

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Debbie Anne Taylor (Applicant)
AND Coastal Glass and Glaziers Limited (Respondent)
REPRESENTATIVES Vivian Moore for the Applicant
Murray Blackwell for the Respondent
MEMBER OF AUTHORITY James Wilson
INVESTIGATION MEETING 24 February 2005
DATE OF DETERMINATION 12 May 2005

DETERMINATION OF THE AUTHORITY

Debbie Taylor's problem

[1] In January 2004 Debbie Taylor applied for a job with Coastal Glass. On 30 January 2004 she went for an interview and, she understood, was offered the position. She says that she subsequently resigned from her current employment and advised Mr Murray Blackwell, the Managing Director of Coastal Glass, that she could start on 8 March 2004. However when she turned up for work on 8 March Mr Blackwell told her that she could not start that day and he subsequently advised her that she did not have a job. Ms Taylor is now seeking to recover her lost income for the period from 8 March 2004 to February 2005, together with compensation for humiliation and distress and costs.

[2] Mr Blackwell has a somewhat different version of what happened. He says that Ms Taylor was never offered a job and that he was extremely surprised when she turned up for work. He agrees that she came for an interview but says he told her at that time that he had "other people to see" and would get back to her.

[3] The determination of this case depends on which version of events I accept. If Ms Taylor was offered, and accepted, a job as she claims, she is entitled to be compensated for her loss and for the hurt and stress she has been caused.

What the parties say

Ms Taylor's version of events

[3] Ms Taylor says that in response to an advertisement for a part-time receptionist/office clerk, she contacted Coastal Glass. Shortly afterwards she arranged, with the foreman at Coastal Glass, Ian Crooks, to attend an interview on 30 January 2004. She says that the interview, in its initial stage was with Mr Crooks and Mr Blackwell. However Mr Blackwell had to leave shortly after the start of the interview and she continued to talk to Mr Crooks. She says that on Mr Blackwell's return he confirmed that she had been successful and discussed the hours of work, the rate of pay and that she was to start in one month. On or about 3 February, she says, she gave notice to her current employer and on 11 February, contacted Mr Blackwell to advise him that she would start work on 8 March. As described above she reported for work on 8 March but was told that she could not commence employment. She says that the reason Mr Blackwell gave, at that time, for not allowing her to commence was that he had just laid off another worker and was fearful of being seen to be taking on new staff. After several attempts to talk to Mr Blackwell she was finally advised by him that there was not enough work for her to be employed. Ms Taylor is supported in her version of events by an affidavit from Mr Crooks.

Mr Blackwell's version of events

[4] Mr Blackwell says that while the advertisement suggested a position of 25 hrs per week, this was in error and that there was probably only 8 to 10 hours work per week. His partner (Tamra Beale), who placed the advertisement, supports this contention. Mr Blackwell agrees that he did not conduct the full interview but says that he did tell Ms Taylor to leave her CV and he would get back to her. He says that she advised him that she was already proposing to leave her current job and was looking for part-time work. He denies having discussed pay rates, start date or hours of work. Mr Blackwell is supported in his recollection of events by Ms Beale and an apprentice.

Discussion

[5] Regrettably, in cases such as this, it is necessary to decide whose version of events is "true". This decision must be based on what the law calls "the balance of probabilities" i.e. which version of events is the most probable based on the weight of evidence. Ms Taylor appears to be a genuine person who believes that she was offered employment with Coastal Glass. On the other hand Mr Blackwell appears equally credible. In circumstances such as this it is necessary to consider all of the evidence and assess its probability. Mr Crooks gave evidence in support of Ms Taylor but, when questioned, appeared uncertain about much of what had transpired. He admitted being in bitter dispute with Mr Blackwell and over all I do not find his evidence credible. The evidence from Mr Blackwell's supporting witnesses is that there was insufficient work and that Mr Blackwell was merely exploring the possibility of employing someone. There is also evidence that he was, at least informally, considering another possible applicant. While Ms Taylor may have thought Mr Blackwell was offering her a job, I think that, under the circumstances described to me, it is unlikely i.e. improbable, that he did so.

Determination

[6] Having carefully weighed all of the evidence, I find, on balance, that Ms Taylor was not offered employment by Coastal Glass. She is not therefore entitled to the remedies she seeks.

Costs

[8] Ms Taylor is in receipt of legal aid and Coastal Glass were not legally represented during the Authority's investigation process. There will be no order for costs.

James Wilson
Member of Employment Relations Authority