

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 376
5333697

BETWEEN

JASON WIREMU RIKA
Applicant

A N D

BEULAH SERVICES
LIMITED
Respondent

Member of Authority: Tania Tetitaha

Representatives: No appearance by Applicant
A Bennett, Counsel for Respondent

Investigation meeting: 9 September 2014 at Tauranga

Date of Determination: 9 September 2014

ORAL DETERMINATION OF THE AUTHORITY

- A. The application for personal grievance is dismissed.**
- B. A copy of the Memorandum of Counsel dated 9 September 2014 is to be served upon Jason Rika. Jason Rika is directed to file any costs submissions by 19 September 2014, 3pm. In the event no submissions are filed, there shall be an order for Jason Rika to pay Beulah Services Limited costs of \$3,500.**

Employment relationship problem

1. The applicant, Jason Rika, was employed by Beulah Services Limited until November 2010. On 12 November 2010 he was involved in a fight with another employee. Jason alleges he was subsequently unjustifiably dismissed.

Facts Leading to Dispute

2. Jason Rika (Jason) was employed as a truck driver by the respondent company, Beulah Services Limited. The respondent is a family owned company employing Jason and several other siblings. His parents, Leonard and Roberta Rika, were the respondent directors.
3. On or about 12 November 2010, Jason and another employee sibling, Caleb Rika were involved in a fight at work. The Police were called. Jason did not return to work thereafter.
4. On 17 November 2010, his parents on behalf of the respondent, sent Jason a letter raising concerns about the 12 November incident which could lead to termination of employment. A further disciplinary meeting was to be organised and Jason was invited to bring a support person.
5. On 22 November 2010, the respondent was contacted to fill in a WINZ form to enable Jason to obtain a benefit. The respondent paid out his wages and leave owed the same day.
6. On 29 November 2010, Jason sent a letter raising a personal grievance.
7. On 30 November 2010, the respondent sought again to organise the disciplinary meeting with Jason for 2 December 2010.
8. On 5 December 2010, the respondent held a disciplinary meeting with Jason. The meeting did not go well ending in an acrimonious fashion.
9. Between 2010 and 2013, Jason and some members of his family were involved in the criminal and family court jurisdictions. There appeared to be a dispute about custody of his daughter.

10. On 12 December 2013 Jason filed a personal grievance application in the Authority, alleging he was unjustifiably dismissed by the respondent.
11. There were preliminary issues to determine before this matter could progress to a substantive hearing. Those issues were about time limitations for raising and filing a personal grievance. Leave was granted on 20 June 2014 extending the time for filing the personal grievance application.¹ It is now before me for determination of the personal grievance application.

Non-appearance of Applicant

12. On 8 September 2014 at 1.46 pm Jason telephoned the Authority's Support Officer advising he would not be attending the investigation meeting set down today. From the Support Officer's file note of the telephone conversation, he was feeling anguished and would not sit in the same room with the respondent's witnesses. He believed their statements were all lies and that they were trying to say he was crazy when he was not. His principal concern was about the return of his daughter to his care. He told the Support Officer he was grieving and will "*lump everything up in the Supreme Court for it to deal with*".
13. The Support Officer told him to put everything down in writing and that if he chose not to attend the hearing today, the Authority can continue to hear the matter and determine it in a way that may not be in his favour. Jason was to call again.
14. After consulting me about this new development, the Support Officer telephoned Jason again at approximately 1.57 pm. At that stage I was in transit to Tauranga.
15. The Support Officer asked him to put his requests in writing and they would be considered tomorrow. She advised he may bring a support person to the hearing as well. Jason told the Support Officer the Authority 'outcome' was "*not something that he wants*" and he "*did not mind the meeting going ahead without him because what he wants is what the Authority cannot give him.*"

¹ *Rika v Beulah Services Limited* [2014] NZERA Auckland 250

He then said he could not attend because he had a "*road job to attend to near Tairua tomorrow*".

16. I asked the Support Officer to advise Ms Bennett of these new developments. Ms Bennett filed a Memorandum dated 9 September seeking dismissal of the personal grievance application together with costs."
17. Upon checking with my Support Officer this morning, no further information from Jason Rika has been received.
18. The time now is 10.15am. Jason Rika has still failed to appear.
19. I have the power to proceed if any party fails to attend². The test is whether there is good cause shown for that party's failure to attend or to be represented at hearing.
20. I find there is no good cause for Jason's non-appearance today. It appears from the above telephone conversations Jason is no longer pursuing his application for personal grievance. This is because the orders I may make in this jurisdiction are not what he seeks. His principal concern is custody of his daughter. I do not have the power to make that type of order. He will need to take the matter to Family Court.
21. The personal grievance arose in 2010. This matter is now four years old. There needs to be finality.
22. This hearing was set down in June 2014. The Support officer confirmed Jason received the notice of hearing and copies of the evidence filed.
23. The four respondent witnesses have travelled at their own expense from Whakatane and engaged a lawyer to assist with preparation and hearing.
24. Despite the late advice of his non-appearance, Jason was given several opportunities to put his concerns in writing prior to today's hearing. He was well aware of today's hearing and had time to make work arrangements and to prepare for hearing. He has failed to do so.

² Clause 12 Schedule 2 Employment Relations Act 2000

25. Even if there was a good cause (which was not evidenced today) there is the power to reopen an investigation.³ Taking into account the above, I find there is no good cause shown by Jason Rika for his failure to attend today's hearing. I shall now proceed to determine this application.

Determination

26. Jason's above statements indicate he is no longer pursuing a personal grievance application. This inference is confirmed by his absence today. In the circumstances I dismiss the application.

Costs

27. The respondent seeks payment of their costs set out in its tax invoice tendered to me today. The respondent's actual legal costs were \$5,729.83. These appear reasonable for preparation a two day hearing and today's shortened appearance.
28. The starting point for costs awards in the Authority is its daily notional tariff of \$3,500. There are no factors justifying the reduction of this starting point. Given Jason's late advice he may not attend today's hearing but refusal to put that advice in writing resulting in unnecessary hearing and preparation time, imposition of a full day daily notional tariff of \$3,500 is an appropriate costs award in the circumstances.
29. As the costs application was advanced at the end of this hearing, Jason Rika should be given an opportunity to be heard. A copy of the Memorandum of Counsel dated 9 September 2014 is to be served upon Jason Rika. Jason Rika is directed to file any costs submissions by **19 September 2014, 3pm**. In the event no submissions are filed, there shall be an order for Jason Rika to pay Beulah Services Limited costs of \$3,500.



Tania Tetitaha
Member of the Employment Relations Authority

³ Clause 4 Schedule 2 Employment Relations Act 2000