

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Labana Moe (Applicant)

AND Mt Roskill Panelbeaters & Spraypainters Ltd (Respondent)

REPRESENTATIVES Frances Sabbineni, for Applicant
Jo Douglas, for Respondent

MEMBER OF AUTHORITY Marija Urlich

INVESTIGATION MEETING 18 July 2006

DATE OF DETERMINATION 8 August 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Labana Moe was employed as a paint technician by Mt Roskill Panelbeaters and Spraypainters Limited from 13 April 2005 until his dismissal on 8 December 2005. Mr Moe says his dismissal was unjustified because it was premeditated and procedurally unfair. He seeks reimbursement of lost wages and compensation for distress caused as a consequence of his dismissal.

[2] Brent Buckmaster, the managing director of Mt Roskill Panelbeaters, says that Mr Moe refused to provide an explanation for conduct which was put to him to comment on, that in the face of this he was left with no option but to dismiss Mr Moe and that the dismissal was fair and reasonable in the circumstances.

Background

[3] At about 8am on 8 December Mr Buckmaster asked Mr Moe to attend a meeting later that morning and told him he should bring a "referee" with him. There is no dispute that Mr Buckmaster did not tell Mr Moe what he wanted to discuss with him. However, the purpose for the meeting should have been evident to Mr Moe who had left work at about 10am two days before following an altercation with Mr Buckmaster and had not attended work the following day without explanation.

[4] The 8 December meeting began at about 10am. Mr Moe attended with William Oliver, who is a long-serving employee of Mt Roskill Panelbeaters and has acted as Mr Moe's representative at previous disciplinary meetings. Mr Buckmaster asked Mr Moe if he had any issues which he wanted to discuss, in particular Mr Buckmaster asked Mr Moe if he had a problem with him. Mr Moe said he had none. Mr Buckmaster then asked Mr Moe why he had left work early on 6 December. Mr Moe said he was angry. Mr Buckmaster told the Authority that Mr Moe had stormed out of the workplace at 10.30am on 6 December when Mr Buckmaster spoke with him about the paint work on a bumper which he had been working on. Mr Buckmaster then asked Mr Moe why he had not attended work the following day without ringing in. Mr Moe said he was still angry.

[5] Mr Buckmaster said he then raised some concerns about a number of paint jobs Mr Moe

had recently worked on. Mr Moe said he could not recall Mr Buckmaster raising any such issue with him in the meeting. Mr Oliver's evidence was that he recalled Mr Buckmaster saying to Mr Moe that some paint jobs were not up to a professional standard. I find it is likely Mr Buckmaster would raise these issues given the bumper paintwork issue on 6 December and the context of similar ongoing discussions with Mr Moe over the preceding months.

[6] Mr Buckmaster said he then put to Mr Moe that the poor paint work had been intentional and Mr Moe responded "*bullshit*". Mr Buckmaster said Mr Moe then became quiet and threatening in his manner. Mr Buckmaster told Mr Moe he had no choice but to let him go. Mr Moe then assaulted Mr Buckmaster, grabbing him by the shirt and pushing him against the wall. Mr Moe said that he did not abuse or threaten Mr Buckmaster. There is no dispute that Mr Moe became angry during the meeting and given this state it is unlikely that he is able to accurately recall what occurred during the meeting. For this reason I prefer Mr Buckmaster's account.

[7] Mr Buckmaster laid a complaint of common assault with the police that day to which Mr Moe subsequently pleaded guilty and received a fine of \$300.

Fair and reasonable inquiry?

[8] Mr Sabbenini submits that the meeting was not convened in a procedurally fair manner and that Mr Moe was disadvantaged because he did not know what the meeting was about. I do not accept this. Mr Buckmaster had had a number of disciplinary meetings with Mr Moe in the months prior to this dismissal. These meetings concerned Mr Moe's refusal to use work systems which he had been directed to use and attendance. Mr Moe accepted that he did not use the work systems because he thought they were a waste of time. In the days immediately prior to 8 December Mr Moe had left work early, without explanation, following an angry outburst, and had failed to attend work the following day without advice that he would not be in. I do not accept that given these circumstances and Mr Buckmaster's advice to bring a "referee" to the meeting that Mr Moe was not fairly put on notice that the meeting was disciplinary in nature or that he was unaware of what the purpose of that meeting could be.

[9] Mr Sabbenini also submits that Mr Moe did not receive fair notice of the consequences of any disciplinary action, ie, that he did not know he could be dismissed. Again, given the evidence I cannot accept this argument. Mr Moe had already received a verbal warning from Mr Buckmaster and disciplinary issues had continued to be drawn to his attention. Mr Moe denied receiving a verbal warning. I don't accept this given he could recall telling Mr Buckmaster he would "*smash his head in*" during the same meeting, which must have been a reaction to notice of something significant. I find Mr Moe was on notice that his employment was in jeopardy. I also find given Mr Moe's conduct on 6 and 7 December it would have been reasonably apparent to him that serious disciplinary consequences could result.

Was dismissal open to a fair and reasonable employer?

[10] An argument of predetermination has been advanced on Mr Moe's behalf. I can see no evidence to support this claim. Mr Moe's leaving work early without explanation and absence without explanation warranted a disciplinary inquiry. Disciplinary issues concerning work practises and attendance had been raised with Mr Moe over the preceding months and he had been issued with a warning. On 8 December Mr Buckmaster put the issues to Mr Moe once again. Mr Moe had an opportunity to put his side of the story, he choose to give a minimal explanation and used abusive language. Mr Buckmaster then dismissed Mr Moe. I do not believe Mr Buckmaster acted unreasonably in the circumstances. The dismissal was not a knee-jerk reaction following a superficial inquiry into an isolated event.

[11] Mr Moe's witness statement refers to his terrible personal circumstances at this time. When asked about these circumstances at the investigation meeting Mr Moe was unable to say. I find Mr Buckmaster was alert to possible mitigating circumstances when he asked Mr Moe in the dismissal meeting if he had any issues he wanted to raise. Mr Buckmaster was entitled to accept Mr Moe's response that he did not.

[12] Mr Moe's dismissal, in all the circumstances, was fair and reasonable.

Costs

[13] Costs are reserved. The parties are invited to try to resolve this issue themselves. If they are unable to do so Ms Douglas may file and serve a costs memorandum within 14 days of the date of this determination. Mr Sabineni has a further seven days in which to file and serve any response.

Marija Urlich
Member of Employment Relations Authority