

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 328/07
File Number: 5053738

BETWEEN John Corcoran

AND Graeme Rogerson & Denise
 Howell t/a Dormello Stud

Member of Authority: Janet Scott

Representatives: Peter Brosnahan, Counsel for Applicant
 Joanne Watson, Counsel for Respondent

Investigation Meeting: 6 August 2007 at Hamilton

Submissions received: 22 August & 21 September 2007 for applicant
 7 & 24 September 2007 for respondent

Determination: 19 October 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant submits he was unjustifiably dismissed from his employment with the respondent. To remedy his alleged grievance he seeks reimbursement of lost remuneration and benefits, compensation pursuant to s.123(c) (i) and costs in the matter.

[2] The respondent denies dismissing the applicant and submits he resigned from his employment.

Background

[3] The applicant is an experienced horse breeder who has run his own stud for many years. In late 2005 he was considering his future. Then, by chance, he met with Murray Gregory (Racing Manager, for the respondent) at the Karaka sales. The two men discussed Mr Corcoran's future intentions. As a result of this meeting, Mr Corcoran and his son Mark travelled to the Waikato to meet with Graeme

Rogerson and his business partner, Denise Howell. They were setting up a new stud operation (Dormello Stud) near Hamilton and were casting around to employ people with relevant experience in breeding and stud management.

[4] The outcome of the meeting between Mr Rogerson, Ms Howell, Mr Murray and Mr Corcoran and his son Mark was that Mark was offered and accepted a position as Stud Manager at Dormello Stud and John Corcoran (the applicant) was offered a position as a Stud Consultant/Assistant Manager.

[5] I find that some important terms of the employment were negotiated and agreed at that meeting. For example, it was agreed that Mr Corcoran would be employed at a salary of \$50,000 per annum. However, the detailed negotiations between the parties were left to be discussed and agreed between Mr Corcoran and a Mr Don McIlraith who acts for Graeme Rogerson in employment matters.

[6] At some stage it was agreed that Mr Corcoran would commence his employment with effect from 1 July 2006. However, it was also agreed that Mr Corcoran would arrive at Dormello Stud some time before that time and move into accommodation that was to be provided for him. The evidence suggests that Mr Corcoran arrived at Dormello Stud on 8 May 2006.

[7] Having moved into the provided accommodation, Mr Corcoran proceeded to familiarise himself with the operation and over the next few weeks (prior to the planned commencement of his employment) he expressed his views to Ms Howell about the development and management of the operation which was in the early stages of its development. The breeding mares, in fact, were not intended to come onto the property until 1 August.

[8] In the meantime, negotiations for concluding an IEA proceeded. On or about 25 May, Mr Corcoran received a draft IEA from Mr McIlraith. He considered that draft and recorded some changes that he wanted. Those changes were discussed in a telephone conversation between himself and Mr McIlraith on 30 June 2006. It is not in contention that Mr Corcoran advised that he wanted to change the title of the position (stipulated as Assistant Stud Manager) to Stud Consultant. He wanted to have specific hours of work removed from the hours of work clause and he would agree to work whatever hours he deemed necessary to fulfil the role. Mr Corcoran also wished to change the position description to refer to *management and*

supervisory matters and made it known he did not wish to undertake manual work. Mr Corcoran sought to reduce the probationary period from three months to one month and he wanted to amend a clause restricting his involvement in other business activities.

[9] Mr McIlraith gave evidence for the respondent. It was his evidence that he got the impression from his discussion with Mr Corcoran that he had very little understanding of the difference between being an employee and running his own stud. Mr McIlraith said in his oral evidence that Mr Corcoran had left him with an impression that Mark would be running the stud and he was there to wander around giving a few hints – pointing at things with his stick and giving instructions.

[10] In discussions with Mr Corcoran about what he was actually going to do, Mr Corcoran had made it clear that he was not going to be (for example) painting fences. Mr McIlraith's understanding, on the other hand, was that Mr Corcoran would need to be involved in handling and examining horses and participating in the servicing of those horses.

[11] It was Mr McIlraith's evidence that he was so concerned that he expressed his concerns to Denise Howell and suggested that the respondent should not proceed with the negotiations with Mr Corcoran. However, Ms Howell had come back to him at a later stage and instructed that he was to attempt to conclude an agreement with Mr Corcoran and that the probationary clause that had been proposed to cover a three month period should be extended to cover a 12 month period.

