

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Vincent Williams (Applicant)  
**AND** Bayer New Zealand Limited (Respondent)  
**REPRESENTATIVES** David Schnauer, Counsel for Applicant  
Peter Craighead, Counsel for Respondent  
**MEMBER OF AUTHORITY** Marija Urlich  
**INVESTIGATION MEETING** 13 June 2005  
**SUBMISSIONS RECEIVED** 23, 24, 30 June and 4 July 2005  
**DATE OF DETERMINATION** 8 August 2005

DETERMINATION OF THE AUTHORITY

**Employment relationship problem**

[1] Vincent Williams commenced employment with Bayer New Zealand Limited (“Bayer”) on 23 August 2004. He was employed as a customer services co-ordinator. His employment was for a fixed term of year to cover a period of parental leave and his terms of employment were set out in a written employment agreement. Mr Williams was dismissed from his employment with Bayer on 1 September 2005.

[2] Mr Williams says his dismissal was unjustified and seeks reimbursement of lost wages and compensation for hurt and humiliation consequent to his dismissal.

[3] Bayer says Mr Williams misrepresented the extent of his computer/data entry skill level to it, that he was aware of the short time available in which to get him up to speed and that in the circumstances his dismissal was justified.

[4] To determine this employment relationship problem I must decide whether Mr Williams misrepresented his computer/data entry skill level to Bayer and whether his dismissal was justified in all the circumstances.

**Issues**

**(i) Did Mr Williams misrepresent his skills to Bayer?**

[5] Bayer operates a customer service centre from its offices located in Glenfield, Auckland. The two customer service co-ordinators employed in this centre deal with wholesalers of Bayer’s crop protection products. Data inputing is a significant part of this job.

[6] In June 2004 Bayer began the process of filling a one year fixed term customer service co-ordinator position to cover for a period of parental leave, due to begin on 30 September 2004. Bayer's human resources manager, Saluma Ioane, referred the matter to personnel consultants, Hays. She provided Hays with a position description and draft advertisement and instructed them to place the advertisement, screen applicants, carry out reference checks and draw up a shortlist of possible candidates for Bayer to interview.

[7] Mr Williams replied to the advertisement with a covering letter indicating his interest in the position and a CV which set out his work experience and skills. He was interviewed by a Hays consultant and completed tests to assess his data entry skills and Excel spreadsheet database skills. His application was put forward by Hays as the only candidate worth interviewing. Ms Saluma asked for more candidates and was told there were no other suitable applicants. She agreed to interview Mr Williams.

[8] Mr Williams attended three interviews with Bayer. The first was with Ms Saluma. The second with Ms Saluma and Hugh Lemmon, supply chain manager, to whom Mr Williams would report directly. The third interview was with Ms Saluma, Mr Lemmon and Jacqui Lundie, who is the other customer services co-ordinator and was to train the appointee. Mr Williams was subsequently offered and accepted the position and the parties agreed he would commence his employment with Bayer on 23 August 2004.

[9] Bayer says Mr Williams misrepresented his level of skill. The claim rests on the following evidence:

- (i) Ms Saluma, Mr Lemmon and Ms Lundie said when they expressed concern during the third interview as to Mr Williams low level data entry speed he told them he was rusty when he took the test and his data entry skills were better than that;
- (ii) During the third interview the interview panel raised with Mr Williams a concern that he had not held an office based sales position before and he assured them he understood the role and was ready for a change and had enough computer skills to learn on the job;
- (iii) After seven days of employment Ms Lundie assessed Mr Williams' progress on learning the database as poor and his telephone and general office skills as "nil".

[10] Mr Williams' made representations during the interview process that he thought he could learn the job within the specified time frame. These representations were reasonable given Mr Williams had been told by the Hays consultant his skills were adequate for the position. Bayer relied on the skill tests and reference checks conducted by Hays. If it had concerns about the accuracy of Hays' assessment of Mr Williams then it should have taken steps to test those assessments with Hays. It did not.

[11] None of Bayer's witnesses could specify to what degree Mr Williams had misrepresented his skill level. The complaint seems to be that Mr Williams did not make the expected progress on learning the Bayer database within the first seven days of his employment. The level of expected progress was based on Ms Lundie's experience of training other employees in this role and the proximity to her co-worker's parental leave. While the seven day progress scale may be reasonable it was never discussed with Mr Williams and he was never advised his employment could be in jeopardy if he did not meet Ms Lundie's expectations.

[12] If Mr Williams' skill level to use the telephone and process orders was "nil", as claimed by

Ms Lundie, then such a deficit would have been ascertained within the first day or two of employment and drawn to Mr Williams' attention. This did not occur and Ms Lundie continued to train Mr Williams.

[13] I find Mr Williams did not misrepresent his skill level to Bayer to induce it to enter an employment agreement.

**(ii) Was Mr Williams' dismissal unjustified?**

[14] There was no dispute that Mr Williams was not advised his performance was not adequate until his dismissal at about mid-day on 1 September 2004. Mr Williams was not told what those performance concerns were or told he had misrepresented his skills. He was not given an opportunity to respond to Bayer's concerns, given an opportunity to prepare for the meeting or take advice. The manner in which Mr Williams' dismissal was conducted fell below the accepted standards and was unjustified.

**Remedies**

[15] Mr Williams seeks lost wages for the period from his dismissal until he started a new position on 1 November 2004. I am satisfied on the evidence received Mr Williams took reasonable steps to find new employment following his dismissal from Bayer.

[16] Mr Williams was paid until 2 September. Bayer is ordered to pay Mr Williams wages for the period 3 September until 31 October 2004 pursuant to section 123(1)(b).

[17] Mr Williams seeks compensation for hurt and humiliation caused as a consequence of his dismissal. He gave evidence he resigned secure employment to take up the position with Bayer and that his dismissal came as a shock because no one had told him prior to advising him of his dismissal that there were issues with his performance. Mr Williams said he was humiliated that Mr Lemmon accompanied his exit from the building and that this was observed by the reception staff. He gave evidence that he had to borrow money to pay his mortgage and bills while unemployed. Mr Williams is entitled to an award for hurt and humiliation caused as a consequence of his dismissal.

[18] Bayer is ordered to pay Mr Williams the sum of \$5000.00 pursuant to section 123(1)(c)(i).

**Costs**

[19] In closing submissions counsel for the respondent has asked that costs be reserved. Costs are reserved. The parties are invited to try to resolve this issue themselves. If they are unable to do so application should be made to the Authority to determine costs.

Marija Urlich  
Member of Employment Relations Authority