

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

AA80/09
5116518

BETWEEN ANTHONY TAYLOR
 Applicant

AND BRUCE AND AMBER SCOTT
 t/a KAIPARA MEAT
 PROCESSORS
 Respondents

Member of Authority: G J Wood

Representatives: Lisa Keys for the Applicant
 Amber Scott for the Respondent

Investigation Meeting: 10 February 2009 at Auckland

Determination: 18 March 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr and Mrs Scott own a retail butchery and home-kill operation which trades as Kaipara Meat Processors. Mr Taylor worked for the Scotts under Mr Scott's control until the latter left in December 2007 to take up a separate position in Papua New Guinea. Mr Taylor then reported to Mrs Scott in his role at butchery manager. Mr Taylor was subsequently summarily dismissed on 4 January 2008, after having been seen having discussions with a competitor of Kaipara Meats. He has raised a personal grievance claiming unjustified dismissal. He claims lost wages, \$12,000 in compensation and costs.

[2] While accepting that they did not comply with all normal procedures necessary to justify the dismissal, the Scotts believe that there were good grounds for

Mr Taylor's dismissal and that his conduct was such as to justify no award of remedies.

Issues

[3] The issues for determination are:

- Whether the Scotts' actions and how they acted were what fair and reasonable employers, objectively measured, would have done in all the circumstances at the time;
- If not, what remedies should be awarded to Mr Taylor.

Justification for Dismissal

[4] It has been difficult for me to determine the limited number of matters requiring an assessment of credibility between Mr and Mrs Scott and Mr Taylor. I am sure, for instance, that people's memories will have been affected by the 12 month delay between the events and the investigation. Both parties could thus legitimately have differing recollections of previous events simply because of their different perceptions. In any event the Authority can only determine matters on the basis of what is more likely than not – i.e. the balance of probabilities. In so deciding in my determination on disputed events I am not stating that any one party is completely right or wrong in their recollection, just what is more probable in all the circumstances, as there can be no certainty in such matters.

[5] Mr Taylor was employed in October 2007, on a three month trial period, as manager of both the home-kill and retail butchery businesses. He reported to Mr Scott. Mrs Scott's role at that time was not hands on in the butchery side of the business.

[6] Mr Scott got the opportunity, at relatively short notice, to take up a career position in Papua New Guinea, for which he had to leave on 10 December 2007. Mrs Scott was to follow him the next month, once family and business arrangements had been finalised. Mr Taylor was accordingly placed in the butchery manager role on a permanent basis, even although Mr and Mrs Scott had some concerns about his staff supervision skills, which they had raised with him in writing. His new role was confirmed by way of a written employment agreement.

[7] With Mr Scott's departure, Mrs Scott was to look after the business until she was to leave in January 2008, at which time Mr Taylor would have been left in sole charge, except for the office staff. The Scotts understood that Mr Taylor was not strong in administrative tasks and accordingly hired an office assistant to assist him.

[8] Unfortunately, things did not go well for Kaipara Meats in the time leading up to Christmas. Mr and Mrs Scott were particularly concerned over a large number of Christmas hams that had not been properly cured as the result of a malfunctioning brine pump. As the manager at the time most of the hams were improperly cured, Mr Taylor was ultimately responsible for the quality of work done, although he was not the person who prepared most of the improperly cured hams, which went rotten. Equally, as the owners of the business, Mr and Mrs Scott were also responsible for product that originated from their business, but Mr Scott was away for most of the time and Mrs Scott knew nothing about butchery. By contrast Mr Taylor had been employed as a butchery manager, although he was not a fully qualified butcher like Mr Scott. I find that the parties had a misunderstanding about Mr Taylor's qualifications as a butcher. Mr Scott assumed that Mr Taylor had passed his apprenticeship, whereas in fact he was a journeyman butcher. Mr Scott never checked Mr Taylor's qualification. On the balance of probabilities I accept that it is more likely than not that the parties misunderstood the issue of butchery qualifications and experience, rather than Mr Taylor deliberately misleading Mr Scott.

