

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 141/07
5043469

BETWEEN QUINN JAN MURRAY
 Applicant

AND GODLEY HOUSE LIMITED
 Respondent

Member of Authority: Paul Montgomery

Representatives: Rob Davidson, Counsel for Applicant
 Andrew Marsh, Counsel for Respondent

Investigation Meeting: 19 July 2007 at Christchurch

Submissions received: 3 August 2007 from Applicant
 2 and 9 August 2007 from Respondent

Determination: 20 November 2007

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant was employed as head chef in the respondent's restaurant on or about 2 April 2006. He alleges that he was dismissed on 17 May 2006 following a brief discussion with a director of the respondent. He seeks reimbursement of lost remuneration from the date of dismissal up to the date on which he found alternative employment, compensation for hurt and humiliation in the sum of \$15,000 and costs.

[2] The respondent says the applicant was not dismissed but resigned his position on the morning of 17 May 2006 and for that reason declines to meet the remedies sought by Mr Murray.

[3] The parties attempted to resolve their issues in mediation but were unsuccessful.

What caused the problem?

[4] The key issue was the quality of food prepared for a wedding and later for Mother's Day diners at the restaurant. The respondent had concerns about Mr Murray's performance and called a meeting on 11 May 2006 to discuss the problems and to prepare for the upcoming Mother's Day bookings. Mr and Mrs Blunden, the directors, Ashleigh, the restaurant manager, the bar manager, the second chef and the applicant attended. The performance of the restaurant and all staff was discussed as complaints had been received from customers regarding food quality, foul language in the kitchen and slow service to the diners. The purpose of the meeting was to ensure that these problems were ironed out before Mother's Day when the restaurant was fully booked.

[5] It was decided that a set menu rather than full a la carte service would assist in resolving the food quality and service time problems. It was emphasised that Mr Murray was to take charge of the kitchen and its staff and was to ensure that the foul language ceased. The applicant agreed to these directions.

[6] In summary, all this was to little avail as the restaurant failed to function on Mother's Day and refunds to diners and complimentary wine poured to cushion delays in service cost the respondent over \$700.

[7] As a result, Mr Blunden arranged a meeting for Wednesday, 17 May 2006 which was the applicant's first rostered day back at work. Those to attend were Mr and Mrs Blunden, the applicant and Ashleigh who telephoned Mr Murray at his home the previous evening to advise him of the meeting.

[8] The applicant arrived at work at 10am as usual and met Mr Blunden. A conversation ensued. The applicant said he asked Mr Blunden if the meeting was to be about his future with the company. He says Mr Blunden told him he did not have a future with the respondent and told him he was *history* but that Mr Blunden wanted to tell him this at the meeting in front of others.

[9] Mr Blunden tells a different story. He agrees he met Mr Murray around 10am. He says the purpose of the later meeting *was to discuss all the issues that had arisen over the weekend and then after that schedule a formal disciplinary meeting if need be*. Mr Blunden agrees Mr Murray asked him some questions about the meeting, including whether or not it was about the applicant's performance. Mr Blunden says:

I advised him that it was and particularly what had happened over the weekend. 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 the issues could be discussed. The applicant 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.

At this point, the applicant stated "I obviously have not got a future here so I might as well leave now", or words to that effect.

[10] Mr Blunden says he again urged Mr Murray to wait until the meeting but that the applicant refused, went to collect his belongings from the kitchen and left the property.

The investigation meeting

[11] At the investigation meeting the Authority heard evidence from the applicant. His former partner, Ms Paul, provided a statement of evidence but did not appear. For the respondent, Mr and Mrs Blunden each gave evidence.

[12] There was an issue over whether the applicant was given an employment agreement. In his statement of evidence Mr Murray said *I was not given an employment agreement to sign*. At the investigation meeting, he conceded he had been given an agreement, but did not sign it. A copy of the agreement, signed by Mr Blunden on 3 April 2006, but unsigned by the applicant, was produced as one of the documents attached to the statement in reply. I infer from this that, aware of that document and the attached Schedule 1 which bears his name, his position, the place and hours of work, the 12 week trial period and the wage he was to receive each week, Mr Murray denied ever receiving it only to concede under oath that he had.

[13] For this reason and because of the applicant's demeanour when questioned, where there is a conflict in the evidence, I have tended to prefer that of Mr and Mrs Blunden.

The issues

[14] To determine this matter, the Authority needs to decide the following:

- Was the applicant dismissed; and
- Was the dismissal unjustified; and

- If so, what remedies are due to the applicant?

Analysis and discussion

[15] On leaving the workplace on 14 May 2006, it is clear from the evidence that Mr Murray knew things had gone badly and said so to Ashleigh Badger. Ms Paul's evidence confirmed that the applicant *became concerned about what the meeting was about and seemed to get a bit upset* when Ashleigh telephoned him about the meeting on the evening of 16 May 2006. Mr Murray's own evidence was that he told Ms Paul at the time, *I'm getting sacked I bet you.*

[16] The evidence of Mrs Blunden is significant as she was upstairs above the lobby and heard the applicant asking Mr Blunden if he had a future with the respondent. Regardless of what had been said between the two men when the discussion began in the bar area which was not heard by Mrs Blunden, it was clear that Mr Murray was still persisting in wringing an answer from Mr Blunden. That rather suggests that the applicant's evidence that Mr Blunden told him *straight out* he did not have a future there, needs also to be treated with caution.

[17] Having heard the evidence of Mr Blunden that he intended to hold a post mortem on the Mother's Day events with his head chef and his manager before deciding on a course of action, and this in the context of his previous experience of employment disputes and knowledge of procedures to be followed, I am satisfied he was proceeding with caution before making any decisions.

The determination

[18] Returning to the issues set out above:

- I find the applicant was not dismissed;
- I find the applicant resigned, collected his equipment and left the property;
- I find the applicant does not have a personal grievance.

Costs

[19] The applicant was in receipt of legal aid and thus the Authority is restricted to an award of \$50 which is the contribution paid by the applicant in making his application for legal aid. I award the respondent the sum of \$50.00 as a contribution to its costs.

[20] Had Mr Murray not been legally aided, I would have, given the circumstances of this case, awarded the respondent the sum of \$1,700.

Paul Montgomery
Member of the Employment Relations Authority