

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2011] NZERA Auckland 96  
5298546

BETWEEN                      MATTHEW FARLEY  
   Applicant  
  
AND                                INTAGR8 LIMITED  
   Respondent

Member of Authority:        R A Monaghan  
  
Representatives:              D Feist, advocate for applicant  
   A Caisley, counsel for respondent  
  
Investigation meeting:        8 February 2011  
  
Determination:                11 March 2011

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     Matthew Farley says his former employer, Intagr8 Limited (Intagr8) dismissed him unjustifiably after he advised of his plans to begin a course of study at university.

[2]     Intagr8 denies there was a dismissal, and says that Mr Farley resigned with effect from an agreed date in order to pursue his studies.

**Background**

[3]     Mr Farley's employment at Intagr8 began on 14 September 2009. According to the parties' written employment agreement he was employed in a full time permanent position as 'telecommunications consultant'. His duties included cold calling businesses and arranging appointments for company sales people.

[4]     In or about December 2009 Mr Farley applied for entry into commerce and law courses offered by Massey University and Auckland University respectively. He

said that on Wednesday 13 January he informed the sales manager to whom he reported, Steven Morrissey, of his applications.

[5] By letter dated 11 January 2010, and received some days later, Massey University acknowledged its receipt of Mr Farley's application. On Mr Farley's account, on Friday 15 January he informed Mr Morrissey he had been accepted into a university. Mr Morrissey responded by saying that meant he could finish work the following Wednesday, 20 January. Mr Farley protested, saying he needed the money and would not be starting university until late February, but Mr Morrissey replied 'too bad, that is what we are doing'.

[6] Mr Morrissey's account was very different. He said that on Monday 11 January Mr Farley came into his office and advised that he had been accepted into university to study law. There followed a conversation about Mr Farley's father being a lawyer, and a discussion about Mr Farley's need to take time to prepare for university. Mr Morrissey asked Mr Farley when he was leaving, to which Mr Farley replied he needed time to prepare for university and would like to leave 'as soon as possible'. Mr Morrissey observed that the employment agreement required one week's notice, but suggested that Mr Farley's employment end on Wednesday of the following week in order to correspond with the end of a pay period. Accordingly a termination date of 20 January was agreed.

[7] Mr Morrissey believed the discussion was amicable. He said he considered Mr Farley a good worker and that Mr Farley's services could have been used for as long as Mr Farley was available. Indeed the company was coming into a busy period, and it would take some time to find a replacement. Mr Morrissey said further that he offered Mr Farley the opportunity to come back and work for Intagr8 any time.

[8] There was a another conflict in the evidence in that Mr Farley said he approached Mr Morrissey in or about mid-January to request written confirmation of the circumstances of his dismissal, a request he made after advice from his mother that he was entitled to such a document. He said Mr Morrissey's reply was to say he 'did not do letters' but to suggest someone else draft one and he would sign it. No such letter was prepared.

[9] Mr Morrissey said Mr Farley approached him for a reference on 18 January. Mr Morrissey explained to Mr Farley that company policy was not to provide references, although he would provide a personal reference if Mr Farley drafted it. Again, no reference was drafted.

### **Determination**

[10] This matter turns on whether the termination date of 20 January 2010 was reached by agreement or imposed on Mr Farley in circumstances amounting to a dismissal, and a resolution of the conflicting accounts of the associated discussions.

[11] I have reservations about the accuracy of aspects of both parties' evidence. For example, since Mr Farley's father is not a lawyer and at the relevant time Mr Farley had not received any advice about his entry into law school, it is unlikely that any conversation on that point proceeded as Mr Morrissey recounted. Further although Mr Morrissey said the discussion about the termination of Mr Farley's employment also occurred in the discussion of 11 January that is unlikely to have been the case as Mr Farley had not yet received the notice from Massey University.

[12] Regarding Mr Farley's evidence, I consider it unlikely that in response to a request for a letter giving reasons for the termination of employment, Mr Morrissey declined and suggested someone else draft a letter for him to sign. Instead it is likely Mr Morrissey was responding to a request for a reference, advising in response that the company would not provide one but suggesting that someone else draft a personal reference from him.

[13] Despite extensive discussion of the disputed accounts both parties were adamant that their own accounts were correct. In particular both were adamant that some of the obviously inaccurate aspects of their evidence were nevertheless correct. The existence of the inaccuracies has not assisted me in determining the more central question of precisely what was said about the termination of Mr Farley's employment.

[14] In maintaining their own accounts neither party accepted the possibility that there had been a misunderstanding. Frequently disputes of the present kind are based

on a misunderstanding, or the parties' misinterpretation of each others' statements, but the parties' responses mean that possibility could not be taken any further here.

[15] I am left with two conflicting accounts of the critical part of the conversation, and usual aids in deciding whose account should be preferred have not assisted. In that respect I have already commented on the matter of accuracy. Further, I have found nothing in the surrounding circumstances to assist me to prefer one account to another. No other witness provided evidence of assistance in this respect. In particular while I accept the ending of Mr Farley's employment appeared to proceed amicably, this fact does not point in one direction rather than another especially since on his account Mr Farley would have ceased working for Intagr8 within a matter of weeks in any event. Similarly, although Mr Farley expressed concern about the duties he was given during the notice period, the fact that he was no longer contacting customers does not assist in determining whether the termination date had been agreed or imposed.

[16] I rely on the balance of probabilities in determining the matter. Because I have been unable to prefer one account to another, I am also unable to find on the balance of probabilities that a dismissal occurred rather than a resignation effective on a date that was agreed. Accordingly I am unable to take this employment relationship problem any further.

### **Costs**

[17] Costs are reserved.

[18] The parties are invited to reach agreement on the matter. If they are unable to do so any party seeking costs shall have 28 days from the date of this determination in which to file and serve memoranda on the matter. The other party shall have a further 14 days in which to file and serve a reply.

R A Monaghan

Member of the Employment Relations Authority