

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2025] NZERA 152  
3259379

BETWEEN CAMERON RIX  
Applicant

AND ROTORUA QUARRY LIMITED  
Respondent

Member of Authority: Geoff O'Sullivan

Representatives: Jeremy Sparrow and Grace Titter, counsel for the  
Applicant  
Mark Beech and Kirsten Lombard, counsel for the  
Respondent

Investigation Meeting: 22 August 2024 in Rotorua

Submissions Received: Up to and including 20 December 2024

Determination: 13 March 2025

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] Cameron Rix claims he was unjustifiably disadvantaged in his employment as a result of the Rotorua Quarry Limited's (RQL) failure to keep him safe. He says that following an event on 22 September 2022 he was unjustifiably dismissed on the basis he had abandoned his employment. Mr Rix claims further that unlawful deductions were made from his final pay, including a reduction for annual leave, a deduction for a deregistered bus he received, and a deduction for personal use of a work vehicle.

[2] Mr Rix says that in the belief he would be absent from work for perhaps 12 months on sick/medical leave, he texted RQL stating he would be returning his work keys and phone. On 26 September 2022 he sent a further text message specifying the hours he had worked for the previous week and advising he was claiming sick leave. His absence was supported by a medical certificate.

[3] On 4 October 2022, Mr Rix received a letter from RQL stating that the company considered he had abandoned his employment and that his final pay would be processed with two weeks' pay deducted.

[4] RQL denies that Mr Rix was disadvantaged in his employment and says further that Mr Rix departed his place of employment on 22 September 2022 in an angry mood. It says Mr Rix abandoned his employment and that the company's communication in October was simply an employer following up about the return of company property.

### **The Authority's investigation**

[5] At the investigation meeting I heard evidence from Mr Rix and his mother. In respect of Rotorua Quarry Limited I heard from Derek Maisey a Director and Barry Pouri. All witnesses gave evidence on oath or affirmation.

### **Background**

[6] Mr Rix commenced employment with RQL in February 2022 as a workshop manager. He says in early July 2022 he was in the workplace and a truck driveshaft fell causing him to overextend his elbow resulting in a tear to the distal bicep.

[7] Mr Rix says later in July he was carting overalls to the workshop when he tripped and fell over a number of large metal clamps which amongst other things exacerbated his injury.

[8] On 22 September 2022, Mr Rix arrived at work ready to start his day. Around 1.00pm he received a call from Derek Maisey, the person he reported to and a director at RQL. Mr Maisey wanted one of the work vehicles to be groomed and ready to be sold. Mr Rix says he was told it would need a warrant of fitness. Sometime later, there was an altercation between Mr Maisey and Mr Rix. As to reasons explained later the incident was not properly investigated, other than the incident occurring, the part each party played in it, remains unclear. While both parties accept there was a verbal argument and pushing there is a suggestion that Mr Rix was either pushed onto or fell onto a car which according to Mr Rix caused further injury to an already injured arm.

[9] It is common ground that after 22 September 2024, Mr Rix did not return to work. This was on the basis that he required sick/medical leave. On 24 September 2022 he advised a staff member at RQL that he was on sick leave and provided a medical certificate declaring him unfit to work from 24 September 2022 to 23 October

2022. Mr Rix when explaining to an office person he was off on sick leave, was accused of assaulting Mr Maisey. This indicates that Mr Maisey was aware or should have been aware why Mr Rix was away from work.

[10] Mr Rix gave evidence that he knew he was going to have to take time off work for an operation. His arm had not recovered from the earlier July issue and although he says his injury was exacerbated by the events which occurred on 22 September, he had already planned for an MRI and ultrasound.

[11] He says that from the moment he left work on sick leave, he could not work. The injury has proved debilitating and Mr Rix has not been able to work since. The evidence is also clear that he emailed the office/payroll administrator advising he would be taking sick leave. This was someone he always dealt with and further, Mr Rix says at this stage he did not wish to deal with Mr Maisey directly because of the incident.

[12] Mr Rix said he suffered significant emotional harm because of the termination of his employment. He said rumours were circulating around the town which ruined his reputation. He gave evidence that he could not sleep or even live normally. He said his relationships with others had completely fallen away because of the abuse he had suffered and the distress in trying to deal with it. His evidence was that he was now on prescribed medication for depression, anxiety and low self-esteem. He did not have a job and felt he could not properly support his family.

[13] Mr Rix was upset about deductions made from his final pay. He says although he accepts the deductions for child support, he did not accept the other deductions made.

[14] An issue arose regarding Mr Rix not having a current licence. Mr Rix said he had not been aware that his licence had expired until it was brought to his attention. However, as RQL did not rely on this matter to terminate Mr Rix's employment, it has little relevance.

