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Sheriff v R.W & A.C. King Limited (Auckland) [2007] NZERA 159 (18 May 2007)

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 153/07 5042482

BETWEEN

ALANZO SHERIFF Applicant

AND

R.W. & A.C. KING LIMITED Respondent

Member of Authority:

Leon Robinson

Representatives:

Applicant In Person

Jenni-Maree Trotman, Counsel for Respondent

Determination:

18 May 2007

DETERMINATION OF THE AUTHORITY

The problem

[1] The applicant Mr Alanzo Sheriff ("Mr Sheriff") applies to the Authority for an investigation of his claim that he was unjustifiably dismissed from his employment with the respondent R.W & A.C. King Limited ("the Company"). Mr Sheriff asks the Authority to resolve the problem by making formal orders for a written apology and compensation.

[2] The Company says Mr Sheriff was justifiably summarily dismissed for serious misconduct and insubordination.

[3] The parties were unable to resolve the problem between them by using mediation.

[4] The Authority has taken evidence from Mr Sheriff, Mr Ronald King a director of the Company ("Mr King"), Mr Darren King a manager of the Company ("Darren King"), and Mr Rakesh Kumar (Happy) another driver.

The facts

[5] Mr Sheriff was employed by the Company as a driver from 4 January 2006 until his summary termination on 7 April 2006. The terms of Mr Sheriff's employment were recorded in an individual employment agreement signed by the parties on 23 January 2006.

[6] On Friday 7 April 2006, the Authority finds that Mr Sheriff had been allocated two deliveries of juice, the first to Henderson and the second to Hobsonville. Mr Sheriff retrieved only the delivery for Henderson from the Company's depot.

[7] Darren King was advised of the situation and his efforts to contact Mr Sheriff by radio telephone were unsuccessful. Darren King immediately informed Mr King. Mr King drove to Fruitworld Henderson on Lincoln Road to raise the matter with Mr Sheriff. He intercepted Mr Sheriff just as Mr Sheriff was leaving the delivery address. Mr Sheriff and Mr King each give very different accounts of the exchange which followed.

[8] Mr Sheriff gives this evidence to the Authority:-

... on the way out of the driveway, Ron King parked his car in front of the truck blocking the road off. He then approached the truck and yelled at me while pointing his finger in my face and told me to get out of his truck. My reply was to ask him "how am I going to get home?" His reply was "I'll ring your wife to come and pick you up." I said to him that my wife is not home now and he told me I have to walk. While this was going on people were looking at us and he was shouting and attracting attention to this situation. I then told him that I can't walk home and if he wants his truck he should come to my house and get it. I then proceeded to drive home. I left this truck outside my house as I usually do and left the key with my wife to give him why he came to get his truck. He then came up our street in another bigger truck parked it beside the other truck and blocked the whole street off for about 10 mins. My wife was too scared to go outside and give him the key so she waited for him to come and ask for it. He did not come and ask for the key. After about 10 -15 minutes both trucks drove off. This was also very scary for my wife and extremely embarrassing as all the neighbours could see what was happening.

[9] Mr Sheriff provided further detail to the Authority and said he told Mr King he had already taken his share and that he done what he had been assigned. He said he told Mr King he could not attend to the Hobsonville delivery because he had already got his share. He said Mr King swore at him and pointed his (Mr King's) finger in his face.

[10] Mr King gives this evidence to the Authority:-

I reached Fruitworld Henderson just as Alanzo was coming out of the driveway. Alanzo had stopped for traffic so I parked my vehicle across the front of his truck. I did this because I didn't want him to drive off before I had a chance to talk to him.

I then asked Alanzo why he had left the Hobsonville Delivery behind. Alanzo responded that he had an appointment at 1.30 pm. I told Alanzo that he had not asked to finish early and reminded him that 3 -4 weeks earlier he had done the same thing and was warned that he had to make arrangements with myself or Darren if he wanted to finish early.

Alanzo then repeated that he had an appointment and was going to it. I asked him to go back to the depot and get the Hobsonville Delivery. He refused. I then asked him again to go and get the Hobsonville delivery as he was still working. He refused.

