

BETWEEN                      ROHIT KUMAR SHARMA  
   Applicant  
  
A N D                              NZ NATURAL PURE LIMITED  
   Respondent

Member of Authority:      T G Tetitaha  
  
Representatives:              Applicant in person  
   H Saini for Respondent  
  
Investigation Meeting:      18 January 2018  
  
Submissions:                  18 January 2018 from Applicant  
   23 January 2018 from Respondent  
  
Date of Determination:      31 January 2018

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**DETERMINATION OF THE AUTHORITY**

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- A. Rohit Sharma was unjustifiably dismissed by NZ Natural Pure Limited.**
- B. I order NZ Natural Pure Limited to pay Rohit Sharma \$2,000 compensation pursuant to s123(c)(i) Employment Relations Act 2000.**
- C. I order NZ Natural Pure Limited to pay Rohit Sharma total wage arrears of \$4,681.57 comprising \$3,680.48 net wages and annual leave of \$1,001.09 net annual leave.**
- D. I order NZ Natural Pure Limited to pay \$71.56 to Rohit Sharma as a contribution to his legal costs.**

[1] Rohit Sharma seeks payment of wage arrears unpaid wages and holiday pay. He also alleges he was unjustifiably dismissed by email on 5 December 2016.

## **Facts**

[2] Mr Sharma was employed as a truck driver by NZ Natural Pure Ltd on 22 August 2016. His manager was Harbinder Saini.

[3] On 29 November 2016 Mr Sharma was injured at work and did not return to work until 5 December 2017.

[4] On 5 December 2016 Mr Sharma was contacted by telephone by an accountant whom he understood was employed by Mr Saini. The accountant enquired when Mr Sharma was able to return to work. Mr Sharma told him he was unable to drive due to his injuries and wouldn't be coming into work. The accountant advised the company needed a driver and would have to replace him. Mr Sharma asked if there were any other jobs he could do. He was told there were not. Instead he was told the company did not have the money to pay him and another driver and his employment was going to be terminated.

[5] He was subsequently sent an email that same day attaching a letter advising his employment would be terminated and his last day of work was 19 December 2017.

[6] Mr Sharma did return to work for two days on 5 to 6 December but was unable to continue his driver duties. He did not return to work again. He is currently receiving ACC compensation.

## **Recall**

[7] As the parties are aware, I have recalled a previous determination dismissing the unjustified dismissal. This is because the Registry omitted to place the letter raising the personal grievance on the file prior to hearing. The personal grievance had been dismissed due to the alleged failure to raise the grievance at hearing. Mr Sharma subsequently wrote to the Registry pointing to the letter having been filed. As a consequence, there has been a miscarriage of justice.

[8] The earlier determination between these parties [2017] NZERA Auckland 317 is therefore set aside and I direct the reopening of the investigation.

## **Respondent**

[9] A further hearing was set down to start at 10 am but was unable to begin until 11 am. Harbinder Saini attended for the respondent company at 10 am. He was asked to return at 11 am but left and did not return.

[10] The respondent was directed to file any further evidence or information it wished the Authority to view by 22 January 2018. Mr Saini emailed the Authority on 23 January 2018 stating:

I have only one concern about the damage Mr Rohit had done and the bill was \$1800. As the time of incident he told us that there was no damage but later on I received the bill for \$1800. I am happy to go half and half.

I am happy to pay his outstanding wages

## **Was Mr Sharma unjustifiably dismissed?**

[11] Mr Sharma produced a letter dated 5 December 2016 from Mr Saini that dismissed him by stating:

My company is no more able to afford highly paid employees and due to financial position of company I am decided to terminate your employment.

[12] Where there has been a proven dismissal from employment, the employer must justify its actions and prove they “*were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal ... occurred*”<sup>1</sup>. In applying this test, the Authority must consider the matters set out in s.103A(3) of the Employment Relations Act 2000. These matters include whether having regard to the resources available, an employer sufficiently investigated the allegations, raised the concerns with the employee, gave the employee a reasonable opportunity to respond and genuinely considered the employee’s explanation prior to dismissal.

