

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Gavin McLeod (Applicant)
AND Anthony Gollop trading as Bay Metal Finishers (Respondent)
REPRESENTATIVES David Bruce, Advocate for Applicant
Anthony Gollop, Advocate for Respondent
MEMBER OF AUTHORITY Dzintra King
INVESTIGATION MEETING 6 May 2005
**FURTHER EVIDENCE
OBTAINED** 6 June 2005
DATE OF DETERMINATION 15 June 2005

DETERMINATION OF THE AUTHORITY

The applicant, Mr Gavin McLeod, says that he was unjustifiably dismissed by the respondent, Anthony Gollop trading as Bay Metal Finishers. Mr Gollop says that Mr McLeod dismissed himself. Mr McLeod seeks lost wages for a three month period and compensation pursuant to s.123 (c) (i). Also at issue is an alleged unilateral breach of contract and a wages arrears claim.

Mr McLeod started work as a metal polisher on 6 August 2001 at a rate of \$14 per hour for a 40 hour week. On 25 June 2003 Mr McLeod's employment came to an end.

The dismissal

During the course of his employment Mr McLeod received three employment warnings, the first (undated) for talking about Mr Gollop's business affairs and for being late. Both Mr Gollop and Mr McLeod agree that there was no discussion prior to the issuing of this warning. There is a warning dated 29 May 2003 which was for being late on three occasions; and a further warning, headed "2nd warning", also undated but issued on 24 June 2003. There had been no discussion before the issuing of any of these warnings. The last warning says:

Dear Gavin

Over the last few months I have found that the time you are taking to complete a job is far to [sic] slow. Time is money and you are causing clients to refuse to pay for time you take. It is with regret that I give you this written earning,

A Gollop

The parties agree that the next day there was a brief discussion. Mr Gollop told Mr McLeod that he was giving him the day off as he had to work till 7pm the night before fixing up Mr McLeod's work. Mr McLeod asked "Does this mean I'm fired?" and Mr Gollop said "yes".

Mr McLeod was unjustifiably dismissed. There was no notice that the meeting might involve the termination of his employment. Mr McLeod did not dismiss himself. Mr Gollop did the dismissing by answering in the affirmative to Mr McLeod's query.

Breach of contract

The business was not doing well and after a full staff meeting during which the financial position of the company was discussed Mr Gollop issued a note on 10 June 2003 stating:

To Gavin

Your New Hours will be from 9 to 2 as from 10-06-05. No overtime. Due to financial circumstances these will be until further notice. Please feel free to find Alternative Employment if this Does not Suit.

Kind Regards

Tony Gollop.

Mr McLeod told me that he agreed to this as he liked working for the respondent and did not want to look for another job. Mr McLeod agreed to the variation.

Remedies

There was limited evidence about humiliation and distress. In the circumstances the award must be small. The respondent is to pay \$1,000 pursuant to s.123 (c) (i).

Mr McLeod found alternative employment on 28 July 2003. His new wage was \$13.50 per hour but it was for a 40 hour week. He is entitled to be reimbursed for the period from 25 June to 27 July at the rate of \$14 per hour for a 25 hour week. This amounts to \$1,750.00. From this the amount of \$230 he earned for working three days in Hamilton must be deducted. The amount owing in wages reimbursement is therefore \$1,520.

Contribution

Mr McLeod did say that Mr Gollop had had discussions with him about picking up his pace and Mr McLeod had agreed that he would. He knew Mr Gollop wanted him to work faster. Had Mr McLeod been a more satisfactory employee he would not have dismissed. There was contribution on his part to the situation that gave to the personal grievance. I set that contribution at 25% and make deductions in the awards accordingly.

The compensation payable is \$750.00 and the wages reimbursement is \$1,140.

Costs

If the parties are unable to resolve the issue of costs the applicant should file a memorandum within 28 days of the date of this determination. The respondent should then file a memorandum in reply within 14 days of receipt of the applicant's memorandum.

Dzintra King
Member of Employment Relations Authority