

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 441  
5470947

BETWEEN JARED WRIGHT-ST CLAIR  
Applicant

A N D CORCEL CORPORATION  
LIMITED  
Respondent

Member of Authority: James Crichton

Representatives: Applicant in person  
Patrick Van Berlo, Advocate for the Respondent

Investigation Meeting: 17 October 2014 at Hamilton

Date of Determination: 29 October 2014

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant (Mr Wright-St Clair) alleges that he was disadvantaged by unjustifiable actions of his employer the respondent (Corcel), that his final pay was short after his employment ended in resignation, and that he is entitled to reimbursement of his lawyer's costs in obtaining payslips from Corcel concerning his final pay.

[2] All of Mr Wright-St Clair's claims are resisted by Corcel.

[3] Mr Wright-St Clair was employed by Corcel in a role styled Business Development Manager Australasia. It is common ground that he resigned his employment with Corcel on 5 May 2014.

[4] However, Mr Wright-St Clair maintains that events prior to his resignation did form the basis for his personal grievance for unjustified disadvantage and events subsequent to his resignation led to his other complaints relating to his final pay.



[5] It is also common ground that the precipitating factor which led to Mr Wright-St Clair's resignation was the relationship between Corcel and its largest client a company I will call Client A (Client A). Mr Wright-St Clair serviced that client. His evidence at my investigation meeting was that there were problems with the products supplied by Corcel to Client A, that he told the client Client A to talk directly to the principals of Corcel, that there were two meetings as a consequence between Client A and Corcel but that the difficulties that Client A was having with Corcel's product continued.

[6] Conversely, Corcel says that it was oblivious of Client A's concerns until a meeting on 2 May 2014 when the factory manager of Client A attended at Corcel's premises and indicated, apparently in reasonably heated terms, that Client A was no longer going to use Corcel's products.

[7] Corcel says that until this exchange, it knew nothing about these difficulties but naturally asked Client A to identify the nature of the problem and was told that Client A had *"been complaining to (Mr Wright-St Clair) for weeks regarding a softening of the base material and the side cleat blocks ..."* and Client A was *"upset that nobody came to investigate or do something about a very serious issue"*.

[8] There is also another complaint from Client A that it was being supplied with insufficient stock and as a consequence was running out during night shifts.

[9] Corcel was able to work with Client A to address Client A's issues and to try and rebuild trust in the relationship.

[10] But because Mr Wright-St Clair visited Client A twice a week to *"monitor stock levels, service the customer, and develop new business"*, Corcel decided it had to discuss matters with Mr Wright-St Clair. Corcel decided that the only appropriate course was to change the person in Corcel responsible for Client A's business and this decision was communicated to Mr Wright-St Clair on 5 May 2014. There was a subsequent discussion between Mr Wright-St Clair and the General Manager of Corcel, Tamara Van Berlo, to confirm that she was taking over the Client A account.

[11] Mr Wright-St Clair maintained in his evidence to the Authority that he was never told explicitly why the change was made and in consequence, Mr Wright-St Clair immediately tendered his resignation and left the meeting.



[12] Corcel agrees that the discussion was a short one but that Ms Van Berlo was busy and indicated that she would schedule time later in the day to have a longer discussion with Mr Wright-St Clair. Clearly Corcel's evidence is that it was shocked and surprised by Mr Wright-St Clair's response to the change in who looked after its biggest client but Corcel's evidence is the effect of getting the relationship with Client A wrong would have been the redundancy of all of the staff in Corcel's workshop.

[13] After Mr Wright-St Clair left the workplace further issues arose. A significant issue in dispute between the parties is the appropriate disposition of the cellphone used by Mr Wright-St Clair during the employment. The short point is that Corcel wanted its SIM card back and wanted the cellphone wiped of all Corcel contacts and certified as such by, for instance, Vodafone. I am satisfied on the evidence I heard that the phone itself belonged to Mr Wright-St Clair, that he paid for it, and that it is his personal property and therefore that he is entitled to keep the phone but he is obligated to ensure that confidential material and information relating to the employer is no longer accessible by him.

[14] The achievement of that desired outcome was, for whatever reason, not possible without the intervention of a third party; I indicated during the course of the investigation meeting that I would be making an order to effect the arrangements just sketched above.

[15] Next was the state of the company car. When recovered from Mr Wright-St Clair, it was in an untidy state, had a cigarette burn on the rear seat, there was significant repair work required to the car's rear brakes and to the mounting of the driver's seat. The cost of putting the vehicle back into a roadworthy condition was \$1,262.65. This charge was met by Corcel without demur but it did seek to recover from Mr Wright-St Clair's final pay the cost of fixing the cigarette burn which was \$200.

[16] In addition, Corcel sought to recover from Mr Wright-St Clair's final pay the sum of \$441.60 being the damage to a sander in the factory which they alleged Mr Wright-St Clair was responsible for.

