

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2021] NZERA 150
3111435

BETWEEN HILLSLEY SHORT
 Applicant

A N D CLANRYE HOLDINGS
 LIMITED
 First Respondent

Member of Authority: Peter van Keulen

Representatives: Michael McDonald, advocate for Applicant
 No appearance for First or Second Respondent

Investigation Meeting: 6 April 2021

Submissions Received: 6 April 2021 for the Applicant

Date of Determination: 16 April 2021

DETERMINATION OF THE AUTHORITY

This determination is a written record of an oral indication delivered on 6 April 2021.

Employment relationship problem

[1] Hillsley Short was employed by Clanrye Holdings Limited as a general dairy farmer from 12 July 2019.

[2] On 12 March 2020, Gary Singh of Clanrye Holdings gave Mr Short a letter that set out two concerns about his performance at work and invited him to attend a disciplinary meeting on 18 March 2020.

[3] Then on 14 March 2020, Mr Singh, on behalf of Clanrye Holdings, served a trespass notice on Mr Short which prevented him from entering the farm he was employed to work on.

[4] Mr Short was unable to attend the meeting on 18 March 2020 as it was scheduled to be held at the farm.

[5] On 20 March 2020, Clanrye Holdings sent Mr Short a letter which advised him he had been dismissed.

[6] Mr Short raised a personal grievance for unjustified dismissal. Clanrye Holdings did not engage in any discussion over Mr Short's personal grievance, including not attending mediation despite requests to do so.

[7] In the end, Mr Short lodged a statement of problem in the Authority, alleging he had been unjustifiably dismissed. He also sought penalties against Clanrye Holdings and Stephen O'Hagan, a director of Clanrye Holdings, for failing to provide wage and time records when requested. Mr Short subsequently withdrew his claim for a penalty against Mr O'Hagan.

[8] I have investigated Mr Short's claim and this determination resolves the employment relationship problem.

Preliminary matter

[9] Mr Short's statement of problem was served on Clanrye Holdings. Clanrye Holdings did not lodge a statement in reply in response to the statement of problem.

[10] In order to progress this matter I set down a case management telephone conference for 6 November 2020. Just prior to the case management conference call, Mr O'Hagan advised the Authority that due to a work incident that morning no one from Clanrye Holdings would be able to attend the call. However he also advised that they did not wish to delay this matter and he was happy for the Authority to proceed in Clanrye Holdings' absence and that it could provide details of witnesses and would be available for an investigation meeting from 25 January 2021.

[11] On this basis I conducted the case management conference call and I issued directions for an investigation meeting to take place on 6 April 2021. The directions were recorded in a

notice of direction and notice of investigation meeting and these were served on Clanrye Holdings.

[12] Witness evidence was lodged on behalf of Mr Short and this was served on Clanrye Holdings. Despite this and my directions, no evidence was then received from Clanrye Holdings.

[13] So, Clanrye Holdings received all of the relevant information in respect of Mr Short's claim, it indicated that whilst it would not participate in the case management call it would participate in the investigation meeting. Clanrye Holdings was given the opportunity to lodge witness evidence and failed to do this. Clanrye Holdings was also aware of the date, time and location of my investigation meeting and could have attended. Despite all of this Clanrye Holdings did not attend the investigation meeting. And, it did not contact the Authority to explain why it could not or would not attend.

[14] The notice of investigation meeting advised Clanrye Holdings that "*If the Respondent does not attend the investigation meeting, the Authority may, without hearing evidence from the Respondent, issue a determination in favour of the Applicant.*" So, Clanrye Holdings was aware that I would proceed if it did not attend the investigation meeting.

[15] Considering all of the above, there was no apparent reason why the investigation meeting could not continue in Clanrye Holdings absence. I therefore proceeded with the investigation meeting pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act).

Unjustified dismissal

The issues for an unjustified dismissal claim

[16] The issues to be resolved in respect of the unjustified dismissal claim are:

(a) Was Mr Short dismissed; and

(b) If so, was the dismissal justified, with the onus resting on Clanrye Holdings to show its actions were justified in line with the test for justification and the duty of good faith set out in the Act?

Was there a dismissal?

[17] By serving the trespass notice on Mr Short on 14 March 2020 and thereby preventing him from being able to attend his place of work and carry out his work, Clanrye Holdings dismissed Mr Short. The trespass notice was, in the circumstances, a sending away amounting to a dismissal.¹

Was the dismissal justified?

[18] Whilst Clanrye Holdings had commenced a disciplinary process with Mr Short when it gave him the letter of 12 March 2020 setting out its concerns and inviting Mr Short to a disciplinary meeting, it cut that process short by dismissing him two days later.

[19] In these circumstances Clanrye Holdings did not meet any of the procedural requirements or expectations for a disciplinary process.² And, because there was no process at all there is no basis for Clanrye Holdings to assert there were justifiable conclusions reached about any misconduct issues and therefore there is no basis for it to be able to justify dismissal on a substantive basis.

[20] As a result Clanrye Holdings' dismissal of Mr Short was unjustified both from a procedural fairness aspect and a substantive basis.