I then informed Alanzo that as he had refused to follow my instructions he was dismissed. I asked him to get out of the truck so that I could go and get the delivery. I needed the truck because the other two chiller trucks were already being used by Tony and

Happy. I didn't want to use the larger truck as it was usually used for general deliveries and chemicals. It was not economical to run the truck for such a small delivery and we would suffer a large loss.

Alanzo refused to get out of the truck and said he was going to go and pick up his car at home. I told Alanzo that his wife could pick him up and to get out of the vehicle. He again refused and told me "If you do not get out of the fucking way I will drive the truck into your car and push it out of the way!"

As I did not want two vehicles damaged I got back into my car to move it out of the way. Alanzo then backed up and drove around the front of my vehicle just missing it.

The merits

[11] Mr King did not alter his written statement of evidence. He concedes he dismissed Mr Sheriff. The Authority enquires to see whether the dismissal was justified. There is a statutory test of justification set out in [section 103A](#) of the [Employment Relations Act 2000](#) ("the [Act](#)").

[12] I prefer Mr King's evidence having seen and heard these witnesses. I find that the exchange between Mr Sheriff and Mr King occurred at about 1.20 pm and not at about 3.30 - 4.00 pm as Mr Sheriff says. I find that Mr King asked Mr Sheriff why he had left the Hobsonville Delivery behind. Mr Sheriff said that he had an appointment at 1.30 pm and that he was going to it. Mr King asked Mr Sheriff to go back to the depot and get the Hobsonville Delivery. Mr Sheriff refused. Mr King then informed Mr Sheriff that as he had refused to follow Mr King's instructions Mr Sheriff was dismissed. Mr King asked Mr Sheriff to get out of the truck but Mr Sheriff refused and drove away. Mr King and Darren King retrieved the truck later that day from Mr Sheriff's residence.

[13] Mr Sheriff tells the Authority he had attended to the only delivery he was assigned that day. He says that as he had completed his assigned task he was free to finish work when he did. He puts the time he completed his duties between 3.30 - 4.00 pm. I have said I prefer Mr King's evidence of the time.

[14] Mr Sheriff agrees that his hours of work as specified in his employment agreement were from 6.00 am to 6.00 pm daily. Mr King issued his instruction within those hours. He was entitled to direct Mr Sheriff to make the delivery to Hobsonville. Mr Sheriff refused to comply and said he was going to his appointment.

[15] I find that Mr Sheriff refused to comply with a lawful and reasonable instruction of his employer. Whether or not Mr Sheriff had been assigned the delivery that morning, which I find he was, Mr King was entitled to direct Mr Sheriff to make the delivery he had asked of Mr Sheriff.

[16] Mr Sheriff did not protest to Mr King that the instruction was in some way unreasonable or unlawful. Nor did he seek to have himself excused from it. He simply declared he was going to his appointment without more. That was a direct challenge to his employer's authority. In adopting that stance Mr Sheriff was deliberately defiant. He does not resile from that defiance to the Authority.

[17] In these circumstances, I do not consider Mr King ought to have appreciated a need for a "cooling off" type recess. There was no cause or any need for further enquiry or investigation in the face of Mr Sheriff's direct and open defiance.

[18] Mr Sheriff's deliberate defiance and refusal to comply, evidenced an intention by him not to be bound by the terms of his employment. Mr King was entitled to then conclude that Mr Sheriff had destroyed the relationship of trust and confidence between them. Mr Sheriff's conduct was repudiatory and Mr King was entitled to affirm that repudiatory conduct and regard the agreement at end.

Determination

[19] I determine that on an objective basis, R.W. & A.C. King Limited's actions and how it acted, were what a fair and

reasonable employer would have done in all the circumstances at the time. **I find the summary dismissal on 7 April 2006 was justifiable. The Authority is unable to assist Mr Sheriff and there will be no formal orders.**

Costs

[20] In the event that costs are sought, I invite the parties to resolve the matter between them, but failing agreement, Ms Trotman is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Mr Sheriff is to lodge and serve a memorandum in reply thereafter but within 28 days of the date of this Determination. I will not consider any application outside that timeframe.

Leon Robinson

Member of Employment Relations Authority

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