

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 180/09  
5281571

BETWEEN                      GRAEME RIDDELL  
   Applicant  
  
AND                              GOODMAN FIELDER NEW  
   ZEALAND LIMITED  
   Respondent

Member of Authority:      James Crichton  
  
Representatives:            Andrew McKenzie, Counsel for Applicant  
   Anna Clark, Counsel for Respondent  
  
Investigation Meeting:      14 October 2009 at Christchurch  
  
Determination:              16 October 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant (Mr Riddell) was a cool room worker employed by the respondent (Goodman Fielder) at its Christchurch operation until his dismissal for serious misconduct on 21 September 2009.

[2]     Mr Riddell commenced employment with Goodman Fielder in January 2008 and apart from the incident which led to his dismissal, has enjoyed a clean work history. The incident which led to his dismissal commenced with a minor car crash on 31 August 2009 when a car belonging to a Goodman Fielder contractor (Mr Baker) ran into Mr Riddell's car which was parked in the staff carpark.

[3]     There is some dispute between the parties as to the extent of the contact between Mr Baker and Mr Riddell for the purpose of effecting repairs to Mr Riddell's vehicle via the agency of Mr Baker's insurance company. Mr Riddell's evidence is that there were a number of occasions on which he provided personal information to

Mr Baker to convey to Mr Baker's insurance company but despite that, Mr Baker, according to Mr Riddell, kept asking Mr Riddell to repeat the same information. Mr Riddell also alleges that Mr Baker belittled him for not having his own insurance. Mr Riddell was hopeful that his vehicle could be repaired promptly as the effect of the collision was that his driver's door would not open and close properly and he wanted to use his vehicle for a weekend away the next weekend.

[4] It appears that Mr Riddell sought to obtain a warrant of fitness for his vehicle but was turned down, primarily he says because of the damage caused to the driver's door. Mr Riddell also contended that, as well as providing Mr Baker with his personal details immediately after the accident, he also provided the same information again the following day (Tuesday, 1 September 2009). According to Mr Riddell, Mr Baker asked for Mr Riddell's home address although Mr Riddell is certain that he provided that information the previous evening immediately after the crash.

[5] On Wednesday, 2 September 2009, there was yet another contact between Mr Baker and Mr Riddell. It is common ground that Mr Riddell was working at his usual place in the enterprise, an area where high visibility clothing and other safety gear is habitually required and worn. Mr Baker had no authority to be in that area and was not wearing high visibility clothing or the appropriate safety footwear. Notwithstanding that, he again approached Mr Riddell and sought the same information again. Mr Riddell says that Mr Baker was condescending and wanted to know why Mr Riddell did not have his own insurance and he then claimed, according to Mr Riddell, that he did not have Mr Riddell's home address. Mr Riddell said that he became agitated because he had already provided this information previously (he says on two previous occasions), and he says Mr Baker had promised to ring him the previous evening to tell him about the progress from the insurance company in getting Mr Riddell's car repaired. Mr Baker did not call the previous evening, although Mr Riddell says he waited at home for that call and cancelled another commitment to do that.

[6] The parties became somewhat heated and, eventually, Mr Riddell says that he put his hands up on Mr Baker's chest to push him away from his personal space, Mr Baker having invaded it by overbearing him. Mr Riddell claims that his actions were defensive rather than offensive but whatever the categorisation, Goodman Fielder received a complaint from Mr Baker, conducted an inquiry, heard from

Mr Riddell on a number of occasions, heard from Mr Riddell's union representatives who were engaged during all of the disciplinary meetings, and then decided to dismiss Mr Riddell for serious misconduct.

[7] The usual undertaking as to damages has been provided by Mr Riddell and an application was filed in the Authority on 25 September 2009 seeking substantive relief but for present purposes seeking interim reinstatement as well.

### **Issues**

[8] Section 127 of the Employment Relations Act 2000 confers power on the Authority to order interim reinstatement pending the hearing of the personal grievance. Pursuant to subsections (4) and (5) of that section, the Authority has power to grant such orders subject to any conditions the Authority thinks fit, and the Authority is required to apply the law relating to interim injunctions *having regard to the object of this Act*.

[9] It follows that four issues need to be considered. These are:

- (a) Whether the applicant has an arguable case;
- (b) Whether damages would be an alternative remedy;
- (c) Where the balance of convenience lies; and
- (d) What is the overall justice of the case?

### **Does the applicant have an arguable case?**

[10] Both parties in the present matter accept that there is an arguable case. For the record, I also am satisfied that Mr Riddell's application does clear the relatively low threshold required to meet the standard of an *arguable* case.

[11] It is the essence of Goodman Fielder's position that Mr Riddell did not deny what, in a criminal Court, would be regarded as an assault and that by admitting to technically assaulting Mr Baker, Mr Riddell committed a breach of the relevant provision of the applicable collective agreement and a breach of the relevant provision of the Goodman Fielder Code of Conduct. Goodman Fielder argued that it had a right to set a tone of behaviour in its workplace and that tone included a commitment to having *zero tolerance for violence*.

[12] For Mr Riddell, it was contended that his behaviour, while acknowledged, was hardly at the high end of the violence continuum, was categorised as a defensive action rather than an offensive one and was to be seen as a response to significant frustration and provocation. The point is made very forcefully in the submissions filed by the Union on Mr Riddell's behalf and dated 21 September 2009, that while Goodman Fielder chose to look only at the incident of violence in isolation, Mr Riddell's defence to it included the fact that he felt frustrated by Mr Baker's final approach to him on 2 September because it simply repeated requests for information which Mr Riddell says he had already provided twice.