[12] It was Mr McIlraith's evidence that following these instructions, he drafted an agreement that incorporated some of the changes sought by Mr Corcoran and the instructions of Ms Howell and that draft was sent to Mr Corcoran. It was Mr McIlraith's evidence that it was much later (in fact after the employment ended) that he became aware that Mr Corcoran had signed this agreement and handed it to Lisa who works in the office at Dormello.

[13] The other significant player in this story is Mr Rogerson. He too is experienced in the horse breeding industry and owns and operates a number of stables in New

Zealand and Australia. He was described as an extremely busy individual and it is clear that he discourages direct contact with employees preferring, in the Dormello case, to rely on his racing manager, Murray Gregory, and his business partner, Denise Howell, to keep him up-to-date on issues relating to the running of the Stud. It is also his practice to convey instructions relating to the management and operation of the stud through Murray Gregory and Denise Howell. It is, however, not in dispute that neither Mr Gregory nor Ms Howell is experienced in horse breeding.

[14] Difficulties arose between Mr Corcoran and Ms Howell (in particular) in the early days of this relationship. Mr Corcoran assumed he had been employed to provide his expertise in the setting up and management of a successful stud operation. However, he found that his advice/instructions were questioned and/or countermanded by Ms Howell, who had little, if any, experience in the management of a stud operation. Mr Corcoran found Ms Howell extremely difficult to deal with and argumentative.

[15] For her part, Ms Howell found Mr Corcoran's manner towards her to be rude and disrespectful. She said it was clear he did not like her and had no respect for her.

[16] It was Ms Howell's evidence that because of Mr Corcoran's aggressive attitude towards her, she requested Mr Gregory to take over communications with him. Mr Gregory did this, albeit this was not advised to Mr Corcoran.

[17] One particular matter that became an issue between these parties related to the grazing of Mr Corcoran's mares on the Dormello property. It was Mr Corcoran's evidence that as part of his terms of employment he was entitled to graze four mares at the Dormello property and he brought those mares to the property at the time that he took up residence there.

[18] The respondent disputes that the free grazing of mares was a term of Mr Corcoran's employment. However, it does acknowledge that agreement was reached that he could bring his mares to the property.

[19] At some stage, Mr Rogerson decided that all the horses on the Dormello property with the exception of Duelled (Dormello's stallion) and a couple of mates had to be removed from the property to allow it to be spelled prior to the commencement of the breeding season in August 2006.

[20] Mr Corcoran's mares were removed from the Dormello Stud property along with all other horses at that time. However, he became concerned as to the quality of the alternate grazing provided for those horses and without consulting with Ms Howell or obtaining permission, he brought his mares back to the Dormello Stud a week or two later. When it was discovered that the horses had been returned to the Dormello Stud, Mr Corcoran was instructed once more to remove his horses and he complied with this instruction.

[21] A number of other issues arose between Mr Corcoran and Ms Howell (and others during this period where Mr Corcoran was familiarising himself with the operation and prior to the commencement of his employment proper. These were described by Mr McIlraith in a letter to Mr Brosnahan (Mr Corcoran's counsel) dated 14 August:

- He changed the height of the crush without conferring with anybody;
- He did not believe in drenching mares;
- He wanted to have mares served in the paddock;
- He asked the blacksmith to remove shoes from the stud's stallion, Duelled;
- The policy concerning EHV inoculations of mares;
- Practices concerning the feeding of weanlings.

[22] Mr Gregory's evidence confirmed that of Mr McIlraith. It was his evidence that in his discussions with Mr Corcoran, Mr Corcoran was clear that he did not want to be tied down in his role with Dormello. He saw his potential role as that of a consultant. He was not keen to have an employment agreement and Mr Gregory believed that Mr Corcoran saw his role as a gentleman farmer who could provide his knowledge and experience but not do any of the physical work. He also advised Mr Gregory – and this is consistent with Mr McIlraith's evidence as to conversations he had with Mr Corcoran – that if the job did not work out he would just talk it out with the employer and if matters could not be resolved he would just leave.