[15] Monies were also deducted in respect of the purchase of a bus. Mr Rix's view was that he got the bus instead of a pay rise and again disputed RQL's ability to make this deduction from his final pay.

[16] RQL believed it was entitled to conclude that Mr Rix had abandoned his employment. Mr Rix was aware that Mr Maisey was the person that Mr Rix reported to and it was not sufficient for Mr Rix simply to give information to the office/payroll

staff. RQL said this was company policy and if Mr Rix intended to take sick leave then he would need to have contacted Mr Maisey directly.

[17] RQL rejected any knowledge of earlier workplace accidents and although it accepted there was an altercation between Mr Maisey and Mr Rix, Mr Maisey's evidence was it was Mr Rix who was angry and who confronted him. RQL's position was therefore if it transpired that Mr Rix had been dismissed, unjustifiably, then there would need to be an analysis of any contributory conduct.

### **Discussion and analysis**

[18] There is no evidence that Mr Rix properly informed RQL of any injuries he may have suffered in July 2022. What is not in dispute, is there was an incident on 22 September 2022 following an altercation between Mr Rix and Mr Maisey. This incident is significant because following it, Mr Rix left his employment and never returned to work.

[19] Mr Maisey and Mr Rix have different views as to what happened on the day. Mr Barry Pouri however witnessed the event. He confirms he saw the pair arguing. The argument was over a company vehicle which had been listed for sale and had been sold with the collection due on the evening of 22 September 2022. Mr Maisey was frustrated because the vehicle had not been taken to VTNZ for a current warrant of fitness. Although Mr Pouri says he witnessed Mr Rix grabbing Mr Maisey, they both let go after three seconds and work carried on. Mr Pouri stated he did not see Mr Maisey strangle or head butt Mr Rix. He did not see Mr Rix fall and describes the event as a non-event with everyone going back to work straight after. Although Mr Rix returned to work fixing a light on a ute, he left some 45 minutes later.

[20] No investigation had been completed in respect of the matter but in any event, Mr Rix was not dismissed for what he may or may not have done on 22 September 2022. Mr Rix lost his employment because he was deemed to have abandoned his employment. His complaint is he had been in touch with the office advising he would be taking sick leave post the 22 September 2022 incident.

[21] On 24 September 2022, Mr Rix texted Mr Maisey stating he would return his work keys and phone to the RQL office. He says this was because he anticipated he would be absent from work for some time on sick/medical leave given the pain he was in.

[22] On 26 September 2022 Mr Rix sent a further message to the payroll administrator advising the hours he had worked the previous week and confirming he would be taking sick leave.

[23] On 27 September 2022, Mr Maisey texted Mr Rix asking “Where you at?” and “Can you provide an update what happening?”. By this stage, Mr Rix had seen his doctor who had declared he was fully unfit for work from 24 September to 23 October 2022. He forwarded this to RQL. On 3 October 2022 he received a text from Ms Maisey, a director of RQL, stating that he had texted Derek quitting his job and that she had closed the payroll and taken me off as an employee. Mr Rix replied to that text stating “I never said to Derek I quit ... I said I’ll return phone and key ... I gather you are aware that Derek headbutted and strangled me at work ...”.

[24] The following day Mr Rix received a letter from Mr Maisey terminating his employment stating this was because Mr Rix had abandoned his employment. He was advised two weeks pay would be deducted.

[25] Mr Rix says overall \$3,318.99 were deducted from his pay for reasons he does not understand.

[26] RQL’s response to the above was its belief Mr Rix had abandoned his employment. It also said that the deductions were authorised and that Mr Rix had agreed to them. In respect of the evidence showing that Mr Rix had contacted the company’s office, Mr Maisey agreed that there was no policy which compelled Mr Rix to contact him about the matter rather than the office.

## **Conclusions**

[27] Mr Rix’s employment ended because RQL considered he had abandoned his employment following his text message sent on Saturday 24 September advising he would be returning company property including keys required to access the workplace. RQL’s 4 October letter also raised the 22 September issue containing an allegation that Mr Rix had instigated a violent attack on Mr Maisey. This letter advised “If the allegations are to be proven it could amount to serious misconduct and possibly involvement with NZ Police.” Accordingly the sole reason for the termination of Mr Rix’s employment was RQL’s belief he had abandoned his employment.

[28] RQL cannot rely on abandonment of employment to justify the termination of Mr Rix's employment. The employment agreement in clause 26 contains the following provision:

**Abandonment**

Where the employee is absent from work for more than three days without the permission of the employer, and the absence of a reasonable explanation, the employee shall be deemed to have terminated their employment without notice.

