

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Dylan Edmonds Thomas (Applicant)
AND Signs One Limited (Respondent)
REPRESENTATIVES John Hancock and Phillip Byrnes, Counsel for Applicant
No appearance by Respondent
MEMBER OF AUTHORITY Leon Robinson
INVESTIGATION MEETING 27 June 2006
DATE OF DETERMINATION 27 June 2006

DETERMINATION OF THE AUTHORITY

The Authority determines that this employment relationship problem shall be resolved by the following orders:-

- A. Signs One Limited is ordered to pay to Dylan Edmonds Thomas the sum of \$5,000.00 as compensation.**
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The problem

[1] The applicant Mr Dylan Edmonds Thomas ("Mr Thomas") says that he was unjustifiably dismissed from his employment as a trainee sign writer with Signs One Limited ("Signs One").

[2] Signs One did not respond to two invitations Mr Thomas extended for mediation.

[3] Mr Thomas made application to the Authority for an investigation of the problem. He lodged his statement of problem in the Authority on 9 May 2006. That statement of problem was served on Signs One on 10 May 2006. Signs One did not comply with the Authority's requirement that it lodge a statement in reply within 14 days of the date of service on it.

[4] The Authority's support staff wrote to Signs One by letter dated 24 May 2006 extending the time for it to lodge its statement in reply to 31 May 2006. Signs One did not respond or comply.

[5] By Minute of 7 June 2006, I directed the matter proceed to an investigation meeting on 27 June 2006 and that Signs One was to be served with that Minute and a notice of investigation meeting.

[6] Mr Thomas has lodged in the Authority an affidavit of William Phillip Richards deposing to service on 17 June 2006 of the Minute and notice of investigation meeting on Signs One.

[7] Signs One did not attend the investigation meeting today. I asked the Authority's support staff to make contact with Signs One. I am advised that a director Mr David McKay advises the support officer he was aware of the meeting today but would not be attending.

[8] I have considered the matter in terms of Clause 12 of Schedule 2 of the Employment Relations Act 2000 ("the Act") which is as follows:-

12. Power to proceed if any party fails to attend-

If, without good cause shown, any party to a matter before the Authority fails to attend or be represented, the Authority may act as fully in the matter before it as if that party had duly attended or been represented.

[9] I did not consider that Signs One had "good cause" for its failure to attend the investigation meeting and accordingly I proceeded to act as fully in the matter as if it had attended.

[10] I have today met with Mr Thomas and his representatives Mr Hancock and Mr Byrnes, and Mr Thomas' father Mr Mark Andrew Thomas. Mr Thomas' evidence is unchallenged.

The facts

[11] Mr Thomas commenced employment with Signs One on or about 13 August 2005 as a trainee sign writer. Then aged 15, he had left school mid-way through his fifth form year. His employment with Signs One was his first full-time employment.

[12] He was paid \$9.50 gross per hour and worked 8.00 am to 4.30 pm Monday to Friday. Mr Thomas was not provided with a written individual employment agreement.

[13] Mr Thomas reported to Signs One director and shareholder Mr David McKay ("Mr McKay"). Mr Thomas says that Mr McKay began to use terrible language towards him on a daily basis. He said Mr McKay would constantly refer to him as "dumb", "stupid", "useless", "dumb arse" and "idiot" on average about five or six times a day.

[14] Mr Thomas says that later, Mr McKay's language became worse. He would refer to Mr Thomas as having stupid parents because he was so stupid and that he was "a worthless piece of shit".

[15] Mr Thomas says that he was intimidated by Mr McKay. He says Mr McKay is of big build and is quick to anger. He says he was too scared to confront Mr McKay about his language and hoped that Mr McKay would eventually stop.

[16] But far from ceasing, Mr Thomas says that Mr McKay began to make derogatory comments about him in front of clients. Mr Thomas recalls four occasions where Mr McKay referred to him to clients as "a worthless piece of shit", "an idiot", "stupid", "dumb" and "a retard". Mr Thomas says he recalls one client confronting Mr McKay about his abusive references to him (Mr Thomas).

[17] Mr Thomas also says that Mr McKay began deliberately bumping into him and elbowing him as he (Mr McKay) walked past.

