



[3] Mrs O'Connor was to be paid an annual salary of \$20,000 *including holiday pay*. Her hours of work were not set in her individual employment agreement but it is evident her duties were to be done at times to enable her to attend to the couple's three children rather than by roster.

[4] Her employment began, by agreement, on 1 August 2008.

[5] Mr O'Connor's employment began on 1 June 2008. Both agreements provided for a *review after six months*. Both were to report to the respondents and to Nick Kummer who owned the herd.

[6] Mr O'Connor says that following problems developing over communications with Mr Peevers relating to a range of farm tasks and increasing fatigue arising from extended working hours on a farm in poorer condition than the Peevers expected, Mr O'Connor says he questioned why he had left Christchurch to be under stress in his new employment. Mrs O'Connor spoke to Mrs Peevers about the pressures and the couple's concerns about inadequate training. Mrs O'Connor says that at no time in this discussion did she raise the possibility of their resigning. She says she and her husband were shocked when Mrs Peevers contacted Mrs O'Connor after the two women's discussion and said the Peevers thought the O'Connors were resigning. Mrs Peevers says at no time did Mrs O'Connor raise an issue about the inadequacy of training.

[7] Mr O'Connor says he agreed with his wife's suggestion they meet with the Peevers on the coming Saturday evening to discuss relevant issues and to clarify *why they had decided to replace me*. Mrs O'Connor says Mrs Peevers told her that she would get back to her about the proposed Saturday meeting. She says neither respondent got back to her to confirm the meeting.

[8] Mrs O'Connor says Mrs Peevers told her they had found replacements for her and her husband that the Peevers would provide the applicants with honest references and there would be no recriminations because the O'Connors had *given it their best shot*.

[9] She also says she asked Mr Peevers when both of them were doing the morning milking on the Saturday, when the meeting was to take place. Mr Peevers said he did not know.

[10] In summary, Mrs O'Connor put the situation this way:

*I had tried my best efforts to undertake the work expected on the farm and to do it around my children's care as the Peevers had agreed that I could do. However, Dave and I could not continue to work for employees who were not prepared to train and support us and who had effectively ended our employment anyway because they had been looking for our replacements. We were going to be dismissed from our employment as soon as the new employees were there. We felt we were given no alternative but to leave and decided to resign that day. This was crushing.*

[11] Mr and Mrs Peevers disagree on some of these issues. They say Mrs O'Connor told them at the interview she was determined to go dairy farming and her physical fitness would meet the demands of the job. They say Mr O'Connor's position was identical and he was going dairy farming *no matter what*. It is simply to record the history to say the O'Connors began working for the Peevers as set out above.

[12] The Peevers say in their evidence:

*The reason for the fixed term nature of the agreement related to the milk production agreement between Nick Kummer (the main sharemilker and herd manager) and us.*

[13] Neither individual employment agreement records this as required under s.66 of the Employment Relations Act 2000. They also say, and I accept, they *waived any rental deduction from 4 June to 1 August 2009 as a gesture of good will*.

[14] The Peevers also dispute the hours Mr O'Connor says he worked and further, say they gave him time off during the early dates of his employment to *ease him into the job*. They also say:

*We provided clear and precise instructions to Mr O'Connor regarding duties and answered questions he had. We were also always available to discuss any questions and concerns the applicant had about his duties and we told him to come back to us if he had any issues.*

[15] In summary, the Peevers say they never intended replacing Mr and Mrs O'Connor, but were considering *bringing on another part-time worker, at our greater cost, to assist as the applicant (Mr O'Connor) in particular was incapable of*

*completing the tasks. The applicant resigned before we had an opportunity to progress that.*

[16] They say that on 15 August 2008 Mrs O'Connor approached Mrs Peevers with her concerns about her husband not coping, but there was no mention of any grievances regarding lack of training, support or instructions.

[17] Mrs Peevers says the reason the Saturday evening meeting did not take place was a breech calving birth they needed to attend to urgently. Mr Peevers says he told Mrs O'Connor this and that if the calving did not take too long, they could still have the meeting but if the calving took over long, they could meet after the morning milking on the Sunday. Mr Peevers said Mrs O'Connor said that would be fine.

[18] The respondents' evidence is that Mrs Peevers worked until 9.30pm that night with other cows and Mr Peevers until around 11pm with the breech birth cow.

### **Issues**

[19] To resolve this matter the Authority needs to make findings on the following issues:

- Were the applicants constructively dismissed unjustifiably; and
- Were the applicants disadvantaged by unjustifiable action on the part of the respondents; and
- If so, in either case, to what remedies are the applicants entitled?

### **The test**

[20] The test for justification is set out in s.103A of the Act and requires the Authority or Court to determine, on an objective basis, by considering whether employer's actions and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.

### **The investigation meeting**

[21] At the investigation meeting the Authority heard evidence from both Mr and Mrs O'Connor in person in support of their claims and their evidence in reply to that

of Mr and Mrs Peevers. Mrs Harbour, Mrs O'Connor's mother and Mr O'Connor's mother-in-law, also gave evidence of her involvement and her observations on the effects of the breakdown of the employment situation on her daughter and son in law.

