

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**CA 83/07  
5044617**

BETWEEN                      DEAN JAMES SAUNDERS  
   Applicant  
  
AND                              MAKAIWAI                      FARM  
   PARTNERSHIP                       
   Respondent

Member of Authority:        Helen Doyle  
  
Representatives:              Dean Saunders  
   Victoria Donaghy, Counsel for Respondent  
  
Investigation Meeting:        8 May 2007 at Dunedin  
  
Determination:                24 July 2007

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The issue to be determined in this case is whether during a meeting between the applicant and the respondent in late June or early July 2005, there was an agreement that the respondent provide the applicant with 20 artificially bred (AB) weaned heifer calves or 20 four day old calves.

[2]     There is no dispute that something is owed to the applicant. The issue to be determined is what was offered and agreed to and is therefore outstanding in terms of that agreement. The agreement was never reduced to writing.

**The background**

[3]     The applicant, Dean Saunders, says the respondent agreed to provide him with 20 AB weaned heifer calves and that the respondent has failed to adhere to its agreement to provide him with the calves born in 2005. Mr Saunders also says that

there was an agreement he would receive a performance bonus although payment of the bonus was a secondary matter for Mr Saunders to that of provision of the calves.

[4] The respondent is Makaiwai Farm Partnership as set out in the individual employment agreement which Mr Saunders was offered, and subsequently negotiated changes to. The respondent is not John Wilson who was named as respondent in the statement of problem.

[5] Makaiwai Farm Partnership (Makaiwai) is one of three farming businesses operated by Rangitata Dairies Partnership (RDP). RDP is the partnership of two farming companies, Rangitata Dairies Limited and Rangitata Plains Limited. John Wilson is a director and shareholder of the two companies and the sole director and shareholder of Wilfarm Enterprises Limited, which provides management services to RDP and its farm businesses including Makaiwai.

[6] Rangitata Dairies Limited and Rangitata Plains Limited jointly acquired the Makaiwai Farm property under RDP on 1 June 2005. Makaiwai was the farm property on which Mr Saunders was employed as a Herd Manager.

[7] It had been agreed that Mr Saunders and another employee would be given options on a position with the Partnership following the purchase. At that time Mr Saunders was being paid \$35,000 pa. After the property was acquired Mr Saunders was given a written individual employment agreement which provided for a salary of \$40,000 gross pa. Mr Saunders declined the offer.

[8] In or about late June or early July 2005 Mr Saunders met with Mr Wilson and the Technical Manager employed by Wilfarm Enterprises Limited, Glen Smith. I shall refer to this meeting as the "late June meeting" as both parties agree that there was a meeting around that time.

[9] Makaiwai agree that Mr Saunders was offered 20 calves at the late June meeting, but say that the offer was part of a performance bonus scheme and that there was never agreement that Mr Saunders would be given weaned heifer calves. The respondent says that there is considerable difference in value between 20 four day old calves which are worth about \$150 per head (approximately \$3,000) and weaned calves which are worth \$550 per head (approximately \$11,000).

[10] At the end of May 2006 Mr Saunders was about to leave his employment at Makaiwai. He had a discussion with Mr Wilson and Mr Smith in an attempt to resolve the outstanding issues between them. Mr Wilson put forward a figure of \$5,500 as a possible settlement and believed that there was agreement about the figure. Mr Saunders said that he was not happy with the settlement offered and wanted delivery of the livestock.

[11] The parties subsequently attended mediation but the employment relationship problem was not resolved.

### **Balance of probabilities**

[12] It is helpful to explain that this employment relationship problem is to be determined on the balance of probabilities. This means the probability that something from the evidence given by the parties did or did not occur is weighed and considered and must be to a reasonable degree of probability, but not to the high standard required in a criminal case of beyond reasonable doubt.

### **The meeting in late June 2005**

[13] There is no dispute that the meeting in late June 2005 was to talk about Mr Saunders' employment agreement. Mr Saunders wanted to be paid \$45,000 gross pa.

[14] The meeting took place at Mr Saunders' house that he lived in on the farm.

[15] Mr Saunders said the agreement reached at the meeting was a wage of \$40,000 gross and provision to him of 20 AB weaned heifer calves. He said that there was discussion about a bonus and that the bonus could be paid in money or more livestock. He said there was no discussion about the amount of a bonus until March or April 2006. Mr Saunders said that he understood that Makaiwai was going to rear the calves until they were weaned. There was also some discussion about future grazing.