[23] It was also Mr Gregory's evidence that he expected some issues to arise in the employment given that Mr Corcoran had always been his own boss and was coming from his own stud to be employed in a new stud which was part of a much larger

operation. It was Mr Gregory's view, however, that with patience these issues could be resolved. He was also mindful of the fact that Mr Corcoran had said to him a number of times that if he had a problem with the job or it did not work out he would leave and that would be that.

[24] It was for this reason that Mr Gregory said that he suggested that the probationary period in the employment agreement be a lengthy one and it was for that reason that it was amended to cover a 12 month period.

[25] Mr Gregory's evidence was that there were some disagreements about the way Dormello did things in comparison with the way that Mr Corcoran wanted to do things. However, Mr Rogerson and Ms Howell were the owners of the operation and at the end of the day, after an exchange of opinion, Mr Rogerson made the decision and gave the instructions and numerous matters were resolved in that way with the exception of the fact that Mr Corcoran had brought his mares back to the Dormello Stud contrary to instructions given by Mr Rogerson.

[26] Mr Gregory saw most of these matters which occurred before the date that Mr Corcoran officially took up his role as teething problems that were resolved through discussion and in accordance with the directions given by Mr Rogerson and Ms Howell.

[27] The events that led to Mr Corcoran's departure from Dormello Stud occurred on 13 July 2006.

[28] The evidence suggests that it is Mr Rogerson's practice to meet with key personnel when he is on site at any of his businesses and that early on 13 July, Mr Gregory telephoned Mr Corcoran to say that Mr Rogerson had arrived from Sydney the previous evening and wished to meet him at 9.30am. Mr Corcoran was not advised what the meeting was about.

[29] Prior to attending the meeting, Mr Corcoran had a discussion with his son Mark who by this time had taken up his appointment with Dormello Stud as Stud Manager. It transpired that Mr Gregory had arranged for Mark Corcoran to meet with Mr Rogerson at 10.30am the same day. The two men thought it was strange that they had been invited to separate meetings to discuss what they assumed would be stud management issues. Mark Corcoran rang Mr Gregory to ensure that the meeting

arrangements were correct. He was advised by Mr Gregory that Mr Rogerson did want to meet each man separately.

[30] Mr John Corcoran then assumed he was going to “*get a barrelling for bringing his horses back to Dormello Stud*”.

[31] Mr Corcoran attended the meeting at 9.30 am as directed. He submits that he was dismissed at that meeting and following that meeting he made a record of the conversation that took place between himself and Mr Rogerson. That record was set out in his evidence:

Rogerson said:

“Mate I’ve had no end of hassles with you since you’ve been here. It looks like we’re definitely not compatible and I don’t want you working for me.”

I then responded:

“I have no problems with you Graeme you know that. The only problems I have are with Denise.”

Graeme’s response was:

“Denise has been with me for over 30 years. I’m not about to fall out with her over you. We’re not compatible and that’s the end of it.”

My response was:

“I admit I probably didn’t do myself any favours shifting those mares but I didn’t realise it was going to be such a big deal.”

Graeme’s response was:

“Its not only that. You’ve been stirring trouble since you’ve been here. You know Denise is a sick woman. We don’t need all this shit. We’re not compatible and I don’t want you working for me. Its okay for Mark to stay but you have to go. They tell me you haven’t been doing anything anyway.”

I then responded:

“Denise said Mark and I weren’t starting until 1 July and so that’s why I haven’t been doing too much. Every time I try to do something constructive I get knocked back by her. I’ve been concerned that the weanlings have been getting too much hard feed.

Graeme’s response was:

“I don’t want you telling me how to feed the bloody mares. I’ll feed them how I like.”

My response was:

“Yes and you’ll never breed a decent horse as long as your arse points to the ground. You are two years ahead of yourself setting up a stud. You should have set the property up first before getting a stallion. It’s a Mickey Mouse outfit. One hundred acres and you want to serve 160 mares. It’s a joke.”

Graeme’s response was:

“Okay but its pretty obvious we aren’t compatible. I don’t want you working for me. I have 160 very loyal staff and I’m not used to this crap.”

My response was:

“I suppose its been a bit difficult having been my own boss all my life. However, if this is what you want I guess I’ll have to go. It might be a week or a bit more to get out of the house but I will do it as soon as I can.”

