

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2019] NZERA 653  
3060493

BETWEEN            NEIL ROLTON  
                                 Applicant  
  
AND                    COOKS STUD FARMS LIMITED  
                                 Respondent

Member of Authority:    Michael Loftus  
  
Representatives:         No appearance for Applicant  
                                 Nelson Cook and Julie Fitzgerald, for Respondent  
  
Investigation Meeting:    12 November 2019 at Greymouth  
  
Submissions Received:    At the investigation meeting  
  
Record of Determination: 14 November 2019

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicant, Neil Rolton, claims he was unjustifiably dismissed by the respondent, Cooks Stud Farms Limited (Cooks), on or about 16 March 2019.

[2]     Cooks accepts it dismissed Mr Rolton but contends the decision justified. It also says Mr Rolton is precluded from advancing his claim as the dismissal was actioned in accordance with a valid 90 day trial provision.<sup>1</sup>

**Applicants non appearance**

[3]     Mr Rolton was not present at the investigation which raised the question of whether or not to proceed.

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<sup>1</sup> Sections 67A and 67B of the Employment Relations Act 2000

[4] That Mr Rolton received the notice of investigation meeting and was well aware of its scheduling is something I accept. Subsequent e-mail correspondence between Mr Rolton and the Authority about whether or not he was required to attend confirms that fact.

[5] Despite that, and a request he advise his intentions, he chose to not attend and failed to notify the Authority of his absence. In such circumstances I considered it appropriate I continue as scheduled.

### **Background**

[6] Mr Rolton was employed by Cooks as a farm hand commencing on 18 December 2018. His terms and conditions of employment were specified in a written employment agreement signed by both parties.

[7] Cooks say the agreement was signed prior to commencement on 17 December. Mr Rolton says signature did not occur till *approximately* 29 December and his copy remained undated.<sup>2</sup> Not in dispute is that the agreement contains what can only be considered a properly crafted 90 days trial provision.

[8] Mr Rolton subsequently received a note which advised:

... you are to be dismissed under the 90 day trial period. You have not made an effort to become part of our team.  
Missing work day too often.  
Rough on the farm motor bikes and general attitude to your job not good enough.

[9] In his statement of problem Mr Rolton alleges this occurred on 4 March 2019. Mr Cook says 17 February. On this I concur with Cooks. I do so given the evidence of Mr Cook, Ms Fitzgerald and, more importantly, the content of a subsequent letter which was sent on 4 March. That letter refers to 17 February and says Mr Rolton received written notice of dismissal under the 90 day trial period following a discussion about the matter that day. It advises his last day will be 16 March and that he was required to vacate the employer provided house he occupied on 18 March.

[10] The following day, 5 March, Mr Rolton received another note. It refers to the letters of 17 February and 4 March before confirming the requirement Mr Rolton

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<sup>2</sup> Statement of problem at [2]

vacate the house no later than 18 March. It then goes on to make various points about the impending departure and Cooks requirements in respect there-of.

[11] Mr Rolton departed as required and challenged the dismissal almost immediately with his then advocate writing on 20 March.

## **Discussion**

[12] As already said, Mr Rolton claims he was unjustifiably dismissed. While Cooks contends the dismissal justified, its prime response is that Mr Rolton is precluded from pursuing the claim by virtue of the 90 day trial provision in his employment agreement.<sup>3</sup>

[13] Section 67A(2) of the Employment Relations Act 2000 (the Act) requires such a provision should make it clear that the employee is subject to a trial period for a period not exceeding 90 days during which the employer may dismiss the employee who may not then bring a personal grievance challenging that dismissal.

[14] There is no dispute those requirements have been met yet an argument about the provisions validity remains. That is due to the disagreement about when the employment agreement was signed<sup>4</sup> and the Employment Court's previous statement that:

*... the statutory intention [was] that trial periods are to be agreed upon and evidenced in writing in an employment agreement signed by both parties at the commencement of the employment relationship and not retrospectively or otherwise settled during its course.*<sup>5</sup>

[15] On this I prefer the respondent's evidence and accept the agreement was, as Cooks claims, signed on 17 December 2018. I do so for the following reasons.

[16] On one side there is Mr Rolton's absence which means he has offered no evidence to support his claim the agreement was not signed till after commencement.

[17] On the other there is the evidence of Mr Cook that the employment agreement was signed on 17 December. He attended and allowed his assertion to be challenged. His evidence was supported by Ms Fitzgerald's circumstantial evidence and, more

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<sup>3</sup> n 1 above

<sup>4</sup> Paragraph [7] above

<sup>5</sup> *Smith v Stokes Valley Pharmacy (2009) Ltd* [2010] ERNZ 253 at [47]

importantly, that of Mr Stephens, the farms manager. Mr Stephens gave evidence that he was in close proximity when both Mr Rolton and his sister, Ms Rolton-Stoddard who was also employed by Cooks, were presented with their agreements. He says he heard them being told they had time to take their agreement away and seek advice but Mr Rolton declined stating that was not necessary and he would sign immediately. Mr Stephens states he also saw the signed agreements that day, 17 December.

[18] I also note Ms Rolton-Stoddard's written statement that she and her brother meet with Mr Cook together and both signed their agreements on 17 December.

[19] My acceptance the agreement was signed on 17 December nullifies the challenge to the validity of the trial period clause. That, in turn, means I accept the defence and conclude Mr Rolton is precluded from challenging his dismissal.

[20] Even if that were not the case his claim would fail. That is because his non attendance means there is no evidence to challenge or undermine the arguments Cooks proffered to justify their decision to dismiss.

### **Conclusion and costs**

[21] For the above reasons I conclude Mr Rolton's employment agreement contained a valid 90 day trial period clause which precludes him from pursuing his claim of unjustified dismissal.

[22] His claim therefore fails.

[23] Cooks was self-represented and there are no recoverable costs. Therefore there shall be no order in that respect.

Michael Loftus  
Member of the Employment Relations Authority