[16] Trevor Saunders is Mr Saunders' father. Trevor Saunders said that he was telephoned by his son about his contract with Makaiwai in early July 2005. He said that Mr Saunders advised him that he was getting 20 AB weaned heifer calves. Trevor Saunders said that he told his son to make sure it was written into a contract,

but that did not happen. Trevor Saunders thought the value of the calves was about \$8,000.

[17] Daniel Montgomery is a friend of Mr Saunders. He said that he had been staying the night at Mr Saunders' house before the meeting took place. Mr Montgomery said that he left the living room at the time of the meeting to give Mr Saunders some privacy when he discussed his wages. Mr Montgomery said that when Mr Wilson had left the room he was told by Mr Saunders that he would be receiving 20 weaned AB heifer calves and \$40,000 pa.

[18] Mr Wilson said that he thought it was appropriate for Mr Smith to be at the meeting because part of Mr Smith's role was to assist the Managers with employment matters. Mr Wilson felt that the salary of \$45,000 that Mr Saunders wanted was higher than would be appropriate for his position. Mr Wilson said that there was some discussion about the partnership being willing to accept some movement. In that regard he said there was discussion about a bonus structure which was, and still is, in place for Managers throughout the Partnership. Mr Wilson said that it was agreed that the extra \$5,000 Mr Saunders was seeking would be made available to him by way of an at-risk bonus. Mr Wilson said that he emphasised that the bonus would be on the same terms as everyone else's as consistency was important to the Partnership.

[19] Mr Wilson said that it was only after discussion about the bonus that Mr Saunders told him and Mr Smith his partner had an uncle or cousin close to the Makaiwai property and that he was considering rearing calves. Mr Wilson recalled that Mr Saunders had some information with him at the meeting on rearing calves. Mr Saunders agreed that he did have some information about rearing calves with him at that time.

[20] Mr Wilson said that he offered Mr Saunders some calves in lieu of a portion of the bonus. Mr Wilson said that he previously had difficulties when calves have been provided to staff but made an exception for Mr Saunders because he was aware that the calves would be raised off the property and would not re-enter the Makaiwai farming system. Mr Wilson said that there was a discussion that the calves would have to be taken at four days old and be taken from the lower end of the calf index range. The value of the calves taken would then be deducted from the attainable bonus.

[21] Mr Wilson's evidence that the agreement was to provide Mr Saunders with four day old calves was supported by the evidence of Mr Smith.

**What happened after the meeting?**

[22] Mr Saunders was not provided with the four day old calves and he did not uplift them.

[23] The evidence is somewhat unclear as to when Mr Saunders first raised the issue of calves following the meeting in July 2005. Mr Wilson said that there was a conversation with Mr Saunders in late Spring when he and Mr Saunders were in the truck looking around the property. Mr Wilson said that Mr Saunders told him that it was impractical for him [Mr Saunders] to rear the calves. Mr Wilson said that he confirmed with Mr Saunders that therefore his bonus would be based on dollars only.

[24] Mr Saunders gave evidence about a discussion with Mr Wilson that he said took place in October 2005. I conclude from the evidence that Mr Saunders was referring to the same late Spring discussion as Mr Wilson. Mr Saunders' evidence about the discussion was different from Mr Wilson's. Mr Saunders said that he asked Mr Wilson where the calves were and that Mr Wilson said he would sort the matter out as soon as possible. Mr Saunders said the fact that he decided not to rear calves had nothing to do with rearing the Partnership calves because the agreement with Makaiwai was that he would be getting weaned calves.

[25] I find it more likely than not that there was some discussion around the fact that Mr Saunders was not intending to rear calves in late Spring. I accept Mr Wilson's evidence that he took from the discussion that the issue about provision of calves by the Partnership was probably at an end and therefore did not advise that he would sort the matter out. That was probably not, I accept, the message Mr Saunders intended to convey.

[26] Mr Saunders also had some discussions with Mr Smith about the calves. I find, having considered the evidence, that it is likely the first discussion took place in or about February 2006. There is no dispute that when the issue about provision of calves was raised with Mr Smith he advised Mr Saunders that the agreement was that Mr Saunders was to get four day old calves not weaned heifer calves.

[27] It was certainly clear from February 2006 that Mr Saunders did not agree that he was to be provided with four day old calves and that he wanted weaned heifer calves.

[28] There was discussion with Mr Saunders in early 2006 about whether he would be interested in a higher management role with the Partnership, but he was not happy with the salary offered.

[29] Mr Saunders advised that he would resigning from his position with Makaiwai and that his final day would be 31 May 2006.

