

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 295
5353368

BETWEEN JEEWAN SINGH
 Applicant

A N D TANDOORI KNIGHTS
 LIMITED
 Respondent

Member of Authority: James Crichton

Representatives: Applicant in person
 No appearance for Respondent

Investigation Meeting: 13 June 2012 in Auckland

Date of Determination: 29 August 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Singh) alleges that he was unjustifiably dismissed from his employment by Tandoori Knights and that he is owed wages by the employer. A statement in reply was filed on behalf of Tandoori Knights and that statement provides further evidence on behalf of the employer.

[2] At the investigation meeting on 13 June 2012, the respondent was not represented. The Authority support staff made earnest endeavours to have Tandoori Knights represented but those efforts were in vein. Notwithstanding the absence of oral evidence, the statement in reply which was filed on behalf of Tandoori Knights provided a clear and unequivocal response to both Mr Singh's allegations and in particular, provided details of the wage and time record and the payments made to Mr Singh during the employment.

[3] Central to the position adopted by Tandoori Knights was first the allegation that Mr Singh had a drinking problem and was regularly the worse for drink and that this drinking problem caused the termination of the employment. Further, Tandoori Knights provided evidence to the Authority through the copy of the wage and time record which shows that Mr Singh was in fact paid for each week that he was in the employment the amount that he himself says he was entitled to.

[4] Dealing first with the allegation that Mr Singh was unjustifiably dismissed, Tandoori Knights say that Mr Singh was regularly the worse for drink while working and that allegation is to some extent confirmed by annotations on the copy of the wage and time record provided to the Authority and also by the evidence of Mr Abbas Froozanfar who the Authority was able to speak to by telephone.

[5] Mr Froozanfar was the manager of the food court in which Tandoori Knights had the shop that Mr Singh worked in. Mr Froozanfar told the Authority that he had observed Mr Singh drunk while at work on a number of occasions. Indeed, it was Mr Froozanfar's action that precipitated Mr Singh's dismissal for cause. Mr Froozanfar told Tandoori Knights that they could not continue to have Mr Singh in their employee in his food court.

[6] Mr Froozanfar told the Authority that he had said to Tandoori Knights they must either discipline Mr Singh and ensure that he was not drunk in the food court again, or alternatively, they must permanently remove him from the premises. Mr Froozanfar was clear with the Authority that he realised that he was asking Tandoori Knights to either ensure that Mr Singh behaved himself or else he would have to work for Tandoori Knights in another location or be dismissed. Mr Froozanfar told the Authority that he had called the police to attend at the food hall on 6 August 2011. Mr Froozanfar said that Mr Singh was drunk and abusive and was effectively terrorising customers at the food hall by his reckless and loud behaviour. Mr Froozanfar told the Authority that when the police arrived at his request on 6 August 2011, Mr Singh had run away.

[7] It was the following day, 7 August 2011, that Tandoori Knights dismissed Mr Singh for serious misconduct having found as a fact that Mr Singh was drunk and disorderly on the previous day. Tandoori Knights had been contacted by Mr Froozanfar to advise that he had had to call the police to deal with Mr Singh and

Mr Froozanfarn told the Authority that the police had advised him (Mr Froozanfarn) that they had also spoken with Tandoori Knights about Mr Singh.

[8] While in principle it is unhelpful and gravely discourteous of an employer to not even be prepared to engage with the Authority's process, in the particular circumstances of this case, the Authority is satisfied that the statement in reply which was filed on behalf of Tandoori Knights is demonstrably accurate because Mr Froozanfarn confirmed the factual elements in his telephone discussion with the Authority.

[9] When the Authority spoke with Mr Singh at the investigation meeting, and put to him the allegations made by Tandoori Knights in the statement in reply, Mr Singh denied having a drinking problem, denied being drunk in the workplace, and denied being abusive of other patrons. His evidence however was unconvincing and the Authority was not persuaded that Mr Singh's recollection of the events could be relied upon.

[10] Given Mr Froozanfarn's very clear evidence supporting the fundamental elements of the factual matrix referred to in the statement in reply, the Authority is satisfied it can rely on those facts and for the avoidance of doubt, indicates now that it prefers the record of events from the statement in reply rather than the oral evidence offered by Mr Singh. The tipping point obviously is the evidence provided by Mr Froozanfarn who was effectively the proximate cause of Mr Singh being dismissed from his employment.

[11] Mr Froozanfarn also told the Authority that Mr Singh had rung him about the time of the investigation meeting and threatened that if he gave evidence to the Authority things would be difficult for him. Notwithstanding that, Mr Froozanfarn was very happy to talk to the Authority and very clear and straightforward in his evidence about Mr Singh's behaviour.

[12] Looking at the wages claim, it is common ground between the parties that Mr Singh was paid \$700 a week in cash. The wage and time record provided by the employer discloses that each and every one of those weekly payments was made to Mr Singh. The wage and time record also notes the regular occasions when Mr Singh was presenting for work drunk and/or when he was "awol".

[13] Mr Singh's claim that there was no written employment agreement is also refuted by Tandoori Knights. They provide a copy of the written employment agreement as an attachment to the statement in reply. It is true that it is unsigned but Tandoori Knights say that that is because Mr Singh refused to sign it and given the Authority's doubts about Mr Singh's recollection of events that seems quite likely.

Determination

[14] The Authority was not persuaded by Mr Singh in his oral evidence that he was either a victim of an unjustified dismissal or had not been paid his waged entitlement. Although Tandoori Knights failed to participate in the investigation meeting, they did cause a clear statement in reply to be filed which enabled the Authority to put the employer's point of view to Mr Singh while questioning him during the Authority's investigation. The evidence of Mr Froozanfar firmly tipped the balance in favour of the record of events set out in the statement in reply.

[15] The Authority is not persuaded then that Mr Singh has been unjustifiably dismissed. To the contrary, the Authority thinks that the dismissal was entirely justified, Mr Singh having been found to be drunk and abusive of patrons of Tandoori Knights and other patrons of the food court on 6 August 2011 which resulted in a determination by Tandoori Knights to dismiss him from his employment for serious misconduct the following day, Tandoori Knights having by that stage heard both from Police and from Mr Froozanfar about Mr Singh's activities the previous day. In the Authority's opinion, Tandoori Knights had sufficient information in their possession to effect a legitimate dismissal especially as Mr Froozanfar had made it clear to them that Mr Singh could no longer work at his food court. In the end, there are some behaviours which are so serious that an employer cannot reasonably be expected to take any other action than implement a dismissal.

[16] The Authority is also not satisfied that Mr Singh has made out his claim to have been short paid his wages. The wage and time record provided to the Authority suggests that his wages were all paid in full and on time. While it is true that there was no signed employment agreement, Tandoori Knights say that is because Mr Singh refused to sign it; that may well be the position and in any event, the Authority is not disposed to take that matter any further.

Costs

[17] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority