

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 297A/07
5050785

BETWEEN JOHN MCTAGGART
 Applicant

AND N & M WITEHIRA LIMITED
 Respondent

Member of Authority: Dzintra King

Representatives: Applicant In Person
 Nick Witehira, Advocate for Respondent

Determination: 19 December 2007

DETERMINATION OF THE AUTHORITY

[1] In determination AA 297/07 I indicated that the applicant could supply detailed medical information to enable me to consider the matter of remedies. The respondent was to have an opportunity to comment on any information supplied by the applicant.

[2] The applicant has provided medical information. The respondent has made no comment on the information supplied.

[3] Mr Witehira sought lost remuneration since August 2006. He said he had been unable to look for other employment because of the effect the dismissal had had on him.

[4] Mr Witehira also sought \$10,000 compensation.

[5] The letter from the Consultant Psychiatrist stated that “amongst a constellation of factors” precipitating Mr McTaggart’s illness was an interlude of significant stress some six months prior to his seeing Mr McTaggart on one occasion on 5 July 2007.

A letter from the Clinical Psychologist who saw Mr McTaggart made no comment on the cause of Mr McTaggart's illness. The GP who saw Mr McTaggart on 1 May 2007 has stated that his symptoms "appear to be in direct correlation with the events leading to his dismissal".

[6] On the evidence before me, while it is clear that Mr McTaggart has been seriously ill, the extent to which the illness was precipitated by work related factors is unclear. I cannot, therefore, award Mr McTaggart loss of wages for the entire period he claims. I am satisfied that his illness was in part occasioned by the dismissal and he was unable to mitigate his losses. The psychiatrist's report refers to the illness being of "disabling severity". However, the period for which lost wages can be awarded should be limited to the statutory three month period. Pursuant to s 128 (2) Employment Relations Act 2000 the respondent is to pay Mr Mc McTaggart three month's ordinary time remuneration.

[7] During his 26 week employment Mr McTaggart earned \$18,215. Three months' remuneration is half that - \$9,107.50. The respondent is to pay this sum to the applicant.

[8] Mr McTaggart is also entitled to compensation. I set that at \$3000.00. The respondent is to pay this sum to the applicant pursuant to s 123 (1) (c) (i) Employment Relations Act 2000.

[9] Mr McTaggart has also sought fees and disbursements. The disbursements have not been identified so I can make no award regarding them. However, Mr McTaggart is entitled to his filing fee of \$70. Neither party was legally represented so there is no issue regarding costs.

[10] Mr McTaggart also raised an issue regarding a penalty. Pursuant to s 135 (5) penalty actions must be commenced within 12 months after the cause of action has arisen. Mr McTaggart is therefore now unable to commence a penalty action.

Dzintra King

Member of the Employment Relations Authority