

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 414/09  
5164369**

BETWEEN                      GORDON PRYOR  
   Applicant

AND                              GIBSON O'CONNOR  
   LIMITED  
   Respondent

Member of Authority:      Alastair Dumbleton

Representatives:            Michael McFadden, advocate for Applicant  
   Don Savage, advocate for Respondent

Investigation Meeting:     28 October 2009

Determination:              20 November 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The Authority has investigated the employment of the applicant Mr Gordon Pryor by the respondent Gibson O'Connor Limited, and in particular the termination of that employment.

[2]     Mr Pryor had become employed as Contracts Manager/Site Manager of the construction firm in about May 2008.

[3]     His dismissal was notified to him during an end of year work function on 23 December 2008, when he was handed a letter advising of the following:

***TERMINATION OF EMPLOYMENT***

*Due to the downturn in the building sector we have been unable to secure any new contracts for next year.*

*Regretfully we will be unable to continue your employment beyond 31st January 2009.*

[4] Mr Pryor worked until 31 January 2009, a period of notice a little longer than the one month required under the employment agreement between the parties.

[5] A grievance was raised on behalf of Mr Pryor in March 2009. He claimed to have a personal grievance for unjustified dismissal arising out of the termination of his employment for the alleged reason of redundancy.

[6] Mediation has not resolved the grievance claim.

[7] After considering the evidence of Mr Pryor and Mr Don Savage, Construction Director of Gibson O'Connor, I find that the company acted unjustifiably towards Mr Pryor in the way it terminated his employment. The actions of Gibson O'Connor as an employer did not meet the test of justification provided by s 103A of the Employment Relations Act 2000. That is because Mr Pryor was not consulted at all before the decision was made to make his position redundant.

[8] There is no dispute that by the end of 2008 as the recession grew and its effects were being felt more sharply, Gibson O'Connor had a shortage of contracts needed to keep its staff going in 2009. It began laying them off and did not engage contractors as often as it had done.

[9] Mr Savage said in evidence that after discussion with other senior managers and his business partner he had decided about a week before 23 December to make Mr Pryor redundant.

[10] Mr Savage readily admitted that before writing the letter given to Mr Pryor on 23 December he did not attempt any communication with him about taking this action. Mr Pryor's views were not sought, and any views he may have had were not able to be considered by Mr Savage.

[11] I find therefore there was no consultation of Mr Pryor before Gibson O'Connor decided to terminate his employment, purportedly on the grounds of redundancy.

[12] This is not a case where a lack of ongoing work and forward orders was so obvious as to lead an employee to see the writing on the wall and predict that the

imminent redundancy of his position would be the employer's likely response to having no work for him or her to do. Even then consultation is required, although it may prove to be futile. In every case of redundancy consultation is a requirement of law; *Simpsons Farms Ltd v Aberhart* [2006] ERNZ 825, a decision of the Employment Court.

[13] The measures taken by Gibson O'Connor were classic cost saving ones of spreading the work performed by an employee in one position around others in different positions. In this case Mr Pryor had been employed to manage projects, not all of which had been completed at the time he was told of his redundancy. He could reasonably assume that until finished they would remain his responsibility.

[14] Mr Pryor's evidence was that there were three projects still going when he was given notice and that one of these needed another five or six weeks to finish. The uncompleted projects Mr Pryor had been supervising were handed to others to look after.

### **Remedies**

[15] In considering the remedies that are appropriate for resolving Mr Pryor's grievance the Authority must take into account clear law, from the Court of Appeal, that any remedy must be directed at the grievance arising: *Aoraki Corporation Ltd v McGavin* [1998] 1 ERNZ 601.

[16] The Authority must identify and focus on the nature and scope of the personal grievance the employee has. The remedy must relate only to what has been lost or suffered as a result of the particular breach of failure by the employer. In this case that means the Authority is not empowered to compensate Mr Pryor for the loss of the job, as his redundancy was genuine I find.

[17] In this case the personal grievance is not that the employment was terminated but that the procedure followed by Gibson O'Connor in bringing that result about was unfair to Mr Pryor. The lack of the consultation and the abrupt and unfeeling way Mr Pryor was advised of the employer's decision caused him humiliation and embarrassment.

[18] Mr Pryor had had a long association with Mr Savage and felt particularly disappointed by what he regarded as the latter's failure to front up and explain the

situation before terminating the employment. As may be expected Mr Pryor has suffered a blow to his confidence after a career of many years in the building and construction industry. He is in his 50s and inevitably the suddenness of the announcement without consultation has increased his uncertainty and anxiety about his future in his particular occupation.

[19] Bearing in mind the limitations on awards of compensation and the need that they are to address the actual harm or wrong only, I find that \$4,500 is appropriate in this case and I award that sum under s 123(1)(c)(i) of the Act. Gibson O'Connor Limited is to pay that amount to Mr Pryor.

[20] Mr Pryor also seeks to be reimbursed lost wages or salary. He did receive notice of at least the period due under the employment agreement and slightly more than that.

[21] The ability to award compensation depends on the Authority's finding as to the likelihood that if Mr Pryor had been consulted about the need for redundancy Gibson O'Connor may have decided to extend his employment, until at least all the projects he was working on had been finished. The employer did not have to agree to that, but in the circumstances the offer was not made because there was no consultation.

[22] It was a possibility that an extension of the employment would be the result of consultation, as it had been estimated the projects supervised by Mr Pryor would not be completed until about mid February 2009. I therefore assess 3 weeks as the remuneration lost on account of the grievance (the failure to consult) and award \$4,961.53 as reimbursement, which is to be paid by Gibson O'Connor to Mr Pryor.

### **Determination**

[23] For the above reasons the dismissal of Mr Pryor was unjustified. He has a personal grievance which is to be resolved by payment to him of the amounts quantified above as compensation and lost remuneration.

**Costs**

[24] Mr McFadden has given advice as to the actual costs incurred by Mr Pryor in being represented in this investigation. They are \$2,500 plus the \$70 expense for lodging the claim. A copy of the advice will be sent to Mr Savage and he shall have 7 days to provide any reply he wishes to make for Gibson O'Connor Limited.

A Dumbleton  
**Member of the Employment Relations Authority**