Conclusion

[21] Mr Short was unjustifiably dismissed from both a procedural and substantive perspective.

Remedies

[22] Having determined that Mr Short was unjustifiably dismissed I may award any of the remedies provided for under s 123 of the Act. In this regard Mr Short seeks compensation and reimbursement.

¹ *Patangata and anor v Kimiora Ltd* [2016] NZERA Auckland 369.

² Sections 4 and 103A of the Employment Relations Act 2000.

Compensation

[23] I can award compensation for humiliation, loss of dignity and injury to feelings pursuant to s 123(1)(c) of the Act. This is about compensating Ms Short for the humiliation, loss of dignity and injury to feelings he suffered because of the dismissal. What I must consider is the effects of the unjustified dismissal on Mr Short and then I must assess the compensatory value of those effects.

[24] The evidence shows that as a result of the way he was treated Mr Short:

- (a) became sick and was stressed by being without work;
- (b) had concerns and anxiety about not being able to support his children as a result of losing his income; and
- (c) had trouble eating and sleeping and was prescribed sleep medication to address this.

[25] I assess the compensatory value of these effects to be \$14,000.00.

Reimbursement

[26] Mr Short seeks reimbursement for the earnings he has lost as a result of his unjustified dismissal pursuant to s 123(1)(b) of the Act.

[27] If I am satisfied that Mr Short has a personal grievance and he has lost remuneration as a result, then pursuant to s 128 of the Act I must award Mr Short at least the lesser of his actual loss or three months ordinary time remuneration.

[28] Mr Short has calculated three months ordinary time remuneration as being \$7,955.56 and he says this is less than his actual loss. Mr Short has not asked me to exercise my discretion to award the greater amount in this case, being his actual loss.³ So, I award Mr Short \$7,955.56 as reimbursement of lost remuneration pursuant to s 123(1)(b) of the Act.

³ Section 128 of the Employment relations Act 2000.

Contribution

[29] As I have awarded remedies to Mr Short, I must now consider whether he contributed to the situation that gave rise to his dismissal.⁴ This assessment requires me to determine if Mr Short Rochford behaved in a manner that was culpable or blameworthy, and this behaviour contributed to the unjustified dismissal occurring.⁵

[30] Reflecting on the events that occurred it is clear to me that Mr Short did not contribute to his dismissal and therefore there is no requirement for me to reduce the remedies I have awarded.

Penalty for failure to provide wage and time records

[31] Pursuant to s 130 of the Act Clanrye Holdings must keep wage and time records in relation to Mr Short's work. And, pursuant to s 130(2) of the Act Clanrye Holdings must provide copies of the wage and time records when requested by Mr Short.

[32] I am satisfied that Mr Short asked Clanrye Holdings for wage and time records in respect of hours worked and payments made to him but this information was not provided to him. Whilst Mr Short was unable to provide precise details of when and how often he asked for this information I am satisfied, based on his evidence, that it was a regular request that he made as he wanted to check his hours worked against the pay he received.

[33] Pursuant to s 130(4) of the Act I can impose a penalty against Clanrye Holdings for the failure to provide the wage and time records on request.

[34] Considering sections 133 and 133A of the Act and applying the circumstances of the continued breach by Clanrye Holdings I conclude that it is appropriate for me to impose a penalty against it and I quantify the penalty to be \$1,500.00.

[35] I also consider it appropriate to award part of this penalty to Mr Short and assess that to be \$1,000.00.

⁴ Section 124 of the Employment Relations Act 2000.

⁵ *Xtreme Dining Ltd v Dewar* [2016] NZEmpC 136

Orders

[36] Clanrye Holdings unjustifiably dismissed Mr Short.

[37] In satisfaction of Mr Short's personal grievance Clanrye Holdings is to pay Mr Short, the following amounts:

(a) \$14,000.00 for compensation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000; and

(b) \$7,955.56 (gross) for lost remuneration pursuant to s 123(1)(b) and s 128(2) of the Employment Relations Act 2000.

[38] Clanrye Holdings failed to provide wage and time records to Mr Short when requested and has therefore breached s 130 of the Act. Clanrye Holdings is to pay a penalty of \$1,500.00 for this breach. \$1,000.00 of this penalty is to be paid to Mr Short and \$500.00 is to be paid to the Authority for transfer to a Crown bank account.

Costs

[39] Mr Short is entitled to an award of costs as he has been successful with his claim.

[40] The award is based on the daily tariff, which is a set amount of costs awarded for each day of the investigation meeting, i.e. a calculation of quantum based on the time spent in the investigation meeting applying the current rate. The current daily tariff is \$4,500.00 for the first day of an investigation meeting and \$3,500.00 for every subsequent day of an investigation meeting.

[41] I am prepared to award Mr Short costs for a half day investigation meeting. So, applying the daily tariff for one half day of an investigation meeting, the amount is \$2,250.00.

[42] Mr Short is also entitled to be reimbursed for the filing fee in this matter of \$71.56.

[43] Clanrye Holdings must pay Mr Short \$2,250.00 plus \$71.56 as a contribution to the costs he has incurred in this matter.

Peter van Keulen
Member of the Employment Relations Authority