[13] The evidence shows NZ Natural Pure Limited did not meet some of the mandatory considerations set out in s.103A(3). There was no opportunity for Mr Sharma to seek legal advice and representation and then respond to the concerns before dismissal. The single telephone call from Mr Saini’s accountant immediately followed by a termination letter the same day is insufficient to meet s103A.

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<sup>1</sup> Section 103A(2) of the Employment Relations Act 2000.

[14] These defects were not minor and did result in Mr Sharma being treated unfairly (s103A(5)).

[15] Rohit Sharma was unjustifiably dismissed by NZ Natural Pure Limited.

### **Remedies**

[16] Mr Sharma seeks lost wages and compensation for hurt and humiliation.

[17] There is no award of lost wages because Mr Sharma was unable to work and receiving ACC.

[18] He is entitled to seek compensation. I accept he was traumatised by the abruptness of this dismissal. He was left in financial difficulties and felt he was treated badly by NZ Natural Pure Limited. Promises to pay him wages owed were never honoured. He has had to lend funds to meet his daily costs. He feels panicked when he thinks of these matters. He states he felt depressed but has not received any medical diagnosis. He is still owed wages for his last weeks of work and notice period.

[19] However his employment was very short – 3 months at most. The injury that has kept him out of work has been compensated for by ACC. His losses are primarily financial, although I accept the loss of this job was traumatic. From the evidence his employment may have ended because of the employer's business need for a permanent driver and there being no available alternative duties they could offer him. A modest award of \$2,000 compensation is appropriate subject to any reduction for contributory behaviour.

### **Contributory behaviour**

[20] Contributory behaviour must be causative of the dismissal and blameworthy.

[21] Although Mr Saini raised an issue about payment for expenses NZ Natural Pure Limited had incurred due to Mr Sharma's actions some months ago, this is not contributory behaviour. It may be a counterclaim but it has been raised without any supporting evidence. I decline to make any reduction for this matter.

[22] There is no basis to reduce the compensatory award for contributory behaviour.

[23] I direct NZ Natural Pure Limited to pay Rohit Sharma \$2,000 compensation.

## **Wage arrears**

[24] Mr Sharma had an 'M' tax code. When he was initially employed his employment agreement provided for a salary of \$46,909 gross per annum or \$1,501.09 net per fortnight. In October 2016 this was increased to \$52,800 gross per annum or \$1,661.79 net per fortnight.

[25] Prior to 5 December 2016 Mr Sharma was employed for 14 weeks. He has produced his ANZ Bank accounts for the period 22 August 2016 to 14 February 2017. This shows pay received from the respondent between 14 September to 25 November 2016 totalling \$9,292.44. He should have received \$3,002.18 for the first four weeks work then \$8,308.95 for the remaining 10 weeks totalling \$11,311.13. He is owed \$2,018.69 net wages.

[26] His employment agreement also provides for two weeks' notice upon termination or \$1,661.79 net wages.

[27] He has not received his annual leave entitlements. His gross wages for the period of employment would have been \$3,608.38 for the first four weeks work then \$12,184.62 for the remaining 12 weeks (including the notice period) totalling \$15,793 gross. Given he worked less than 12 months for this employer he is owed 8% or \$1,263.44 gross less PAYE of \$262.35 leaving \$1,001.09 net annual leave owed.

[28] I order NZ Natural Pure Limited to pay Rohit Sharma total wage arrears of \$4,681.57 comprising \$3,680.48 net wages and annual leave of \$1,001.09 net annual leave.

[29] Mr Sharma seeks reimbursement of his filing fee and other personal expenses for attending mediation. As explained at hearing only the filing fee may be reimbursed. I order NZ Natural Pure Limited to pay \$71.56 to Rohit Sharma as a contribution to his legal costs.

**T G Tetitaha**  
**Member of the Employment Relations Authority**