[29] The immediate problems faced by RQL are that although Mr Maisey personally may not have been aware as to why Mr Rix was not at work, the office certainly was. It knew he considered himself to be away from work on sick leave. He had provided a medical certificate. Mr Maisey took virtually no steps to contact Mr Rix to explore any reason why he may not have been at work. It follows therefore that RQL was not entitled to rely on the abandonment provision in justifying the termination of employment.

[30] Mr Rix raised an unjustified disadvantage action in respect of the 22 September 2022 incident. As no investigation into this was completed the Authority is not in a position to ascribe blame to either side. However, the evidence is clear Mr Rix did not return to work after 22 September 2022 because he was on sick/medical leave. He says that this was as a result of an earlier accident potentially exacerbated by the 22 September incident. Nonetheless, it is difficult to see what disadvantage Mr Rix could have suffered bearing in mind he did not return to work.

**Remedies**

[31] As I have found that Mr Rix was unjustifiably dismissed from his employment, it follows he is entitled to an assessment for remedies. Mr Rix gave evidence as to the effects the dismissal had on him in respect of injury to feelings, humiliation and loss of dignity. I accepted his evidence. Under the circumstances, I consider an appropriate award to be \$18,000.00.

[32] There is however an issue as to what caused Mr Rix's salary lose. In giving evidence, Mr Rix said he returned the keys and car because he was going to be off work for 12 months. RQL submits this must impact on RQL's liability for lost wages.

[33] Mr Rix gave evidence as to his loss of income. His average weekly earnings were \$1,707.49. I need to consider however the submission by RQL that the fact

Mr Rix later went onto ACC which was backdated, should be taken into account in assessing lost wages. However, Mr Rix may or may not have been off work on ACC if his employment had not been terminated. He would have had some controls to when he underwent any medical procedure. He may have had a period of sick leave but also may have been ready and able to attend work as the Court noted in *Judea Tavern Limited v Patricia Jenson*<sup>1</sup> in circumstances where a dismissed employee is receiving accident compensation payments, this raises the spectre of a duplication of payments for lost wages in respect of any award under s 123(1)(b) of the Act. The Court noted:<sup>2</sup>

Previous cases have held that the liability to pay wages, or compensation for wages, rests with the employer and that the payment of, for example, social security payments or accident compensation does not displace this liability. Rather any question of reimbursement of such payments falls on the particular organisation and the individual concerned. Applying this approach in this case means that any question of repayment in respect of ACC payments Ms Jenson received falls on the Corporation and Ms Jenson, and can be put to one side in terms of the Courts assessment of an appropriate award under s 123 (1)(b).

[34] Section 128(2) of the Act means Mr Rix is entitled as a minimum to a reimbursement of three months wages. Under all of the circumstances I consider it unlikely he would have continued in paid employment with RQL past that point so decline to exercise my discretion under s128 (3) of the Act in his favour.

[35] Accordingly, RQL is ordered to pay Mr Rix 13 weeks lost earnings totalling \$22,197.37 (less PAYE).

[36] Mr Rix claims a penalty against RQL for breaches of the Wages Protection Act. Under the circumstances I decline to award a penalty. However, RQL was wrong to deduct:

- (a) Annual leave of \$170.75;
- (b) \$1,000.00 for the deregistered bus;
- (c) \$749.86 for personal use of a work vehicle.

[37] Mr Rix is entitled to be reimbursed for these sums.

[38] Section 124 of the Act requires me to assess whether or not Mr Rix contributed in any way to his personal grievance. I have found that Mr Rix was unjustifiably dismissed. Whilst the evidence confirms there was an altercation between Mr Rix and

---

<sup>1</sup> [2017] NZEmpC 82.

<sup>2</sup> Above n1 at [40].

Mr Maisey, the details and blameworthiness of this remains unclear because no investigation was completed. However on a more fundamental note, RQL ended Mr Rix's employment on the basis he had abandoned his employment. As noted above, this was not the conclusion a fair and reasonable employer could come to. Mr Rix had not abandoned his employment. It follows therefore he cannot have contributed to his dismissal in a blameworthy manner.

### **Summary of orders**

[39] Rotorua Quarry Limited is ordered to pay Cameron Rix the following within 28 days from the date of this determination:

- (a) The sum of \$22,197.37 equating to 13 weeks lost earnings.
- (b) Annual leave of \$170.75.
- (c) The sum of \$1,000.00 unlawfully deducted in respect of the deregistered bus.
- (d) The sum of \$749.86 unlawfully deducted for the personal use of a work vehicle.
- (e) The sum of \$18,000.00 as compensation for humiliation, loss of dignity and injury to the feelings of Cameron Rix.

### **Costs**

[40] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[41] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Cameron Rix may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Rotorua Quarry Limited will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[42] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>3</sup>

Geoff O’Sullivan  
Member of the Employment Relations Authority

---

<sup>3</sup> For further information about the factors considered in assessing costs see:  
[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)