

BETWEEN JAMES HINDESHWAR RAM
 Applicant

AND PACIFICARE TRUST
 Respondent

Member of Authority: Alastair Dumbleton

Representatives: James Ram in Person
 No appearance for respondent

Investigation Meeting: 30 April 2008

Determination: 1 May 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Authority has investigated the dismissal of Mr James Ram by Pacificare Trust, following his lodgement of a Statement of Problem on 28 November 2007.

[2] The investigation meeting proceeded in the absence of Pacificare Trust or any representative of that body which, I am satisfied, had been properly served with notice of the meeting. The notice was served in sufficient time to allow seven clear days before the meeting date, and it contained the usual advice that in the absence of either of the parties the investigation meeting could still proceed to final determination.

[3] Advice received by the Authority indicates that Pacificare Trust, while still registered, is in financial difficulties to the extent that a creditor has entered into possession of the assets and business of the Trust and has appointed an agent to manage those. That agent employed some of the workers formerly employed by Pacificare Trust to continue to run the hospital owned by Pacificare Trust. Mr Ram was not one of those offered new employment in this way and in the circumstances it

is clear his employment must be regarded as having been terminated by Pacificare Trust.

[4] I am satisfied from the evidence of Mr Ram that even if his dismissal was justified apparently on the grounds of redundancy, there was no attempt to treat him fairly and reasonably, particularly in respect of giving him notice and making all payments due to him, including annual holiday pay.

[5] Mr Ram had been employed as the administration manager of Pacificare's hospital since August 2006.

[6] His employment ended abruptly when the creditor's agent moved in and made arrangements to employ some of the workers but not Mr Ram. He was told that he would have to sort out his final pay with Pacificare Trust, but its officers have not communicated with Mr Ram at all over his dismissal.

[7] There was no problem with his pay up until 13 November 2007, at which time he accepted that he had been dismissed and left.

[8] I find that Mr Ram has a personal grievance arising from his dismissal which occurred through no fault of his and apparently for redundancy reasons. He is also entitled to recover payments due under his employment agreement but left unpaid by Pacificare.

[9] Mr Ram is entitled to two weeks pay for redundancy under clause 34 of his individual employment agreement. The amount owed is \$1,216.00. He is entitled to be reimbursed for lost wages following his unjustified dismissal for a period of four weeks during which he had no work. That amount is \$2,432.00.

[10] I am satisfied from the pay sheet produced by Mr Ram that as at the date of dismissal he was entitled to a total of 139 hours pay in lieu of annual holidays accrued. That amount at \$19 per hour is \$2,641.00.

[11] Further, I am satisfied that because of the manner of his dismissal without notification or explanation from Pacificare Trust, Mr Ram should recover \$7,500 as compensation for humiliation suffered through the employer's actions which gave rise to a personal grievance.

[12] Finally, Mr Ram is entitled to recover \$70 as the cost of lodging his application in the Authority.

[13] Pacificare Trust is therefore ordered to pay Mr Ram the above sums. The total of wages, holiday pay and redundancy compensation is \$6,289.00. Compensation to be paid under s 123(1)(c)(i) of the Act is \$7,500.00, and costs are \$70.00. Those amounts are to be paid within 14 days of the date of service of this determination on the Trust at its registered office of 11 Wakelin Street, Mangere, Auckland.

[14] If the amounts due are not paid to Mr Ram as ordered, he may request the Authority, through a Support Officer, to reconvene the investigation meeting for consideration to be given to ordering compliance against Pacificare Trust under s 137 of the Employment Relations Act 2000.

[15] In the event that a compliance order is given by the Authority, and should the Trust fail to observe the terms of the order, Mr Ram is entitled to enforce it in the Employment Court which may give remedies that include a fine of up to \$40,000 and/or the seizure of assets owned by Pacificare Trust to pay the amounts owed to Mr Ram. Section 140(6) of the Act sets out the remedies for breach of a compliance order of the Authority.

A Dumbleton
Member of the Employment Relations Authority