Graeme’s response was:

“Okay, sorry it didn’t work out but we’re just not compatible.”

[32] The respondent’s witnesses have a very different view regarding the conversation which took place between Mr Rogerson and Mr Corcoran on 13 July. That evidence was that after Mr Corcoran arrived at the meeting, Mr Rogerson started the meeting saying he wanted to talk through a few things he was not happy about (the respondent’s witnesses agreed that those were the issues set out in Mr McIlraith’s letter to Mr Corcoran’s counsel dated 14 August – see page 5 above).

[33] In response to this, Mr Corcoran immediately said he wanted to tell Mr Rogerson a few things as well. He said something along the lines of *the way you are going you’re never going to make it. Do you want me to tell you where you’re going wrong?* His tone was aggressive and he was fired up. To this, Mr Rogerson said he did not want to hear Mr Corcoran’s opinion on how he was going wrong and at that point Mr Corcoran started making accusations about Ms Howell, raising a number of complaints or allegations about her. He also raised issues that he said were issues that his son Mark and Mark’s wife had about Ms Howell. Mr Corcoran made personal attacks on Ms Howell and referred to her *bullshitting* about her illness. It

was the evidence of the respondent's witnesses that Mr Corcoran then said *I can't work with her and I won't work with her and neither will Mark.*

[34] It was the respondent's witnesses' evidence that Mr Rogerson defended Ms Howell by saying that she had worked for him for 35 years. He advised that she was a 50/50 owner in the stud and that she was not going anywhere. It was the evidence of the respondent's witnesses that Mr Rogerson did not say that there was incompatibility.

[35] Mr Gregory's evidence was that while Mr Corcoran did not say he was resigning at the meeting, he clearly said he would not work for Ms Howell and nor would Mark. He was angry and he had insulted Mr Rogerson by saying he was never going to make it and had said insulting and personal things about Ms Howell.

[36] Following this discussion, it was Mr Corcoran who asked if Mr Rogerson was going to honour a previous agreement between himself and Mr Corcoran that Mr Rogerson would buy a truck from Mr Corcoran. Mr Rogerson said that he would buy the truck.

[37] It is the respondent's position that there was no statement or implication that Mr Corcoran was dismissed. Rather, the respondent took from Mr Corcoran's statement that he could not and would not work with Ms Howell that he was leaving his employment because he was not happy with the way things were run. It was Mr Gregory's evidence that he was not surprised at this because from the start Mr Corcoran had made it clear that if he was unhappy or the job did not work out he would leave and it appeared to Mr Gregory that after Mr Corcoran had had a couple of confrontations with Ms Howell, he was struggling to understand that she was one of the owners and his employer. He did not believe Mr Corcoran liked taking instructions from a woman, and a younger one at that and he did not believe that Mr Corcoran ever understood how the total Rogerson operation ran and that it ran differently to the way he would run his stud. Neither did Mr Gregory believe that Mr Corcoran had come to terms with what it would be like to be an employee instead of his own boss or what it meant to be an employee of such a large operation.

[38] It was Mr Gregory's evidence that he was then instructed to prepare two cheques for Mr Corcoran. One was a cheque for a week's wages (the respondent's position is that Mr Corcoran did not commence work until 7 July), and the other was a

cheque for \$40,000 to pay for the truck. There had been an agreement reached between the parties that Mr Corcoran could remain in the accommodation until such time as he could arrange his departure and he was given permission to use the trailer or the truck to move his belongings.

[39] Following the meeting on 13 July, Mr Corcoran went back to his home and spoke to his son Mark and daughter-in-law Jane. He advised them that he had been dismissed. Jane rang Mr Brosnahan (Mr Corcoran's counsel) who advised him to record immediately the discussion that had taken place.

[40] Subsequently, Mark Corcoran attended the meeting that had been arranged for him at 10.30am. There is disputed evidence relating to the nature of the discussions that took place at that meeting.

[41] Mr Mark Corcoran says he attended the meeting with Mr Rogerson where he was told that his father's employment was at an end because he was not compatible and that it was assumed that his employment would continue and that apart from this reference to the departure of Mr John Corcoran, his discussion with Mr Rogerson was limited to operational matters.

