

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2023] NZERA 696
3230179

BETWEEN

JONATHAN WRIGHT
Applicant

AND

LA HOOD ELECTRICAL LIMITED
Respondent

Member of Authority: Philip Cheyne

Representatives: Ronald Jones, advocate for the Applicant
No appearance for the Respondent

Investigation Meeting: 21 November 2023 at Wanaka

Date of Determination: 22 November 2023

DETERMINATION OF THE AUTHORITY

This determination is a written record of an oral indication delivered on 21 November 2023.

Employment relationship problem

[1] Jonathan Wright was employed by La Hood Electrical Limited fulltime as an apprentice electrician from April 2021. Mr Wright was dismissed in June 2022.

[2] Mr Wright commenced this action in May 2023. His claim is that he has a personal grievance arising from the dismissal. Mr Wright seeks compensation of \$20,000.00.

[3] Paul La Hood is the principal of La Hood Electrical Limited (La Hood Electrical). The company in its reply says that Mr Wright was not dismissed but was made redundant.

[4] I am satisfied from the file that La Hood Electrical was served with a notice of investigation meeting, but there was no appearance for the company. At my direction an Authority Officer attempted to contact Mr La Hood by phone and by email but was not able to reach him. The meeting proceeded.

[5] The Authority received an email from Mr La Hood at 9.04pm on 21 November 2023. The investigation meeting had finished that morning and I had given an oral indication at the time. In his email, Mr La Hood claims to have left a message “yesterday”. The Authority has had no recent contact from Mr La Hood and he left no message.

[6] The issues are:

- (a) Did La Hood Electrical dismiss Mr Wright?
- (b) If yes, did La Hood Electrical justifiably dismiss Mr Wright?
- (c) If not, what remedies should be ordered?

Did La Hood Electrical dismiss Mr Wright?

[7] Dismissal is a sending away or termination of employment at the initiative of the employer.

[8] Although La Hood Electrical in its statement of problem says that Mr Wright was not dismissed or fired but was made redundant, Mr Wright’s employment was terminated at the initiative of the employer.

[9] The employment agreement defines “Redundancy” as the situation where the employee’s employment is terminated by the employer and the termination may be attributable to the fact that the position is superfluous to the needs of the company. The agreement provides for three week’s notice of termination of employment by either party.

[10] Mr La Hood arranged to meet Mr Wright first thing on 23 June 2022. The meeting ended and Mr La Hood took Mr Wright home, rather than requiring him to work. There is a dispute about what happened given the correspondence that followed between Mr Wright's representative and Mr La Hood, but it is common ground that there was no mention by Mr La Hood about the following matter.

[11] Later that evening, Mr La Hood sent a letter dated 23 June 2022 to Mr Wright via email. The letter stated that Mr Wright's position had been "declared redundant and as such we hereby give You 3 weeks' notice". It confirmed that Mr Wright would be paid his holiday pay final pay and for time worked to 14 July 2022. It ended with Mr La Hood's thanks for Mr Wright's contribution to the company.

[12] Nothing in the exchange of correspondence that followed suggests that the possibility of redundancy had been part of the exchange between Mr Wright and Mr La Hood earlier that day. I accept Mr Wright's evidence that that it had not been raised before he received the email.

[13] Mr Wright had use of a company vehicle. Mr Wright's evidence is that he was dismissed during the earlier exchange on 23 June 2022 when Mr La Hood challenged him about his use of the company vehicle. Mr Wright told me (and it appears to be common ground) that Mr La Hood took the vehicle off him and drove him home at the end of the exchange. Mr Wright says he understood from the exchange, him being driven home in the vehicle and Mr La Hood unloading Mr Wright's tools from it that he had been dismissed. In the absence of evidence for La Hood Electrical, I accept Mr Wright's evidence.

[14] Even if Mr Wright had misunderstood what happened earlier on 23 June 2022, La Hood Electrical dismissed Mr Wright when he received the company's redundancy letter later that night.

[15] On either account, I need to consider whether the dismissal was justifiable.

Justification for the dismissal

[16] The test for justification is set out in s 103A of the Employment Relations Act 2000. I need to determine whether La Hood Electrical's actions and how it acted were what a fair and reasonable employer could have done in the circumstances at the time. In applying that test, I must consider whether La Hood Electrical sufficiently investigated matters with regard to its resources, whether it raised matters with Mr Wright, whether it gave him a reasonable opportunity to respond and whether it genuinely considered that response before dismissing him.

[17] La Hood Electrical's actions and how it acted were not what a fair and reasonable employer could have done at the time.

[18] Mr Wright was entitled to know what La Hood Electrical's concerns were about his use of the vehicle and an opportunity to answer that, knowing that he was at risk of being dismissed. However, La Hood Electrical did not tell Mr Wright that he was at risk of dismissal, did not give him a reasonable opportunity to respond and did not genuinely consider his response when Mr La Hood challenged him about his use of the company vehicle at the meeting on 23 June 2022.

[19] It follows that the dismissal was unjustified.

[20] The alternative account based on La Hood Electrical's correspondence, statement in reply and unsworn statement is that Mr Wright was not dismissed early on 23 June 2022 but was given notice of dismissal for redundancy later that day. A dismissal on that basis would be unjustified in any event. La Hood Electrical had not consulted with Mr Wright about the possibility of his redundancy before it sent him the letter. La Hood Electrical could not establish justification for a dismissal effected without regard to its good faith consultation obligations.

[21] Mr Wright has a personal grievance.

[22] Mr Jones agreed that the disadvantage grievances outlined in the statement of problem are part of the dismissal and need not be separately considered.

Remedies for the personal grievance

[23] There is no claim for reimbursement of lost remuneration.

[24] There is a claim for \$20,000.00 compensation.

[25] The evidence is limited but I accept that Mr Wright was harmed by the unjustified dismissal. Compensation of \$15,000.00 would remedy that harm.

[26] There is no evidence from La Hood Electrical to establish that Mr Wright contributed in a blameworthy manner to the circumstances giving rise to the personal grievance, based on the dismissal early on 23 June 2022. If the dismissal and personal grievance had resulted from the redundancy letter, it would be difficult to see how Mr Wright could have contributed to such a grievance. There is no basis to reduce remedies based on Mr Wright's actions.

Summary and Orders

[27] Mr Wright was unjustifiably dismissed.

[28] To settle the personal grievance, La Hood Electrical Limited is to pay Jonathan Wright compensation of \$15,000.00 (without deduction) within 28 days from the date of this determination.

[29] Mr Wright is entitled to costs as the successful party. Mr Jones sought the application of the Authority's standard approach and also a contribution to his travel costs. Mr Wright was entitled to a representative of his choice, but that does not extend to reimbursement of costs for the representative's travel.

[30] The investigation meeting took less time, but I will fix costs at half the daily rate for the first day to recognise preparation and attendance. Mr Wright is also entitled to recover from La Hood Electrical Limited the fee he paid to lodge this application.

[31] La Hood Electrical Limited is to pay Jonathan Wright costs of \$2,321.55 within 28 days of this determination.

Philip Cheyne
Member of the Employment Relations Authority