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Murray v Godley House Limited CC 1/09 [2009] NZEmpC 5 (17 February 2009)

Last Updated: 2 March 2009

IN THE EMPLOYMENT COURT

CHRISTCHURCHCC 1/09CRC 53/07

IN THE MATTER OF a challenge to a determination of the Employment Relations Authority

BETWEEN QUINN JAN MURRAY

Plaintiff

AND GODLEY HOUSE LIMITED

Defendant

Hearing: 20 October 2008

(Heard at Christchurch)

Appearances: R J Davidson, Counsel for the Plaintiff

A D Marsh, Counsel for the Defendant

Judgment: 17 February 2009

JUDGMENT OF JUDGE A A COUCH

[1] Mr Murray was employed as a head chef in the restaurant operated by Godley House Ltd. He took up that position on or about 2 April 2006. On 17 May 2006, the employment relationship ended. Mr Murray says he was dismissed and that his dismissal was unjustifiable. The company's position is that Mr Murray resigned.

[2] This employment relationship problem was investigated by the Authority which, in its determination dated 20 November 2007 (CA 141/07), found that Mr Murray resigned.

[3] Mr Murray challenges that determination. The matter proceeded before the Court by way of a hearing de novo.

Sequence of events

[4] Godley House Ltd operates a function centre at Diamond Harbour. This includes a relatively large restaurant. In March 2006, Mr Murray accepted employment as head chef of the restaurant on terms which he negotiated with Neil Blunden, a director of Godley House Ltd.

[5] Mr Murray took up the position on or about 2 April 2006. Other key staff at Godley House at that time included Trevor Watson, who was the second chef, and Ashleigh Badger, the manager.

[6] Shortly after Mr Murray took up his position, Mr Blunden began to have concerns about his performance. These concerns increased when several letters of complaint were received about the quality of food and service at

a function during the weekend of 4 and 5 May 2006.

[7] On Thursday 11 May 2006, Mr Blunden held a meeting of senior staff to discuss problems in the restaurant. One of Mr Blunden's key objectives in holding this meeting was to avoid similar problems occurring on Mother's Day which was the following Sunday 14 May 2006.

[8] Special arrangements were made for the restaurant on Mother's Day. These included a fixed menu and additional staff. Despite these arrangements, the restaurant performed poorly. In particular, the kitchen was chaotic. Many of the patrons were dissatisfied. Some were given refunds, vouchers or free drinks.

[9] Mr Blunden was most unhappy about these events. He arranged a meeting of senior staff to be held at 2pm on Wednesday 17 May 2006 to discuss what had happened. The meeting was scheduled for Wednesday because Monday and Tuesday were Mr Murray's days off and Mr Blunden regarded it as essential that he attend the meeting. Ashleigh Badger telephoned Mr Murray on the evening of Tuesday 16 May 2006 to tell him about the meeting and that he was required to attend.

[10] On Wednesday 17 May 2006, Mr Murray arrived for work at about 10am. Almost immediately, he encountered Mr Blunden and they exchanged greetings. There followed a conversation between the two men which led to the termination of the employment relationship. There were no independent witnesses to this conversation and the evidence given by Mr Murray and Mr Blunden of what was said differed in several critical respects. I deal with that evidence in detail subsequently. In essence, however, Mr Murray said that he was dismissed; Mr Blunden said that Mr Murray resigned. Following that conversation, Mr Murray left the premises and did not return.

Conversation on 17 May 2006 – Mr Murray's evidence

[11] In his evidence-in-chief, Mr Murray said:

30. *... I asked Mr Blunden whether the meeting I was going to be attending at 2.0pm was about my future. Mr Blunden confirmed that he was going to discuss my future in my job at the meeting.*
31. *I was concerned about what Mr Blunden had said to me so I asked him whether I had a future with the company because of what had happened in the restaurant the previous weekend.*
32. *Mr Blunden stated straight out that I did not have a future with the company. He actually told me that I was history. He then said that he wanted to wait until the meeting at 2.0pm because he wanted his wife and the manager to be present at the meeting when he told me that I no longer had a job at the restaurant.*

...