[9] Mrs Scott also had serious concerns about the way product was displayed in the shop and the fact that a lot of items were allowed to remain on sale past their expiry date. This led Mrs Scott to have serious concerns about Mr Taylor's ongoing suitability as manager. As a result in particular of the problems in the retail shop, on 21 December Mr Scott told Mr Taylor that he should get out of the back of the shop and that he was no longer to act as the manager, rather work in the factory only. Thus Mr Taylor was effectively demoted from that time.

[10] Due to the problems with the Christmas hams in particular, the business was also facing significant financial pressures. The Scotts decided to deal with the matter by way of a restructuring, requiring all staff members to re-apply for their positions. I accept that a couple of staff were later made redundant. In Mr Taylor's case, however, he was told that his position would be dissolved and that the Scotts would manage the business from overseas, but that he could apply for a new second in

charge position. Mr Scott was informed of this in a meeting on 24 December, which went on for over an hour. On the other hand the Taylor's subsequently in fact employed a new manager after Mr Taylor had been dismissed.

[11] Mr Taylor was still understandably confused about what his employment status was, considering he had been relieved of his management role earlier that week, and been told to simply work out the back in the production area.

[12] The parties returned to work on 31 December 2007. Mr Taylor filed a personal grievance about his treatment and sought mediation. He was told by Mrs Scott that she would continue to have overall responsibility for management of the business and he would continue as a butcher with no management responsibilities. Mrs Scott agreed to mediation. Other than a discussion about whether an exit arrangement for Mr Taylor could be agreed, there was no more communications between the parties as Mr Taylor made it clear that he did not want to speak to Mrs Scott any further.

[13] In the meantime there had been further issues about drinking at the work place (which allegedly involved Mr Taylor amongst others) and his poor quality management skills, relating to his work before 21 December, for which he received a written warning.

[14] Events unfortunately overtook the restructuring and mediation processes. On 4 January 2008 Mrs Scott observed Mr Taylor (in his lunchtime) meeting with a competitor of Kaipara Meats. She believed that in meeting with the competitor Mr Taylor was in breach of his duty under clause 11 of the employment agreement not to pass on any trade professional or other confidential information gained during the course of his employment. Mrs Scott therefore prepared a letter, which was clearly one of dismissal, even though it was headed *Immediate Dismissal – on pay until further inquiries*. It stated that Mr Taylor would be suspended immediately on full pay for a further week. In the letter she also stated:

To have Anthony Taylor still working with us when I can only draw the conclusion that there is something underhanded going on is too great a risk. Your actions have also damaged the reputation and business earnings of (names deleted) as well as our company.

Again Anthony you have left our company in a very vulnerable position. I repeatedly express my deepest disappointment that you

have chosen not to communicate with us in any way despite our repeated requests.

[15] Mr Taylor was handed the clearly ambiguous letter when he came back from lunch. He was, however, clearly told that he was dismissed with immediate effect and to take his gear with him, which he did.

The Employers' Reasons for their Actions

[16] Mr Taylor was quite entitled to meet with a competitor of Kaipara Meats during his own time to try and find alternative employment, particularly given that his job was very much at risk already. Mrs Scott had no evidence whatsoever that Mr Taylor was passing on any confidential information to a competitor. Indeed in the Authority Mr Taylor denied passing such information and said he was simply looking for a job, which I accepted, particularly as Mrs Scott accepted she was going on intuition and had no direct evidence to support her view, either at the time or subsequently.

[17] While I also accept that Mrs Scott was under extreme pressure with genuine concerns over Mr Taylor's performance and the stresses of emigrating and leaving the business in other people's hands, there was no justification for summary dismissal here. It therefore follows that the reasons relied on by Mrs Scott for dismissal were not those that a fair and reasonable employer would have relied on in the circumstances at the time.