[18] In about mid November 2005, Mr Thomas says that Mr McKay approached him and announced that Mr Thomas would be put on a trial period. He said he had forgotten to do so when Mr Thomas had started but he was going to start. Mr Thomas did not know what to say. He felt unsure whether Mr McKay could do so but he did not challenge Mr McKay fearing he would be abused.

[19] On Thursday 1 December 2005, Mr Thomas waited while Mr McKay dealt with a client. Mr McKay in conversation with the client referred to Mr Thomas and said "like this guy he's a dumb arse". Mr Thomas said that was the final straw. He had had enough. When Mr McKay came downstairs he asked Mr Thomas "what are you doing, why aren't you fucking working" and then told him to "get out and don't come back".

[20] Mr Thomas says that he was too scared to challenge Mr McKay. He said he wasn't thinking properly and ended up standing in the middle of the street unsure what to do or where to go. He said he was escorted off the road by a concerned on-looker. He then walked home to Medowbank because he had no other way of getting home. The journey took him six hours.

[21] Mr Thomas did not go to work the next day. He visited his doctor on Monday 5 December 2005. The doctor deemed him unfit for work because of stress.

[22] Mr Thomas took legal advice and did not return to work at Signs One.

Determination

[23] I accept Mr Thomas' unchallenged evidence. When Mr McKay told him to "get out and don't come back" that was a sending away constituting a dismissal. That dismissal was unjustifiable. It was unfair, unreasonable, improper and unwarranted. It was not the actions of a fair and reasonable employer. It was unjustifiable in terms of the test prescribed at section 103A of the Act.

[24] I find that Mr Thomas was summarily dismissed on 1 December 2005 and that dismissal was unjustifiable. Mr Thomas has a personal grievance and he is entitled to remedies in settlement of that grievance.

[25] Having made that finding and in considering both the nature and the extent of the remedies to be provided, I am bound by section 124 of the Act to consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly. I find no contributory fault on Mr Thomas' part which requires a reduction in remedies.

[26] The Authority is not empowered to require Signs One Limited to provide Mr Thomas with a written apology.

[27] Mr Thomas says he felt depressed and embarrassed about how he was treated by Signs One before and after his dismissal. He says he was embarrassed because his parents had not wanted him to leave school. He was embarrassed because his first job had not worked out. Fortunately Mr Thomas secured further employment where he has been employed since the beginning of this year.

[28] Mr Thomas' father Mr Mark Thomas gives evidence to the Authority. He says he noticed his son's self esteem and attitude decline. He says Mr Thomas became more difficult to live with, was continually angry and became reclusive withdrawing from family life. He says Mr Thomas became aloof, quiet and could not look him in the eye. Mr Thomas agrees that he began to behave this way and also that his relationship with his parents became strained. Mr Thomas told me the way he was treated by Mr McKay left him feeling like he did not matter and that he was "not really like a person". He admits that he became depressed and says he felt used and "played" by Mr McKay.

[29] There are aggravating features in this case. The behaviour Mr Thomas describes by Mr McKay is completely inexcusable. It is deplorable conduct that is not to be tolerated in our workplaces. No parent would wish their young adult to be introduced to the workforce in this way. Mr Thomas was young, impressionable and unsophisticated. He was inexperienced in life and in the workplace and was not equipped with the necessary personal or life skills to cope with behaviour persons well beyond his age would find difficult to endure. The power imbalance in this relationship was further compounded by the abuse I am satisfied Mr Thomas suffered. He is entitled to be compensated for that abuse.

[30] I am satisfied that Mr Thomas has suffered hurt and humiliation, loss of dignity and injury to his feelings. He has suffered that injury as a result of the unjustifiable dismissal. Having regard to his evidence, his length of service and the nature of the personal grievance, I award Mr Thomas the compensation he claims. **I order Signs One Limited to pay to Dylan Edmonds Thomas the sum of \$5,000.00 as compensation.**

Costs

[31] If Mr Thomas has incurred costs for his representation, his representatives may submit a memorandum to me detailing any such costs and making a claim for a contribution to them within 14 days of the date of this Determination. That memorandum is to be served on Signs One Limited and if it wishes to be heard, it must lodge a reply within 14 days after the date of service on it but in any case, no later than 28 days after the date of this Determination.

Leon Robinson
Member of Employment Relations Authority