35. *He suddenly however offered me 2 weeks pay plus my holiday pay if I agreed to leave my job immediately. I was very surprised by this sudden offer but I objected very strongly to his suggestion. I told him that I was very unhappy with the way I was being treated and that I would not accept 2 weeks pay to leave my job.*
36. *Mr Blunden then suddenly increased his offer to 1 months pay plus my holiday pay if I would leave my job. He did however say this time that I would have to stay on until the other chef started work at 2.0pm.*
37. *I was so disgusted with the way I was being treated that I told Mr Blunden that I would not put up with the treatment I was receiving from him any longer. I gathered up my belongings and left the property at approximately 10.20am. I eventually received my wage and time records from Mr Blunden.*

[12] In the course of his oral evidence, Mr Murray recounted the conversation this way:

Q. *And then what happened.*

A. *Well we exchanged pleasantries, morning, morning. And then I asked him about it. I said what's this meeting about. And he said oh you just wait, he wouldn't tell me, he just says you just wait till 2 o'clock. This is exact words he said to me. You wait till 2 o'clock. I says I want to know now. I said is it about my future, and he says yes. And I says well have I got one, and he says no you're history.*

Q. *You're very clear about that.*

A. *Very clear, that was his exact words.*

Conversation on 17 May 2006 – Mr Blunden's evidence

[13] Mr Blunden's evidence-in-chief was:

10. *Prior to that meeting however at approximately 10.00am, the Plaintiff approached me and asked me some questions about the meeting. He asked me whether or not the meeting was about his performance. I advised that it was and particularly what had happened over the weekend. I said that the meeting was intended to be a post mortem of the Mothers Day issues. He then asked me if he had a future at Godley House. I suggested to him that he should wait until the meeting took place later that day when all these issues would be discussed. The Plaintiff continued to insist that he wished to have an answer there and then however. I continued to tell him he should wait until the scheduled meeting.*

11. *At this point, the Plaintiff stated that "I obviously have not got a future here so I might as well leave now", or words to that effect. He collected all of his belongings and asked me what pay he would receive as he wished to sort out matters there and then.*
12. *I told him that this was his decision and I told him not to be rash and to wait for the scheduled meeting. He refused to do so however. As he was intent upon resigning at that time, I agreed purely as a matter of goodwill to pay his final pay and a period of notice.*
13. *After this, the Plaintiff shook my hand and left the premises. He would have left at approximately 10.20am. ...*

[14] In answer to detailed questions in cross-examination, Mr Blunden's further account of these events was consistent with his evidence-in-chief. He also denied telling Mr Murray that he did not have a future at the restaurant or that he no longer had a job.

Discussion and decision

[15] Mr Murray's claim is that he was unjustifiably dismissed in the course of his conversation with Mr Blunden on the morning of 17 May 2006. In pursuing that claim, the initial onus lies on Mr Murray to establish on the balance of probabilities that he was dismissed. That inevitably requires me to resolve the conflict in evidence between Mr Murray and Mr Blunden about what was said in their conversation.

[16] In order to resolve the conflict of evidence to the extent necessary to decide this matter, I have had careful regard to all of the evidence. On the balance of probabilities, I am not satisfied that Mr Murray was dismissed. I reach that conclusion largely on the basis of my assessment of the reliability of the evidence given by Mr Blunden and Mr Murray. Neither man was an entirely reliable witness but I found the evidence given by Mr Blunden to be more reliable than that given by Mr Murray. I now set out a summary of my reasons for that view.

[17] In several respects, Mr Murray's evidence was inconsistent with contemporary documents. I refer to two examples.

[18] It was common ground that Mr Blunden offered Mr Murray a written employment agreement. When asked in cross-examination when he received that document, Mr Murray was adamant that Mr Blunden put it into his hand following the staff meeting held on 11 May 2006. A copy of the document was produced which shows it was signed by Mr Blunden and dated by him "03-04-06". Mr Blunden's evidence was that he gave the document to Mr Murray on or very close to that date which was within a couple of days after Mr Murray started work. That evidence was unchallenged in cross-examination.

[19] Regarding the staff meeting on 11 May 2006, Mr Murray said in his evidence-in-chief that most of the issues raised by Mr Blunden "*resulted from the poor service being given to the restaurant's customers by the inexperienced waiting staff*". Two sets of minutes of that meeting were produced which were similar in most respects. One set of minutes made no reference to any issue about waiting staff. The other referred to it as one of 10 issues discussed. It was also apparent from both sets of minutes that the key issues discussed at the meeting were the quality of food prepared in the kitchen and leadership within the kitchen. Neither of these issues involved the waiting staff.

[20] In some respects, Mr Murray's evidence in the Court was inconsistent with the evidence he gave on oath to the Employment Relations Authority. An example of this was that, in the written brief he confirmed to the Authority, Mr Murray said that he was not given an employment agreement to sign. The brief of evidence he read to the Court was based on the brief provided to the Authority but, in this respect, it was different. Mr Murray said in his evidence-in-chief to the Court that he was provided with a written employment agreement to sign. I found the explanation Mr Murray attempted to give for this conflict of evidence unconvincing.

