer by Mr Wyatt. I am satisfied that the terms of that agreement are clear and that, in particular, it is plain that the agreement constitutes a *trial period* agreement within the terms of the trial period legislation.

[7] Mr Wyatt remembers offering the agreement to Mr Kingi and giving him an opportunity to seek advice on it, but Mr Kingi does not remember that and considers that he had no such opportunity to seek advice. Notwithstanding Mr Kingi's recollection of events, he signed the agreement and despite his protests now that he did not understand he was subject to a trial period, it is plain from the terms of the agreement that that is the basis of the engagement.

[8] Mr Wyatt gave evidence that Heat Pump Cleaning employs four people and on that basis the trial period legislation clearly applies.

[9] I am satisfied that Mr Kingi has no right to bring a claim alleging unjustified dismissal because his employment with Heat Pump Cleaning was in terms of the trial period legislation. Mr Kingi's claim is accordingly dismissed.

Costs

[10] In the circumstances, costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority