

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Edward Vincent Rollo (Applicant)
AND Pick-A-Part Avondale Ltd (Respondent)
REPRESENTATIVES Edward Rollo, in person
Ross Green, representative for the respondent
MEMBER OF AUTHORITY Marija Urlich
INVESTIGATION MEETING 8 December 2005
FURTHER INFORMATION RECEIVED 9 February 2006
DATE OF DETERMINATION 9 February 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Edward Rollo was employed as a driver by Pick-A-Part Avondale Limited. On 30 June 2004 Mr Rollo was directed to pick up a Honda parked outside a private residence. This pick up was observed in a set up organised by Pick-A-Part. When Mr Rollo returned the Honda to the yard the mag wheels, on it when it had been dropped off that morning in preparation for the set up, were no longer there. On the basis of this information Ross Green, a director of Pick-A-Part, laid a complaint with the police that Mr Rollo had stolen the mag wheels. The set up was arranged because Mr Green had formed the view that things were going missing from his yard and he wanted to monitor the mag wheels to catch who was responsible.

[2] At about lunchtime that same day the police attended Pick-A-Part's offices and spoke with Mr Rollo in a private office. Mr Rollo agreed to accompany the police to the police station for questioning. Later that day Mr Rollo was arrested for the theft of the mag wheels. He was granted bail the following day. In a judgment dated 7 June 2005 the charge of theft of the mag wheels was dismissed. This judgment records that the set up observer did not see Mr Rollo or anyone else remove the mag wheels from the Honda.

[3] This employment relationship problem concerns whether Mr Rollo abandoned his employment. Mr Green says he told Mr Rollo, as he was leaving the yard in a police car, that he should contact him the next day to discuss the matter, that Mr Rollo did not contact him, that he and Mr Rollo exchanged a number of letters over the succeeding weeks, that he tried to contact Mr Rollo directly leaving messages of his mobile phone, but that these calls were not returned. Mr Green said he believed Mr Rollo had failed to communicate with Pick-A-Part, this was abandonment of employment under the terms of Mr Rollo's employment agreement and he employed another driver on 28 July 2004.

[4] Mr Rollo says Mr Green told him, through the window of the police car, that he should not return until the police business was sorted out. Mr Rollo says he did not abandon his employment and that he repeatedly attempted to meet with Mr Green without success. Mr Rollo says he could not enter the Pick-A-Part premises because to do so would have breached the terms of his bail and could result in imprisonment. I record that the bail notice provided to the Authority contains no such restriction. However, I accept Mr Rollo would be very reluctant to enter the premises from which a complaint of theft had been laid with the police. Mr Rollo says he was unjustifiably dismissed and seeks extensive remedies by way of reimbursement of lost wages and compensation for hurt and humiliation caused as a consequence of his dismissal.

[5] Mr Rollo has also made extensive claims pursuant to the Te Ture Whenua Maori Act 1993, the Treaty of Waitangi and the Declaration of Independence 1835. The Authority does not have jurisdiction to deal with claims under these Acts or documents.

[6] At the investigation meeting Mr Green advised me he had a reading disability. To ensure the meeting was conducted fairly I read out to Mr Green those documents on which I wished him to comment.

What happened?

[7] The day after Mr Rollo's arrest, 1 July 2004, Miriama Williams, Mr Rollo's wife, went to Pick-A-Part to find out what was going on. She spoke with Stuart Waugh, the on-site manager, who told her Mr Rollo had been suspended without pay and gave her a box with some of Mr Rollo's possessions. Ms Williams and Mr Waugh then agreed to a time and venue to meet to discuss the alleged incident and Mr Rollo's future employment. The meeting time was to be held outside work hours on 5 July at Mr Waugh's home. Mr Green says Mr Waugh was not authorised to tell Ms Williams Mr Rollo was suspended or to return his belongings.

[8] On 5 July Ms Williams hand delivered to the Pick-A-Part offices a letter addressed to Mr Green. The letter advised Mr Green that Mr Rollo was due to attend a bail hearing at the Manukau District Court on 6 July. Mr Green received this letter. The meeting at Mr Waugh's home did not proceed because Mr Waugh could not attend.

[9] On 9 July Pam Thompson wrote to Mr Rollo:

“Could you please ring and arrange an appointment with our Manager to discuss your employment with Pick-A-Part”.

[10] Mr Rollo spoke with Ms Thompson and said he could not meet at the Pick-A-Part premises because of the terms of his bail and another venue was needed. Messages were left for Mr Rollo suggesting another alternative venue. Mr Rollo did not receive these messages.

[11] On 9 August Mr Rollo wrote to Mr Green:

- (i) seeking a conclusion to his “unjustified suspension”;
- (ii) denying the charge of theft;
- (iii) providing a telephone number and address; and
- (iv) advising a meeting at Pick-A-Part was unacceptable.

[12] On 11 August Mr Rollo wrote to Mr Green:

- (i) raising grievances for unjustified dismissal and unjustified suspension;
- (ii) confirming letters which have been left at the premises on 6 and 9 August; and

(iii) that no response had been received to those letters.

[13] On 12 August Mr Green wrote to Mr Rollo advising:

- (i) he had not been dismissed;
- (ii) unsuccessful efforts had been made to set up a meeting;
- (iii) another driver had been appointed on 28 July because Pick-A-Part had formed the view that Mr Rollo had abandoned his employment;
- (iv) Mr Rollo was invited to attend a meeting at the Pick-A-Part Mangere depot on either 23 August or 24 August between 10am and 1pm and asked to contact Mr Green to confirm a time and date.