[21] On some issues, Mr Murray's evidence changed in the course of cross-examination or in answer to questions from the Court. A clear example of this was in relation to the written employment agreement offered to him. Mr Murray initially said that he refused to sign the agreement because he disagreed with some of its terms. Later he said that there was nothing in the document he objected to and that his reason for not signing it related to the circumstances in which it was offered to him.

[22] On the issue of his work performance and responsibility for the problems which undoubtedly occurred in the restaurant, Mr Murray's evidence was unrealistic and unconvincing. In relation to the problems which were discussed at the meeting on 11 May 2006, Mr Murray said "*I did not accept that I was responsible for any of the problems in the kitchen...*". Similarly, in relation to the serious problems in the kitchen which undoubtedly occurred on Mother's Day, Mr Murray sought to cast blame on others and minimise his own responsibility. In doing so, he ignored the fact that he was the head chef and was, by virtue of his position, directly responsible for the organisation and performance of all kitchen staff. It was only when directly confronted with that proposition in cross-examination that Mr Murray accepted it but, even then, he did so reluctantly and continued to try to place on others the responsibility that was properly his.

[23] In all the circumstances of the case, Mr Murray's account of what happened on the morning of 17 May 2006 is inherently less likely than Mr Blunden's account. In essence, Mr Murray says that Mr Blunden had decided to dismiss him before that conversation had taken place and that the meeting arranged for 2pm that day was a sham. It was a significant aspect of Mr Blunden's evidence that, prior to the events in question in this matter, he had been

through the personal grievance process in relation to another employee. Paraphrasing his evidence, he said that this had been a valuable learning experience and that, in particular, he had come to appreciate the importance of a fair process in dealing with employment issues. It is also significant that, in calling a meeting of senior staff to discuss the problems which occurred on Mother's Day, Mr Blunden was following exactly the same process he had adopted the previous week in relation to earlier, very similar problems.

[24] On the other hand, it is clear that Mr Murray went to work on 17 May 2006 with a strong sense of trepidation. In answer to a question in re-examination about what he thought when he received the message requiring him to attend the meeting, Mr Murray said "*I thought I was getting fired.*" When, at the start of their conversation on 17 May 2006, Mr Blunden confirmed that the meeting that afternoon would include discussion of his performance on Mother's Day, it is understandable that Mr Murray saw little prospect of retaining his job and opted to end it by resignation rather than by dismissal.

Conclusion

[25] As Mr Murray has failed to establish to the required standard that he was dismissed, his claim of unjustifiable dismissal must fail. His challenge to the Authority's determination is unsuccessful. Pursuant to [s183\(2\)](#) of the [Employment Relations Act 2000](#), however, the determination of the Authority is set aside and this decision now stands in its place.

Comment

[26] Although I have focussed in my earlier analysis on the shortcomings I perceive there to be in Mr Murray's evidence, I record that there were also some difficulties with aspects of Mr Blunden's evidence. An obvious example of this was the various different times at which Mr Blunden said he returned to the restaurant early in the afternoon on Mother's Day. The doubt raised in my mind by the shortcomings in Mr Blunden's evidence was, however, less than that raised by Mr Murray's evidence.

[27] I have not referred above to the evidence of Mr Watson. Although he gave evidence which supported what Mr Blunden said on some contentious issues, I was left in real doubt about his reliability as a witness. Accordingly, I have placed little weight on his evidence.

Costs

[28] Mr Murray is legally aided. In its determination on costs, the Authority directed him to pay \$50 to Godley House Ltd, presumably because this was the full extent of the contribution Mr Murray had been required by the Legal Services Agency to make in respect of the proceedings before the Authority. I was not told by Mr Davidson whether Mr Murray was liable to make any further contribution to his costs in respect of the proceedings before the Court. If so, Mr Davidson is to advise the Registrar in Wellington in writing within 3 days of receiving this decision of the amount of that further contribution. I will then make an order as to costs. If Mr Murray is not liable for any further contribution to his costs, there will be no order for costs in this proceeding.

[29] Mr Marsh concluded his submissions with a request that I fix the amount of costs I would have awarded had Mr Murray not been legally aided. Without knowing what costs have actually been incurred by Godley House Ltd, and in the absence of the information necessary to assess whether those costs were reasonably incurred, I decline to fix any figure at this stage. I reserve leave, however, for Mr Marsh to pursue that issue further by way of a subsequent application on notice if he is instructed to do so.

A A Couch

Judge

Judgment signed at 12.15pm on 17 February 2009