[42] The evidence for witnesses for the respondent is quite different. They were, they said, extremely concerned at Mr John Corcoran's statement that he could not and would not work with Ms Howell and neither would his son Mark. As a result they were anxious to meet with Mark Corcoran that morning to determine what his position was and it is their evidence that when Mark Corcoran arrived at the meeting, Mr Rogerson said to him that his father had resigned and that he had said that Mark Corcoran could not work with Ms Howell. It was the evidence of witnesses for the respondent that Mark Corcoran responded by saying he makes his own decisions and that he would be staying and once he had confirmed he was staying, they just got down to business and discussed stud matters.

[43] This was an enormous relief to witnesses for the respondent because while they could cope with the departure of the Assistant Stud Manager, if they were to lose Mark Corcoran two weeks before the commencement of the season, then that would have led to enormous difficulties for the stud.

[44] Following the events of 13 July, Mr Corcoran mulled over the issues and decided to phone Mr Rogerson to see if they could resolve their differences. He rang

Mr Rogerson on Sunday, 16 July. However, Mr Rogerson was not willing to reconsider the situation and it was Mr Corcoran's evidence that he reiterated that the relationship had broken down on the grounds of incompatibility. It was Mr Rogerson's evidence that he told Mr Corcoran that, given what he had said at the meeting, he could not consider re-employing him. I find that Mr Corcoran then raised an issue of "*unfair dismissal*".

[45] The parties attended mediation in an attempt to resolve matters between them. However the problem was not resolved in mediation and hence it falls to be determined by the Authority following an investigation meeting.

Issues for Determination

- Did Mr Corcoran resign from his employment or was he dismissed?
- If Mr Corcoran was dismissed what remedies should be awarded to him and what if any contribution on his part should be factored into remedies awarded?

Discussion & Findings

[46] In arriving at a determination in this matter I have had regard to the evidence of the parties and other witnesses, to the submissions of the parties and to relevant case law.

[47] The submissions of both parties reflect on the discussions that took place between Mr Rogerson and Mr Corcoran on 13 July with a view to influencing me as to their respective views – that this a dismissal or a resignation. Mr Corcoran's counsel submits that the applicant's contemporaneous record of the discussions between the parties should be favoured. I note, however, that the respondent too has submitted some contemporaneous notes – those made by Mr McIlraith on Sunday 16 January following his meeting with Mr Rogerson, Ms Howell and Mr Gregory.

[48] In arriving at findings on what was said and when at that critical meeting I find that both parties recollection is somewhat selective – Mr Corcoran's more so. I have pieced together from all the evidence the the most probable scenario.

Resignation or Dismissal?

[49] I find that Mr Corcoran and his son Mark were confused and suspicious as to why Mr Rogerson wanted separate meetings with them on 13 July. Mr Corcoran formed a view that he was going to get a barrelling for moving his mares back to the stud farm. He had been annoyed with the alternative grazing arrangements and I find he went to that meeting prepared to defend his actions and to take issue with Denise Howell's management of the operation and her in general.

[50] For his part I find that Mr Rogerson had been appraised of some difficulties that had arisen in the early days of Mr Corcoran's presence at the stud and he wanted to speak to him about these problems¹ and the fact he had unilaterally moved his horses back to Dormello in contravention of Mr Rogerson's instructions. I find it was Mr Rogerson's intention to ensure, in those discussions, that Mr Corcoran understood he was an employee and that he was required to take instructions from Mr Gregory, Ms Howell and Mr Rogerson himself.

[51] I find there was no intention that this be a disciplinary meeting – just a man to man discussion to ensure Mr Corcoran understood his role and reporting relationships.

[52] I find that Mr Rogerson opened the meeting by saying he wanted to discuss a few concerns he had. I find he got no further than that before Mr Corcoran responded that he too had issues he wanted to address and he began to criticise the operation and Ms Howell.

[53] The tone of the conversation between the two men quickly became heated and in short order all of the following were said:

- Mr Corcoran criticised Ms Howell in trenchant terms and said he couldn't and wouldn't work with her and neither would his son.
- Mr Rogerson defended Ms Howell vigorously and said she wasn't going anywhere and that clearly Mr Corcoran was not compatible.
- Mr Corcoran seemed to take this as a statement of dismissal and descended to some serious criticism of Mr Rogerson and his operation.