[22] The respondents, both Mr and Mrs Peevers gave evidence and they were supported by the evidence of Mr Kummer.

[23] The Authority records its appreciation of all who assisted in the investigation and to counsel for the parties for their respective submissions, which I have studied in coming to this determination.

### **Analysis and discussion**

[24] In a case such as this where the relationships have ended by the tendering of resignations, the initial burden of proof to establish the resignations did in fact amount to dismissals rests with the applicants. Only after they have established they had no alternatives but to resign does the burden transfer to the respondents.

[25] In this case the allegation rests on the applicants' contention that breaches on the part of the respondents justified their repudiating the employment agreements, and the gravity of those breaches entitled them to walk away.

[26] I want it to be thoroughly clear, both these couples are genuine and honest people. I have no reason to question the integrity of any witness at the Authority's investigation.

[27] The Authority's view is that both parties entered into the employment relationships with the utmost of good intentions and the will for their mutual success and benefit. That none of these was achieved is very regrettable and has impacted on both the applicants and the respondents.

#### **A. Constructive dismissal**

[28] The evidence before the Authority establishes there were significant issues around training and communication between Mr Peevers and Mr O'Connor. Those concerns were brought to Mrs Peevers' attention by Mrs O'Connor and the need for a meeting to address concerns which, it has to be said, were mutual. That meeting did not occur, and as a result of what I find were serious misconceptions by the Peevers that the O'Connors intended to resign, when what was sought was a meeting to

discuss the issues of mutual concern, the message transmitted to Mrs O'Connor was the Peevers were searching for replacements.

[29] At that point, no intention to resign had been put to the Peevers. The evidence of Mr Kummer establishes he had concerns about the O'Connors seeing out the year and told the Peevers so, but at that point, the O'Connor's simply wanted a meeting with the Peevers to sort out the problems which, if achieved, would mean the O'Connors wish to stay could be achieved. Mr Kummer was never the O'Connors' employer. He owned the herd and the Authority accepts he, given his contract with the Peevers, wanted to alert them to what he perceived as a risk to their linked interests in the event the O'Connors decided to resign.

[30] I accept the O'Connors had no intention to resign but were determined to battle on and master their induction into the dairy industry. I accept the Peevers' evidence that their initial reaction was to secure part-time assistance which might take some load off Mr O'Connor and to cover their needs under the contract with Mr Kummer in the event issues between them and the O'Connors could not be resolved.

[31] The requirement that Mr O'Connor vacate the accommodation came only after the O'Connors' resignations were received. It was unwise, as Mr O'Connor was working out the contractual notice period. It also resulted in the O'Connors being unable to secure a large container sufficiently quickly to transfer their furniture from the farm to Christchurch. As a result, some had to be given to the Salvation Army – in effect written off as a loss.

[32] In spite of the effects on the O'Connors, which have been significant, I am of the considered view the applicants jumped too soon before the Peevers were able to clarify their purpose in hiring a part-time assistance farm labourer. The Peevers, having been advised by Mr Kummer after he had spoken to Mr O'Connor, they need *to watch out as they (the Peevers) are going to be left in the lurch*, needed to meet the O'Connors without delay to clarify the applicants' intentions and to advise they were not seeking replacements but rather assistance for the O'Connors.

[33] It is also clear from the evidence Mr O'Connor was, despite his best endeavours, struggling with the physical workload once calving began. That was compounded by his concern he was not getting adequate training in the role from Mr Peevers.

[34] Returning to the claim of constructive dismissal based on a serious breach by the employers, the law requires the breach to be established as so serious that no reasonable employee would accept it and which entitled the employee to treat the agreement as repudiated by the actions of the employer.

[35] The situation here did not reach that threshold.

[36] I then turned my mind under s.122 of the Act to consider whether the applicants had been unjustifiably disadvantaged by what they say was the Peevers' failure to convene the meeting to discuss issues.

[37] Having heard the responses of Mr and Mrs Peevers to the questions posed both by the Authority and by Mr Meyer on behalf of the applicants, I am satisfied the reasons for the deferral of that meeting are thoroughly justified, that the Peevers clearly intended to convene it on the Sunday and that that intention was thwarted by Mrs O'Connor handing Mrs Peevers letters of resignation around 10 o'clock that Sunday morning.

[38] In relation to the alleged disadvantage, I find in all the circumstances the Peevers acted as fair and reasonable employers.

### **Determination**

[39] Returning to the issues set out above in this determination, I find:

- The relationships between the parties were ended by written resignations which do not amount, in these circumstances, to constructive dismissals.
- The O'Connors were not subjected to unjustifiable actions which disadvantaged them in their respective employment situations.
- The applicants do not have personal grievances, however, two issues remain to be tidied.

[40] The deductions made for wet weather gear are not lawful as the alleged agreement regarding this equipment was not recorded in writing. The sums deducted are to be returned to the O'Connors.

[41] The respondents are to pay Mr O'Connor the two weeks wages he was unable to earn in the course of the final two weeks of his notice as they required the accommodation occupied by Mr O'Connor for incoming staff.

**Costs**

[42] Costs are reserved.

Paul Montgomery  
Member of the Employment Relations Authority