[13] From my perspective, it is interesting that Goodman Fielder makes no finding about the context around frustration and/or provocation, or at least if it does, it certainly does not refer to it in the letter of dismissal.

[14] I conclude then that there is an arguable case.

#### **Does the balance of convenience favour Mr Riddell?**

[15] Here, the Authority must consider the relative inconvenience to each party of the other succeeding. Looked at practically, the Authority must weight the relative hardship to Goodman Fielder of Mr Riddell being successful against the potential hardship to Mr Riddell in remaining away from his employment pending the resolution of his personal grievance.

[16] Goodman Fielder says that the employment relationship has irretrievably broken down because it has lost trust and confidence in Mr Riddell, thus making reinstatement impractical. Further, it says that the interests of third parties (specifically Mr Baker) militate against reinstatement and the zero tolerance policy towards violence also suggests that the balance of convenience favours the employer.

[17] Conversely, Mr Riddell says that the balance of convenience strongly favours him. He wishes to continue in employment. He is very clear that he does not wish to have garden leave applied to him. He is keen to return to the workplace and, that being the position, an award of damages for instance would not represent adequate compensation. Of course, Mr Riddell's primary basis for advancing his cause under this head is the economic reality that he has no present source of income and he seeks to be restored to that position at least on an interim basis. His affidavit in support also makes clear that a reasonable proportion of his modest income is devoted to charitable

giving and that he devotes some time and energy to assisting less fortunate individuals in the community. That is laudable but is of itself not determinative.

[18] Not surprisingly, Mr Riddell refers me to the well known passage of Chief Judge Goddard in his judgment in the case of *Melville v. Chatham Island Council* [1999] 2 ERNZ 70 at p.100 where His Honour makes the point that:

*... It is not often that the employer can convincingly assert that the hardship of being required to take an unwanted employee back for a short term is greater to it than the hardship of keeping out an employee who has been unjustifiably dismissed.*

[19] I conclude that the balance favours Mr Riddell. I was troubled by Goodman Fielder's reliance on its policy of zero tolerance in respect of violence in the workplace. Of course, a safe and healthy workplace is a desirable outcome for all and avoiding and minimising the risk of violence in the workplace is a laudable end in itself. However, it seems to me that the effect of the decision that Goodman Fielder has taken in the present case may be to turn the offending which Mr Riddell acknowledges into an offence of strict liability. Mr Riddell quite properly acknowledges that he did what he is accused of doing, but he seeks to have a context for that action considered and on the face of it, the letter of dismissal fails entirely to deal with that matter at all, notwithstanding the gloss put on it by the affidavit in support from Goodman Fielder's human resources manager.

[20] I am not attracted by Goodman Fielder's contention that third parties are at risk either; Mr McKenzie quite properly made the submission on Mr Riddell's behalf that Mr Riddell was not suspended and continued to work in the employment from the date of the incident down to the date of dismissal (nearly three weeks). On that basis, it seems difficult to understand how Goodman Fielder can contend that a period roughly twice as long, when it can be assumed that Mr Riddell will be on his very best behaviour, would somehow place Mr Baker at risk.

[21] I conclude then that the balance of convenience favours Mr Riddell and I do not accept that damages are an alternative remedy that would be as fair and just.

### **Where does the overall justice lie?**

[22] I do not accept Goodman Fielder's submission that the strength of the relative cases strongly favours the company's position. Indeed, I think the converse is the case. I have reached the conclusion that the overall justice of the case favours

Mr Riddell. In my judgement, he is entitled to the benefit of the doubt in respect of the contextual matters that he raises and which my provisional conclusion is the company has not adequately considered.

[23] Furthermore, there seem to me some factual matters which, on the affidavit evidence before me, I am not clear if Goodman Fielder has formed a view about and therefore whether those matters have informed its decision-making or not. In particular, I am troubled by the difference in the documentary evidence between Mr Riddell's recollection of how many times he had the same conversation with Mr Baker and Mr Baker's evidence. Of course, Mr Baker has not even furnished affidavit evidence (nor would that be appropriate), but the fact that there is a significant difference on this point and it is not clear from Goodman Fielder's affidavit evidence what its view is, continues to trouble me.

[24] I think this is the kind of case where the cautious approach adopted by His Honour Judge Couch in *George v. Carter Holt Harvey Wood Products Nelson Ltd* (CC6/08, 10 April 2008) is an appropriate way to proceed. In that case, His Honour referred particularly to:

*The maintenance of the status quo ... In some cases ... what is required to do justice is to preserve the position of the parties as it was immediately prior to the dispute arising. An order for interim reinstatement is of that nature.*

[25] I think this is such a case and I conclude that the overall justice of the case favours Mr Riddell.

### **Determination**

[26] Mr Riddell is granted interim reinstatement for the reasons advanced in this brief determination. Counsel are to liaise with a view to implementing this decision. This decision is made on the basis that Mr Riddell returns to the workplace and is **not** placed on garden leave. In the event the implementation of this decision becomes problematical, leave is reserved for counsel to revert to the Authority for orders.

**Costs**

[27] Costs are reserved.

James Crichton  
Member of the Employment Relations Authority