How the Employers acted

[18] Similarly, Mrs Scott acted on behalf of Kaipara Meats in a way that no fair and reasonable employer would have done. When there are serious allegations to be made against a worker that worker must be given notice of the specific allegations and their likely consequences, be given a real opportunity to explain and have that explanation considered in an unbiased way. Unfortunately, Mrs Scott's actions met none of these minimum criteria. Instead, Mr Taylor was simply handed the dismissal letter and told he was summarily fired. He had to leave then and there with no opportunity for any explanation.

[19] It therefore follows that how the employers acted was also not the way that a fair and reasonable employer would have acted in all the circumstances at the time. It

also follows therefore that Mr Taylor's dismissal was unjustified on both substantive and procedural grounds.

Remedies

[20] Mr Taylor found no work for several months after his dismissal. He did look for work at a few butcheries (including some supermarkets) and did get some casual work for a few days, although that was not until much later. He also tried to get work labouring on dairy farms by approaching farmers directly. He admitted that he was a *bit devastated* after his dismissal and that it took him a while to get over it and therefore he did not do a lot of job seeking immediately after his dismissal. He also admitted that he had rejected a job that commenced a week earlier than the alternative employment he found because that later job was more convenient.

[21] Mrs Scott gave evidence that there was plenty of work for butchers in the area and therefore she did not accept that Mr Taylor could not have found work.

[22] I accept that Mr Taylor has not mitigated his loss sufficiently to be entitled to three months lost remuneration. I therefore reduce any wages claim to a period of eight weeks, being \$7,230.80 gross, particularly as it was unlikely he would have remained in the Scotts' employment any longer than that anyway, given the ongoing performance concerns.

[23] Mr Taylor also claims \$12,000 compensation for humiliation, loss of dignity and injury to feelings. This claim involves assessing only the impact on Mr Taylor personally of his employers' actions. Here, despite the concerns that Mr and Mrs Scott had about his performance as manager, the fact remains that Mr Taylor was removed from his management role without consultation, was then told his position was to be disestablished and was then summarily dismissed (for a reason that had no substance), after having raised a personal grievance and while awaiting mediation.

[24] Mr Taylor was therefore entitled to feel particularly grieved about his situation and his evidence about being *a bit devastated* is understandable. On the other hand, he has had the support of his partner, has managed to find alternative work, was responsible as a manager for the poor performance of parts of the business and there was little evidence given by him (and none on his behalf) about the impact of the dismissal on him. In assessing remedies account must also be taken of financial situation of the business and the Scotts. They are struggling financially, have

significant debts and are not therefore in a position to pay a substantial amount of money to Mr Taylor, particularly in the short term.

[25] I therefore determine that an award of \$6,000 compensation is appropriate.

[26] I must next consider the extent to which the actions of Mr Taylor contributed towards the situation that gave rise to the personal grievance and if those actions so require, reduce the above remedies.

[27] There is no doubt that Mr Taylor was not successful as manager of Kaipara Meats, but had Mr Scott been available to assist him, it is possible that over time he may have developed further. There is no doubt that he was a hard worker and that he had improved over the course of his employment in many areas, such as interpersonal skills. I have also accepted that he was not deliberately deceitful over his qualifications. Furthermore, he can not be held responsible for how his employers acted by jumping to the conclusion, without evidence, that by meeting a competitor he had divulged confidential information to that person.

[28] While there was therefore a substantial likelihood that his employment would not have continued for more two months after he was in fact dismissed, the blameworthy behaviour on his part addressed above are not actions requiring the remedies to be reduced, because they did not contribute directly towards the situation that gave rise to the personal grievance, namely negative assumptions made about his intentions without evidence, and the improper process applied to dismissal. I therefore make no deductions for contribution.

[29] I therefore order the respondents, Bruce and Amber Scott, on a joint and severable liability basis, to pay to Anthony Taylor \$7,230.80 gross in lost remuneration and \$6,000 in compensation under s.123(1)(c)(i) of the Act.

Costs

[30] Costs are reserved.

G J Wood
Member of the Employment Relations Authority