¹ See page 5.

[54] When the heated discussions ran out of puff both parties had separately arrived at the view that the relationship was over – albeit they had different perspectives as to the nature of the ending with Mr Corcoran believing he had been dismissed and Mr Rogerson and Mr Murray of the view that because Mr Corcoran had said he couldn't and wouldn't work for Ms Howell that he had effectively resigned his employment. There followed a civil discussion between the parties to conclude their relationship. Mr Corcoran was advised the respondent would honour the previous agreement to buy his truck and he was subsequently paid for this and given a week's wages. The respondent also agreed that Mr Corcoran could remain in the accommodation for a reasonable period and he was permitted to use the truck to move his belongings.

[55] I am satisfied there were no precise words of resignation or dismissal expressed by the parties at the meeting and each party departed with their different perspectives as to how the relationship had terminated.

[56] However, by 16 July Mr Corcoran had reflected on the exchanges on 13 July and phoned Mr Rogerson with a view to seeing if they could resolve their differences. Mr Rogerson rebuffed this approach. This step taken by Mr Corcoran is determinative of the matter before me.

[57] I find on the evidence that Mr Rogerson was advised at that during the telephone discussion on the 16th that Mr Corcoran considered his termination to be a dismissal. That should have immediately sparked in Mr Rogerson's mind the fact that there was a misunderstanding between them as to the precise nature of the breakdown in the relationship. This leads me to a finding that this was a classic case where a "cooling off period" should have been allowed to be followed by a sober and rational discussion between the parties in relation to the events of 13 July, the issues of concern and the future of the relationship. For the benefit of the parties and to illustrate my thinking I am including a passage from the determination of my colleague Robin Arthur in Dahl & Knight Train Haulage Ltd unreported AA 278/07:

“An unequivocal resignation cannot be withdrawn without the consent of the employer: Harris & Russell Ltd v Slingsby [1973] 3 All ER 31, 32; applied in NZ Labourers Union v Hodder & Tolley Ltd [1989] 1 NZILR 430,439. However, in circumstances where a resignation is given during a heated discussion, an employer should act with caution and allow a “cooling off” period before taking reasonable steps to ensure a resignation is genuine: see

cases cited in Little Earth Ltd (t/a Kiwi Hilton Backpackers) v Luxmore (unreported, EC Auckland, AC149/98, 8 December 1999, Travers J). In Boobyer v Good Health Wanganui (unreported, EC Wellington, W17/94, 24 February 1994, Goddard CJ) the Court states that an employer cannot safely insist on its interpretation of words of resignation that are “an emotional reaction or amount to an outburst of frustration” if it is obvious that on sober inquiry the words were not meant to be taken literally and that this would have been obvious if the employer made inquiry after the heat of the moment had passed taking with it any influence of anger or other passion that may impair the employee’s reasoning. As the Court in Boobyer² noted:

Examples of a sudden flare up being treated as a resignation are scattered through the [law] books. Some feature either extreme actions by the employee including emphatic language and expressive conduct extending to actually walking out or using words of resignation, only to return to recant later. Each case turns on its own facts but it is at least clear that “[a]n apparent resignation can also amount, notwithstanding the words used, to a dismissal”.

[58] In this case Mr Rogerson became aware that Mr Corcoran thought he had been dismissed. A fair and reasonable employer – and that is the test that must be applied to Mr Rogerson’s actions³ – would not, being on notice that there existed a different interpretation of the outcome of the discussions of 13 July, have relied on the view that Mr Corcoran had resigned his employment that day and refused to engage in discussions on the breakdown in the relationship. A fair and reasonable employer would have invited Mr Corcoran to hold discussions probably at a meeting set up for the purpose where the events of the 13th could have been discussed calmly in the absence of the heated emotions that had coloured the discussions/outcome of their previous exchange. Only then could Mr Rogerson have decided if there had been a genuine resignation by Mr Corcoran which could be safely relied upon.

[59] I would go so far as to say there had been no genuine resignation. What was needed here was a frank discussion between the two men as to the employer’s expectations of Mr Corcoran as an employee and in relation to the reporting relationships.