[30] There were some further attempts to resolve the matter before Mr Saunders resigned.

### **Determination**

[31] This is not an easy matter to determine because there is nothing in writing about the agreement reached in late June 2005. I have carefully considered the evidence. I am of the view that it is more likely than not that the agreement was for Mr Saunders to be provided with four day old calves and that the value of those calves would then be deducted from the performance bonus payable. I have reached that conclusion on the following basis:

- Mr Saunders went to the meeting with Mr Wilson and Mr Smith in late June 2005 to ask for an increase in his remuneration to \$45,000. It is unlikely he would have been offered a package of bonus and calves which would be valued at much more than the \$5,000 he had asked for. Mr Saunders, for example, valued the weaned AB calves at \$8,000. On top of that he would also have received a performance bonus.
- It is more likely than not that when the salary increase to \$45,000 was declined, the conversation moved to a performance bonus which was in place for other employees of the Partnership. That is because application of a similar system to Mr Saunders' performance would be consistent to others employed by RDP. I accept consistency between employees was important for Mr Wilson. I do not find on the balance of probabilities that Mr Wilson and Mr Saunders had considered providing Mr Saunders with calves prior to the meeting. It is less

likely that the conversation moved immediately during the meeting to provision to Mr Saunders of calves.

- I think it is more likely that the only reason the calves were offered to Mr Saunders was because he talked to Mr Wilson and Mr Smith about the possibility of rearing calves off the Partnership property. There was some confusion as to who would do the rearing, but I find that both Mr Wilson and Mr Smith understood that was what Mr Saunders wanted to do. It was on that basis I find that he was offered four day old calves to rear off the property. I am strengthened in my view of that by the undisputed evidence that Mr Smith, when questioned about the calves, immediately said that the agreement was that Mr Saunders was to be provided with four day old calves not weaned calves. If there had been no discussion about rearing the calves off site, then it is unlikely, in my view, that Mr Smith would have responded in that way.
- I find it more likely that there was agreement that the value of the livestock was to be connected in some way to the performance bonus and that there was agreement the value would be deducted from the bonus.

[32] I find that Makaiwai agreed to provide Mr Saunders with four day old calves and deduct the value of those calves from any performance bonus.

### **Value of the calves**

[33] If Mr Saunders had taken the calves at four days old then he would have had the benefit of those calves from early August 2005, as calving begins each year on 1 August. There were no specific calves set aside for Mr Saunders and Mr Saunders is now working elsewhere.

[34] The most sensible way to deal with the matter is to award Mr Saunders the value of 20 four day old calves at \$150 per head, in the sum of \$3,000 together with interest on that money from 1 August 2005 until 1 June 2006 (304 days). I find that on 31 May 2006 there was a satisfactory agreement put to Mr Saunders to resolve the matter.

[35] I have calculated the interest rate in accordance with clause 11(1) of the Second Schedule of the Employment Relations Act 2000 at the rate of 10% which

does not exceed the 90 day bill rate at the date of this order plus 2%. I arrive at a daily rate of \$0.82.

[36] Makaiwai Farm Partnership is to pay to Dean James Saunders the sum of \$3,249.28 being the value of 20 four day old calves in the sum of \$3,000 together with interest on that sum until 1 June 2006.

#### **Value of the performance bonus**

[37] I intend to approach the performance bonus value on the basis that Mr Saunders would have received the maximum payable of \$5,000. I have deducted from that sum the value of the four day old calves of \$3,000. Mr Saunders is entitled to have the balance of the performance bonus paid to him in the sum of \$2,000.

[38] Makaiwai Farm Partnership is to pay to Dean James Saunders the sum of \$2,000 being a performance bonus.

#### **Costs**

[39] I reserve the issue of costs.

[40] If the agreement about the calves had been put in writing by Makaiwai then the matter would have been resolved without the need for an investigation meeting. In the circumstances this may be an appropriate case, notwithstanding the settlement offer made to Mr Saunders, for costs to lie where they fall.

#### **Summary**

- I have found that Makaiwai Farm Partnership agreed to provide Mr Saunders with four day old calves and not AB weaned heifer calves.
- I have ordered Makaiwai Farm Partnership to pay to Dean James Saunders the sum of \$3,249.28 being the value of 20 four day old calves together with interest.
- I have ordered Makaiwai Farm Partnership to pay to Dean James Saunders the sum of \$2,000 being the balance of a performance bonus following deduction of the value of the calves.

- I have reserved the issue of costs.

**Helen Doyle**  
**Member of the Employment Relations Authority**