

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 184
5554597

BETWEEN ANDREW SAUNDERS
Applicant

A N D TANIWHA ESTATE LIMITED
Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in person
Russell Drake for the Respondent

Investigation Meeting: On the papers

Submissions Received: 2 and 18 June 2015 from the Applicant
5 June 2015 from the Respondent

Date of Determination: 23 June 2015

DETERMINATION OF THE AUTHORITY

- A. Mr Saunders application for a compliance order is declined.**

- B. Taniwha Estate Limited’s counter-claim is declined.**

- C. Taniwha Estate Limited is ordered to pay to Mr Saunders within
14 days of the date of this determination \$71.56 being
reimbursement of his filing fee.**

Employment relationship problem

[1] Mr Saunders seeks an order for compliance in relation to payments due under a Record of Settlement (the Agreement) made in mediation with his former employer, Taniwha Estate Limited (Taniwha Estate). Mr Saunders claims that the amount of \$200 was withheld from his final pay and that he has not received the positive written reference required in the Agreement.

[2] Taniwha Estate does not dispute that \$200 was withheld from Mr Saunders' final pay. In its statement in reply Taniwha Estate counterclaimed against Mr Saunders the amount of \$150 on the basis that the cleaning of the carpet on vacation of the accommodation cost \$351 and the \$200 that was deducted from his final pay did not cover the total cost. Since lodging and serving its statement in reply Taniwha Estate has paid the outstanding \$200 and has amended its counterclaim to \$351. Taniwha Estate says that the reference was not negative and therefore must be considered to be a positive reference.

[3] The parties consented to this matter being determined on the papers based on the information lodged in the Authority and the submissions made by the parties.

The issues

[4] The issues requiring determination are whether a compliance order should be made and whether or not Taniwha Estate should be successful in its counterclaim against Mr Saunders.

Application for compliance

[5] On or about 22 January 2015, Mr Saunders and Taniwha Estate reached an agreed settlement of their employment relationship problems. The settlement was recorded in a Record of Settlement and signed by a Ministry of Business Innovation and Employment mediator pursuant to s.149 of the Employment Relations Act 2000 (the Act).

[6] The Agreement provided for Mr Saunders to vacate his accommodation and required him to leave it in a "clean and tidy condition as per the requirements of the service tenancy agreement".

[7] The Agreement also required Taniwha Estate to provide Mr Saunders with a positive written reference confirming that Mr Saunders' employment ended by way of resignation due to significant surgery that prevented him from continuing in his role.

[8] As noted above the outstanding arrears of \$200 has now been paid to Mr Saunders. Mr Saunders still maintains that his reference was only an outline of his job description and did not positively describe how he undertook his duties.

[9] The reference certainly sets out the duties Mr Saunders had in relation to his role and the number of cows that he was responsible for milking on the farm. In

accordance with the Agreement the letter of reference included a statement about the way in which the employment had come to an end.

[10] The letter setting out the duties undertaken by Mr Saunders is in effect a certificate of service. I agree with Mr Saunders that the letter does not go as far as providing positive statements of the way in which Mr Saunders undertook his duties. This is something one would expect to see in a positive reference.

[11] However, there is nothing in the reference which would indicate that Mr Saunders did not perform his duties competently or adequately. The letter is signed off on behalf of both directors of Taniwha Estate and is contained on a letterhead which provides contact details for Mrs Pamela Storey, a director of the employer.

[12] It would be open for any prospective employers of Mr Saunders to contact Mrs Storey and seek further information including information about the way in which Mr Saunders undertook his duties if they cared to do so. The Agreement requires all additional comments and information to be positive. There is no evidence to indicate Taniwha Estate has not provided positive statements or information when asked.

[13] Mr Saunders' application for a compliance order is declined as I am satisfied that the terms of the Agreement have been met by Taniwha Estate.

Counter-claim

[14] Taniwha Estate is seeking a payment of \$351 as reimbursement for the costs associated with having to commercially clean carpets in the residential property vacated by Mr Saunders.

[15] Mr Saunders' employment agreement sets out the steps that he was required to take when vacating his accommodation. This includes that carpets must be vacuumed and any badly marked or stained carpet was to be commercially cleaned.

[16] Mr Saunders says that he used a Rug Doctor carpet cleaning machine to clean the carpets prior to his vacating the accommodation and that he should not now be made to contribute to a decision made by the employer to have the carpets commercially cleaned.

[17] There is no evidence before the Authority that the carpets were badly marked or stained and which then required commercial cleaning of the carpet. Mr Saunders says that when they moved into the property there were marks and stains left by the previous occupants but that when he left the property, having shampooed and thoroughly vacuumed the carpets, he had met his obligations under the employment agreement.

[18] The Authority is satisfied that Mr Saunders has met his obligations to leave the property in a clean and tidy state pursuant to the Agreement signed by the parties in January 2015.

[19] The application for a counterclaim is declined.

Costs

[20] Although he was unsuccessful Mr Saunders is entitled to be reimbursed for the costs of bringing his application to the Employment Relations Authority. This is because, without lodging his statement of problem it is unlikely Taniwha Estate would have paid him the \$200 it retained from his final wages.

[21] Taniwha Estate Limited is ordered to pay to Mr Saunders within 14 days of the date of this determination \$71.56 being reimbursement of his filing fee.

Vicki Campbell
Member of the Employment Relations Authority