

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Mach Rider (Applicant)
AND Stratford By Products Limited, also t/a Taranaki
Abattoirs (1992) Limited (Respondent)
REPRESENTATIVES David Patten for Applicant
Frank Watty for Respondent
MEMBER OF AUTHORITY G J Wood
**INVESTIGATION
MEETING** Wanganui, 7 December 2006 and
New Plymouth, 16 January 2007
**DATE OF
DETERMINATION** 23 January 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

1. The applicant, Mr Mach Rider, claims that he was unjustifiably dismissed by the respondent (Stratford By Products) following an accident at work. By contrast, Stratford By Products claims that Mr Rider resigned of his own free will.

Credibility

2. There can be no certainty about disputed events which occurred over a year ago. The role of the Authority is to make its determination of the facts on the balance of probabilities, i.e. what is more likely than not to have occurred. Where there is a dispute it is not simply a matter of taking one person's word over another, but closely examining the documentary evidence and other surrounding circumstances that took place.
3. In this case, I have concluded that I prefer the evidence of other witnesses over that of Mr Rider because of the fundamental dispute over whether he attended the Stratford By Products offices on 25 or 26 October 2005.

4. I do so because Mr Rider's evidence that he never attended the site on those days was contradicted by the manager, Mr Watty, his office manager Ms Gemma Lawrence, and his former receptionist Ms Janette Harper. Despite discrepancies in their evidence over details such as what day of the week this matter occurred, and where the parties were standing, I do not accept on the balance of probabilities that they had mistaken Mr Rider for another worker. They all saw and heard a discussion/argument between Mr Rider and Mr Watty early in the morning on either 25 or 26 October. I find it more unlikely that these three people would be mistaken (particularly as Ms Harper no longer works for Stratford By Products Limited) than Mr Rider. While Mr Rider did not clock in that day, it is quite possible that he attended the work site in order to give his resignation, as Mr Watty claimed. Such an explanation is quite consistent with Mr Rider's medical treatment and his claims with ACC.
5. It therefore follows that, in general, Mr Watty's evidence is more likely to be correct than Mr Rider's, which is not to say that Mr Rider was necessarily giving false evidence to the Authority, but rather that he was mistaken.

The Facts

6. Mach Rider was employed by Stratford By Products Limited, also trading as Taranaki Abattoirs (1992) Limited, in August 2005. In September he was taken on as a full time, rather than casual, by products operator. In early October Mr Rider suffered an injury at work, but as at the date of the investigation meeting he had not been paid for his first week's absence due to injury. Mr Watty undertook to pay Mr Rider that money. That sum is to be paid by Stratford By Products to Mr Rider and leave is granted to Mr Rider to revert to the Authority should the sum not have been paid by the date of this determination.
7. On 21 October Mr Rider suffered another injury while at work. Whatever the cause of this injury, it is clear that it occurred at work before the Labour weekend. He suffered injuries to his pelvis and neck. If anything, the injury worsened over the Labour weekend and the day before Mr Rider was due to come back to work he received treatment from a physiotherapist.

8. I find that, as a result of these injuries and his concerns over the general working conditions, including low pay, poor safety conditions and poor relationships with other workers at the plant, Mr Rider decided to resign. Accordingly, on Wednesday 26 October he went to see Mr Watty at some time before 9am in the morning. He had a long discussion with Mr Watty, which became quite heated. In that conversation Mr Rider announced his intention to leave immediately. Mr Watty tried to calm him down and discuss the issues and to get him to re-think his position, but to no avail.
9. Mr Watty then went in and told both the office staff that Mr Rider had resigned and that Ms Lawrence should make up his final pay forthwith. Ms Lawrence did so, paying Mr Rider for the hours worked the previous week, plus pay for a statutory holiday, and his holiday pay. Ms Harper already knew about Mr Rider leaving because she had overheard him telling Mr Watty that "*he could stick his job*" and that he would not be back.
10. Mr Rider then went to his medical practitioner and was told that he was unable to resume duties at work for seven days from that date. Mr Rider took that certificate in to the office manager, Ms Lawrence, on Friday 28 October. She told him that he did not need to bring it in as he had been finished up.
11. Mr Rider subsequently brought in another medical certificate the next week, which stated that he would be unable to resume any duties for 14 days from 2 November. Mr Rider remained on ACC for a considerable period thereafter, despite Stratford By Products disputing Mr Rider's eligibility for ACC with it. That matter is effectively closed as Stratford By Products chose not to challenge ACC's notification that it had accepted that this was a work injury.
12. Several weeks after Mr Ryder had left Mr Watty rang Mr Ryder to see if he would cover a shift for Stratford By Products, but Mr Ryder's cell phone cut out before any decisions could be made.
13. The parties have been to mediation and have attempted to resolve the matter on their own terms, but unfortunately have been unable to do so.

Determination

14. This is a case where the determination of the Authority follows the findings of credibility above. As a result of the findings of fact, I determine that Mr Rider was not dismissed but in fact resigned. In the face of what was effectively Mr Rider's resignation with immediate effect, Mr Watty did what a fair and reasonable employer would do, in that he sought to find out and discuss with Mr Rider the reasons for his leaving. He then, as a fair and reasonable employer would, tried to get Mr Rider to defer making a decision on the spot, but failed to do so.
15. In these circumstances, I find that what occurred was a resignation, not a dismissal. I therefore dismiss Mr Rider's claim, with the exception of the first week's pay for ACC from 11 October referred to above.

Costs

16. Costs are reserved.

G J Wood
Member of the Employment Relations Authority