

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 121/10

File Number: 5289418

BETWEEN Charles Gray
Applicant

AND Mike Blundell and/or Blundell
Coffee Club Limited t/a The
Coffee Club
Respondent

Member of Authority: Denis Asher

Representatives: Mr Gray represented himself
No appearance by or for the respondents

Investigation Meeting Napier, 29 June, 2010

Submissions Received On the day of the investigation

Determination: 5 July 2010

DETERMINATION OF THE AUTHORITY

The Problem

[1] Who was the employer – Mr Blundell or the respondent company (the Company)? Was Mr Gray unjustifiably dismissed by his employer? And did the applicant file his grievance within 90-days?

The Investigation

[2] During a telephone conference on 16 April 2010 the parties agreed to a one-day investigation in Napier on Tuesday 29 June. Timelines for providing witness statements and documents were also agreed. During the conference I explained to Mr Gray that the Authority did not have the statutory power to award the remedies sought of a letter of apology and a reference.

[3] On the morning of the investigation counsel previously acting for Mr Blundell telephoned Authority support staff and advised she could not obtain instruction from her client, that the respondent Company had gone into liquidation, that she understood Mr Blundell 'had lost everything and was in New Plymouth'. No other explanation was received for Mr Blundell's absence and I was satisfied there was no good reason not to proceed with the investigation.

Background

[4] Mr Gray commenced employment as a barista at the Coffee Club, Hastings in the pay week ending 23 August 2009.

[5] His employment came to an end in disputed circumstances on or about 5 November that year.

[6] Mr Gray says he was told by Mr Blundell, over the telephone, "*Don't come in*" (attachment to statement of problem). In light of recent events, Mr Gray asked, "What! At all?" He says Mr Blundell replied, "*That's right. We don't need you, we're ok*" (above).

[7] In a witness statement received by email on 9 June 2010 Mr Blundell says that, amongst other things, Mr Gray telephoned in on the morning of 5 November 2009 and advised the head chef that he would not be in and "*that was it as far as his job was concerned*" (above).

Discussion and Findings

[8] Mr Gray affirmed both his written statement and his oral evidence. He repeated the allegations set out in his statement of problem as to the circumstances of the termination of his employment and how, by letter dated 6 November 2009, he advised Mr Blundell of his grievance (refer copy attached to statement of problem). Mr Gray said he posted another copy of the same document to Mr Blundell, and received confirmation from a Department of Labour employee that she had emailed the same to the respondent.

[9] Mr Gray also advised he had commenced employment without a signed, written employment agreement but later signed an employment agreement: he says he was never provided with a copy of the document and the agreement attached to the statement in reply is not the contract he signed off. As evidenced by his pay slips, Mr Gray says he was a full-time employee (not part-time as claimed by Mr Blundell). The applicant says that at the time of being interviewed for the position, being hired, signing his employment agreement and being fired he was never advised by Mr Blundell that the Company was his employer, not Mr Blundell.

[10] I have no reason to doubt Mr Gray's account. The absence of any statement from the head chef alleged by Mr Blundell to have received advice of the applicant's resignation and his, Mr Blundell's, failure to follow up on the same and his failure to have in place a signed, written employment agreement in advance of Mr Gray's employment causes me to conclude that Mr Blundell's claims are inherently not credible.

[11] I am therefore satisfied that Mr Blundell was the applicant's employer, that he summarily dismissed Mr Gray, and that the latter filed his grievance within the statutory 90-day period.

[12] The termination of Mr Gray's employment was clearly in breach of s. 103A of the Employment Relationship Act 2000 (the Act) as it is long established law that good employers do not act arbitrarily, but consult with staff in respect of performance and/or economic concerns that calls into question their ongoing employment.

Remedies

[13] During today's investigation Mr Gray confirmed he was seeking 13 weeks lost remuneration and \$2,000 compensation for humiliation and hurt. The applicant confirmed he has unsuccessfully sought similar work by approaching 6 or seven cafes in the Hawkes Bay area, attempted to sell vacuum cleaners and was undertaking other entrepreneurial initiatives.

[14] I am satisfied from the applicant's evidence that, in all the circumstances, his claims are fairly made out.

Contributory Fault

[15] There is no evidence of any actions on Mr Gray's part that contributed to the situation that gave rise to his successful personal grievance: s. 124 of the Act applied.

Determination

[16] Mr Blundell is to pay to Mr Gray:

- a. 13 weeks wages or \$8112.00 gross (i.e. a figure derived from the average provided by Mr Gray in his witness statement and submissions received by the Authority on 18 May 2010);
- b. \$2,000.00 (two thousand dollars) compensation for humiliation and hurt; and
- c. \$70 (seventy dollars) filing fee.

[17] While costs are reserved I note here that, subject to his submissions, Mr Gray represented himself and, unless he incurred legal costs, it is therefore unlikely he has grounds to claim a contribution to any fair and reasonable costs.

Denis Asher

Member of the Employment Relations Authority