

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 170
5357424

BETWEEN RAFAT AL SADOUD
 Applicant

AND THE BARBER SHOP
 ASHBURTON LIMITED
 Respondent

Member of Authority: M B Loftus

Representatives: No appearance by or for the Applicant
 Chris Bradley on behalf of the Respondent

Investigation Meeting: 14 August 2012 at Ashburton

Determination: 14 August 2012

DETERMINATION OF THE AUTHORITY

[1] The applicant, Rafat Al Sadoud, claims he was unjustifiably dismissed by the respondent, The Barber Shop Ashburton Limited (The Barber Shop), on 2 August 2011.

[2] Mr Bradley, as a director and owner of The Barber Shop, accepts he dismissed Mr Al Sadoud but contends his actions were justified.

[3] Mr Al Sadoud was neither present, nor represented, at the investigation meeting.

[4] Despite that, I am satisfied Mr Al Sadoud was aware of the investigation meeting. He was originally represented and his advocate participated in a telephone conference during which the meeting was scheduled. His advocate subsequently e-mailed advice he was no longer acting but added he had been told to advise Mr Al Sadoud would still attend the meeting.

[5] Subsequently The Barber Shop notified the Authority it was no longer trading and was unlikely to defend the claim. Mr Al Sadoud was told of that and asked about his intentions. He stated he wished to continue with his application and confirmed he would attend the scheduled investigation meeting.

[6] Notwithstanding that advice, he failed to appear. He did not advise his unavailability and failed to respond to two attempts the Authority made to contact him and ascertain his whereabouts this morning.

[7] Given the circumstances, I dismiss the application. Notwithstanding the fact the dismissal is admitted and the legal test therefore requires the respondent justify its decision, I do so for two reasons.

[8] First there are significant differences about the circumstances in which the dismissal occurred and, in particular, a question as to whether or not Mr Al Sadoud had an opportunity to explain his alleged wrongdoing. His non-attendance meant those differences could not be tested and the respondent's view would most likely be accepted. Second, and even if The Barber Shop failed to justify its decision to dismiss, there was absolutely no evidence to support an award of remedies.

Conclusion

[9] For the reasons outlined above, I dismiss Mr Al Sadoud's claim.

Costs

[10] It is normal that costs follow the event but Mr Bradley was unrepresented at the investigation meeting and resides locally. That means recoverable costs are limited. In order to avoid additional effort or expense, and given that a costs award can be reviewed, I choose to dispose of the issue and order that costs lie where they fall.

M B Loftus
Member of the Employment Relations Authority