[14] On 20 August Mr Rollo wrote to Mr Green:

- (i) he could not enter Pick-A-Part premises because it would breach his bail conditions and Mr Green had told him on 30 June he could not enter the premises until the police matter was sorted out;
- (ii) he had tried to arrange a meeting with Mr Green through Stuart Waugh, his on-site manager, and Mr Waugh had returned some of his belongings;
- (iii) he agreed to meet at Pick-A-Part premises on 23 August at 12pm if written authorisation was provided.

[15] Mr Rollo attended the meeting on 23 August, but was advised by Mr Waugh that Mr Green was unavailable and the meeting was cancelled. Mr Rollo wrote to Mr Green on 27 August requesting another meeting.

[16] On 2 September Mr Rollo wrote to Mr Green repeating his requests for documentation (Mr Rollo's driver's license and log book) and a meeting.

[17] On 9 September Mr Green wrote to Mr Rollo asking him to contact him to arrange a meeting. Mr Rollo did not receive this letter because he had changed address.

[18] On 20 September Mr Green wrote to Mr Rollo enclosing a cheque for holiday pay and recording a deduction for failure to give notice under the terms of the employment agreement.

[19] Mr Rollo continued to write to Mr Green requesting a meeting and the return of his driver's license and log book.

Did Mr Rollo abandon his employment?

[20] Clause 8 of the employment agreement between Mr Rollo and Pick-A-Part provides:

“Abandonment of Employment

Where the employee absents himself/herself from work for a continuous period exceeding 2 days without notifying or obtaining the consent of the Company, he/she shall be deemed to have terminated his/her employment. An employee who is unable to notify the Company of absence because of unforeseen hospitalisation or similar cause, shall be given the opportunity of reinstatement.

[21] Mr Rollo and Pick-A-Part were in regular contact from 1 July, the day after his arrest, until September 2004. Pick-A-Part's correspondence and Mr Green's evidence show that Pick-A-Part did not expect Mr Rollo back at work after 1 July and that Pick-A-Part wanted to meet with Mr Rollo to discuss the issue which had prompted it to lay a complaint with the police. No where in

the letters to Mr Rollo does Mr Green say he expects Mr Rollo back at work performing his usual duties. In such circumstances it cannot be said that Mr Rollo abandoned his employment; his employer had laid a complaint with the police that he had stolen mag wheels during the course of his duties. Mr Rollo was unable to resume his normal duties without express authorisation from his employer.

[22] If Mr Rollo did not abandon his employment then what has happened to the employment relationship? I find that Mr Rollo was dismissed on 28 July when Mr Green hired a replacement driver.

Was Mr Rollo's dismissal justified?

[23] Pick-A-Part is unable to demonstrate the accepted requirements of procedural or substantive fairness have been followed to justify Mr Rollo's dismissal.

[24] The District Court judgment described the set up as poorly executed and recorded that the observer did not see Mr Rollo remove the mag tyres from the vehicle. Mr Green relied on what the observer told him to lay his complaint with the police but what the observer told him could not provide a reasonable basis upon which Mr Green could conclude Mr Rollo was responsible for the disappearance of the mag wheels.

[25] Ms Williams attended the Pick-A-Part premises the next day to advise of Mr Rollo's circumstances. I accept Mr Waugh told Ms Williams Mr Rollo was suspended and returned some of his belongings. I also accept that it was reasonable for Mr Rollo to treat this information as authorised by Mr Green, Mr Rollo reported directly to Mr Waugh. Mr Green acknowledged at the investigation meeting that Mr Waugh was the appropriate person for Mr Rollo to contact.

[26] It is also clear that Mr Green's availability to meet with Mr Rollo was restricted because he was overseas for three weeks during this period. I do not accept Mr Green's assertion that he was unable to delegate to his brother, another director of the business, or another senior employee the task of meeting with Mr Rollo to discuss his employment status. Pick-A-Part had an employment relationship with Mr Rollo which, as with all employment relationships, obliges parties to deal with one another in good faith and in a way which maintains trust and confidence between the parties. Given the circumstances of Mr Rollo's removal from the premises and the uncertainty this created for him in relation to his employment, Pick-A-Part should have prioritised meeting with Mr Rollo. I am not satisfied, on the evidence received, that Pick-A-Part took reasonable steps to set up a meeting with Mr Rollo.

Remedies

[27] Mr Rollo was suspended from 1 July 2004 until 28 July 2004 and that suspension should have been on pay. If Mr Green wished Mr Rollo to return to work, then he should have told Mr Rollo. **Mr Rollo is entitled to be reimbursed for unpaid wages from 1 July 2004 until 28 July 2004, the date of his dismissal, and I so order.**

[28] Mr Rollo seeks reimbursement of wages lost as a consequence of his dismissal. I have received evidence of Mr Rollo's attempts to mitigate his lost wages and am satisfied he has made reasonable efforts to do so. **Mr Rollo is entitled to be reimbursed for three months wages lost as a consequence of his dismissal and I so order pursuant to section 123(b) of the Employment Relations Act 2000.**

[29] Mr Rollo seeks compensation for hurt and humiliation consequent to his dismissal. The sum

he seeks far exceeds the usual sums awarded in this jurisdiction. I am satisfied that Mr Rollo has suffered as a consequence of his dismissal. He has told the Authority that his mana has been trampled on by the manner in which his former employer laid a complaint with the police and the difficulties he experienced in trying to communicate with Pick-A-Part.

[30] Mr Rollo is entitled to an award of \$4000 for hurt and humiliation caused as a consequence of his unjustified dismissal pursuant to section 123(c)(i) of the Employment Relations Act 2000.

Costs

[31] Mr Rollo is entitled to be reimbursed for the cost incurred in filing this application and I so order.

[32] Pick-A-Part Avondale Limited is ordered to reimburse Edward Rollo the filing fee of \$70.

Marija Urlich
Member of Employment Relations Authority