² Boobyer v Good Health Wanganui Ltd unreported W 17/94

³ S.103A

[60] Mr Rogerson did not act as a fair and reasonable employer would have acted in all the circumstances at the time. I find therefore that Mr Corcoran was unjustifiably dismissed from his employment and he has a personal grievance against his former employer.

Determination

[61] Mr Corcoran was unjustifiably dismissed from his employment and he has a personal grievance *against his former employer*.

Remedies

Contribution

[62] In considering the remedies to be provided to the applicant I am required under s.124 of the Act to consider the extent to which the applicant contributed to the situation that gave rise to his personal grievance.

[63] I find that Mr Corcoran throughout his association with and employment by Dormello Stud acted in an arrogant, abrasive and dismissive manner towards Ms Howell. He was still demonstrating a dismissive attitude towards her at the Investigation Meeting and I find the proposition that he could have continued working at Dormello Stud without ameliorating his attitude and conduct (because he could communicate through Mr Murray alone) to be an unacceptable proposition. It implies it was acceptable conduct on his part to have maintained an abrasive and dismissive approach to one of his employers.

[64] Mr Corcoran also made disparaging and derogatory statements about his employer at the 13 July meeting and together I find his attitude and communications contributed to the situation that gave rise to his personal grievance.

[65] I set that contribution at 50 per cent.

Lost Remuneration & Benefits

[66] Mr Corcoran seeks lost remuneration and loss of benefits including his pre-employment transportation costs, accommodation and grazing for four horses. He also seeks to recover the costs associated with his move (including the floating of his horses) back to Wanganui.

[67] In addressing these claims I find firstly that it was not a term of Mr Corcoran's employment that his pre-employment expenses would be reimbursed by the respondent. No awards are made in respect of these claims.

[68] Secondly I have some difficulty with Mr Corcoran's claims for lost remuneration and benefits following his dismissal. This is because the evidence shows that Mr Corcoran took no steps to find alternative paid employment. The evidence supports a finding he took himself out of the job market when he returned to Wanganui and went to help his ex-wife at her stud operation. He said he received free grazing and a roof over his head in return for helping out and that he did this from early August 2006 until March 2007.

[69] As a result I am limiting Mr Corcoran's loss of remuneration to a period of three weeks (reduced by 50%).

I therefore direct the respondent to pay to the applicant the sum of \$1,442.31 gross to reimburse him for remuneration lost as a result of his grievance.

[70] I make no award for loss of accommodation. Mr Corcoran went from the position of receiving accommodation as part of his package with Dormello to receiving free accommodation in return for helping out his ex-wife.

[71] Neither do I make an award for the grazing or transportation of his horses because the transport and grazing for his horses was not a term of Mr Corcoran's employment with Dormello - a fact made clear to him by Mr McIraith in contract negotiations and a position accepted by him in signing his contract.⁴ In any event I

⁴ Due to the fringe benefit implications.

have found on Mr Corcoran's own evidence he received free grazing in return for helping his ex-wife.

Compensation pursuant to s.123 (1) (c) (i)

[72] I accept the circumstances of Mr Corcoran's termination caused him humiliation. I award him \$5,000 under this head again reduced by 50%.

I therefore direct the respondent to pay to the applicant the sum of \$2,500 net for hurt humiliation and injury to feelings suffered by him as a result of his grievance.

Costs

[73] Costs are reserved. The parties are directed to attempt to resolve the question of costs between them. If they cannot do so they are to file and serve submissions on the subject and the matter will be determined.

Final note: I have not addressed or determined some of the issues raised relating to Mr Mark Corcoran's communications with the respondent as in the main they were not relevant to the my determination. For the sake of certainty, however, I reiterate my finding that Mr Corcoran did say at the 13 July meeting that he would not work for Ms Howell and that neither would Mark. I find, too, that the respondent clarified with Mark Corcoran's his intentions at the meeting held with him at 10.30am and he confirmed he would be staying. I make these findings because I accept the question of Mark Corcoran's intentions became an extremely important one for the respondent – so important this matter was raised by the respondent and discussed in the meeting held between the respondent's witnesses and Mr McIlraith on Sunday 16 July and recorded by him in his notes that day.

