

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 149
5447613

BETWEEN

STUART BRENNAN
Applicant

A N D

CORPORATE PROTECTION
AND SECURITY
INTERNATIONAL LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Mark Nutsford, Advocate for Applicant
No appearance for Respondent

Investigation Meeting: 15 April 2014 at Auckland

Date of Determination: 16 April 2014

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Brennan) alleges that he was unjustifiably dismissed by the respondent (Corporate Protection) because the employer failed to allow him to undertake his employment as agreed.

[2] There has been no engagement whatever from Corporate Protection with the Authority's process, so there was no statement in reply, no attendance at the telephone conference prior to the investigation meeting or indeed any other contact between Corporate Protection and the Authority.

[3] I am satisfied that Corporate Protection received the originating documents for this claim together with the subsequent information from the Authority and in particular the Notice of Hearing.

[4] When the appointed time for the commencement of the investigation meeting arrived, Corporate Protection were not in attendance, although Mr Brennan and his representative were. I waited fifteen minutes before commencing my investigation and there was still no attendance from Corporate Protection. Nor was there any notification to my Support Officer that Corporate Protection were delayed or unable to attend for any legitimate reason.

[5] Accordingly, I determined to proceed with my investigation.

[6] Mr Brennan was approached by Corporate Protection in October 2013 with a proposal that he commence employment with that company as General Manager.

[7] Mr Brennan who has qualifications relevant to the security industry was attracted by the idea and in consequence, an individual employment agreement was signed by both parties on 21 November 2013. That employment agreement is before the Authority.

[8] After attending several meetings Mr Brennan was given a cheque drawn on Corporate Protection's account for advance wages in the sum of \$8,000. When Mr Brennan attempted to bank that cheque through the banking system, it was returned by Corporate Protection's bank with the answer "refer to drawer".

[9] Contemporaneously, Mr Brennan had sought to attend at the offices of Corporate Protection in order to commence work but on each occasion he has attempted to do that, he has found the offices empty.

[10] Mr Brennan told me that initially he was able to make contact with representatives of Corporate Protection but eventually there was simply no response.

[11] A personal grievance notification was raised with Corporate Protection on 9 January 2014 and on the evidence before me, it appears to have been properly communicated.

[12] Again there has been no response whatever from Corporate Protection and in consequence, Mr Brennan instructed his advocate to file a statement of problem in the Authority which initiated the present proceedings.

[13] Mr Brennan told me in graphic terms the effect of these events on his personal circumstances. Most devastating of all is the fact that Mr Brennan was in

employment when he was approached by Corporate Protection and he left that good employment in order to take this new opportunity and so lost the certainty of continued employment. Worse than that, since the debacle with Corporate Protection, he has been unable to obtain alternative employment.

[14] As a consequence, he has been without income since the end of his notice period from his original position and has been forced to obtain a mortgage holiday from his bank for a period of three months, expiring in May of this year, and has also had to draw-down his superannuation to the tune of \$22,000 in order to provide some living expenses while he seeks alternative employment.

[15] I was impressed with the efforts that Mr Brennan had made to get alternative employment. He showed me extensive documentation at the investigation meeting about his attempts to find work.

[16] Mr Brennan seeks compensation for the unjustified dismissal in the sum of \$25,000, three months lost wages on his \$100,000 per annum salary, holiday pay on that sum of \$2,000 and a contribution to his costs.

Determination

[17] I am satisfied on the evidence before me that Mr Brennan has suffered an unjustified dismissal. The evidence is plain that the parties entered into a binding commitment whereby Mr Brennan would provide work as General Manager and Corporate Protection would provide salary at the agreed figure of \$100,000 per annum. Mr Brennan was in my judgment either an employee or a person intending to work within the meaning that that phrase has in the Employment Relation Act 2000 (the Act). As a consequence Mr Brennan can bring a personal grievance for an unjustified dismissal given the ample evidence before me that there was a binding agreement, that the parties intended to be bound by that agreement and that but for the default of Corporate Protection, the agreement would have been performed.

[18] Mr Brennan made a number of earnest attempts to commence his employment and I am satisfied Corporate Protection intended to create a binding legal relationship with Mr Brennan and have simply defaulted on their obligations. I reach that conclusion because of the executed employment agreement which was provided by Corporate Protection for Mr Brennan to consider and then sign if thought fit, and the fact that Corporate Protection gave him a cheque on account of wages,

notwithstanding the fact that that cheque was dishonoured by Corporate Protection's bank. It is difficult to see why Corporate Protection would have given Mr Brennan that cheque if it had not intended that there be an employment relationship.

[19] A further reason that I conclude that Corporate Protection intended to be bound is their request, willingly acceded to by Mr Brennan, for Mr Brennan to be involved in a number of meetings around the time that the employment agreement was executed.

[20] Mr Brennan struck me as a straightforward and honourable man and I was impressed with his demeanour at the investigation meeting. Clearly the personal grievance has been devastating for him and I am satisfied that he is entitled to be compensated for the wrong done to him.

[21] I am also satisfied on the evidence I heard that he has done nothing to contribute to the circumstances giving rise to the personal grievance: s.124 of the Act applied.

[22] However, I do not think I can award Mr Brennan the sum of \$25,000 as compensation under s.123(1)(c)(i) of the Act. That sum is larger than I think the circumstances warrant and certainly larger than the superior courts would think appropriate for a personal grievance of this sort. That said, this is an egregious wrong that has been done to Mr Brennan and on that basis, I award him compensation of \$10,000.

[23] Mr Brennan is entitled to be reimbursed for the wages he has lost as a consequence of the failure of his employment relationship; the wage loss is a direct consequence of Corporate Protection's default. I direct that Mr Brennan is to be paid the sum of \$25,000 gross being three months lost wages on his annual salary of \$100,000 gross.

[24] Mr Brennan seeks holiday pay as well on the sum lost. I note that there is some debate within the Authority at present about the correctness of granting holiday pay claims in these circumstances. Notwithstanding that, I am satisfied that it is a proper exercise of my discretion to direct that Mr Brennan is to be paid the sum of \$2,000 as holiday pay which he would otherwise have earned. That payment is made pursuant to s.123(1)(c)(ii) of the Act, because it is the loss of a benefit that would have accrued but for the personal grievance.

[25] Costs are sought and rather than have that subject to further engagement, I fix costs in the present matter at \$1,000 and direct that Corporate Protection is to pay that sum of Mr Brennan as well.

[26] In summary then I have made the following orders:

- (a) Compensation under s.123(1)(c)(i) in the sum of \$10,000;
- (b) Reimbursement of lost wages in the sum of \$25,000 gross;
- (c) Payment of holiday pay in the sum of \$2,000 gross in terms of s.123(1)(c)(ii) of the Act;
- (d) A contribution to Mr Brennan's costs in the sum of \$1,000.

James Crichton
Member of the Employment Relations Authority