[17] Finally, I note that in addition to the deductions from the final pay already referred to, there was a deduction of \$782.51 made in respect to the disconnection cost for the cellphone previously operated by Mr Wright-St Clair. Corcel says this



became necessary because of the failure of Mr Wright-St Clair to return the SIM card and confirm that he no longer had Corcel access and/or material on his phone and because his early departure pre dated the end of the phone contract.

[18] Discussions between the parties in relation to Mr Wright-St Clair's final pay revolved around first these deductions which Mr Wright-St Clair maintained were improper, and second the failure of Corcel to provide Mr Wright-St Clair with his final payslip.

[19] As to the latter, I heard evidence that the payroll officer at Corcel had a serious family emergency in consequence of which he was told by Mr Van Berlo not to give priority to providing Mr Wright-St Clair with the payroll information that the latter sought. The fact of that family emergency was advised to Mr Wright-St Clair by the payroll officer by telephone and an undertaking was given the payslips would be provided as soon as the payroll officer was able to fulfil that request.

[20] An email dated 20 June 2014 from Mr Wright-St Clair to Corcel raised various complaints including an alleged personal grievance, the latter being in the following terms:

*I believe raising a personal grievance of defamation of character has been the only way to get further comfort and clarification here. (sic) As to how the company is handling these new customers and the explanation they are being given as to why I am no longer working within the business and whether or not they will actually get the goods they were seeking within the timeframes it was agreed we were to give them.*

### **Issues**

[21] The Authority needs to address the following questions:

- (a) Was a personal grievance ever raised and if so what was it about;
- (b) Could Corcel make deductions from the final pay; and
- (c) Was there a delay in providing payslips?

### **Was a personal grievance ever raised and if so what was it about?**

[22] The law in relation to the raising of a personal grievance is clear enough. Put simply the law requires the employee to make the employer aware of the personal



grievance that the employee wants the employer to address. In the leading case of *Cready v. Commissioner of Police* [2006] 1 ERNZ 517, Chief Judge Colgan made this observation:

*It is the notion of the employee wanting the employer to address the grievance that means that it should be specified sufficiently to enable the employer to address it. ... For an employer to be able to address a grievance as the legislation contemplates, the employer must know what to address. ... An employer must be given sufficient information to address the grievance, that is to respond to it on its merits with a view to resolving it soon and informally ...*

[23] On the face of it then, Mr Wright-St Clair has identified the matters that are of concern to him although it is difficult to fit his concerns within the framework of the categories of personal grievance that are available.

[24] His principal concern, based on the words that he uses, is “*defamation of character*”. Nowhere does he refer to unjustified dismissal or unjustified disadvantage for that matter and it is apparent on his evidence at my investigation meeting that he regarded his resignation as absolutely voluntary.

[25] While Mr Wright-St Clair uses the words “*defamation of character*” in the raising of his personal grievance, I became satisfied after questioning him at my investigation meeting that he was concerned broadly about damage to his reputation as a consequence of his no longer being employed by Corcel. That said, Mr Wright-St Clair was adamant that the resignation itself was freely given and he did not seem to want to argue that he was constructively dismissed.

[26] Rather, he maintained a concern about the way that Corcel represented his departure and dealt with the business that he (Mr Wright-St Clair) had written.

[27] Those two issues which he identified in his oral evidence to me are, of course, absolutely consistent with the words that he used in raising his personal grievance, the relevant quotation from which I set out at para.[20] above. In that document raising the personal grievance, Mr Wright-St Clair referred to “*how the company is handling these new customers and the explanation they [presumably the customers] are being given as to why I am no longer working within the business and whether or not they [again presumably the customers] will actually get the goods they are seeking within the timeframes it was agreed we were to give them*”.



[28] Mr Wright-St Clair maintained that he felt that he regularly made promises on behalf of Corcel when he was out in the marketplace selling Corcel's products and that those promises were not fulfilled and that because of that, his reputation was damaged. Corcel provided me with its responses to the two issues that Mr Wright-St Clair seems to be concerned about. First, it maintained that all it ever said to customers was that Mr Wright-St Clair had resigned his employment, it denied saying anything uncharitable about him and there is no evidence before the Authority to support any alternative view. I am satisfied on the evidence I heard that Corcel behaved entirely properly in simply recording that Mr Wright-St Clair had left the employment at his request.

[29] Corcel also addressed Mr Wright-St Clair's second allegation that it was failing to adequately service the business that Mr Wright-St Clair had written and therefore, on his analysis, damaged his reputation. First, I am not persuaded there is a direct nexus between business that Mr Wright-St Clair has written, any possible failure by Corcel to deliver and Mr Wright-St Clair's reputation. My sense of it is that no reasonable person in the marketplace would blame the person who sold them goods or services for a failure by the salesman's principals to deliver on time.

[30] Moreover, and perhaps more pertinently in this regard, all the evidence I heard suggested that Corcel had ramped up production and also ramped up sales so it is difficult to see how there could be any prospect of Mr Wright-St Clair's reputation being damaged by perceived failures of Corcel.

[31] Looked at strictly in terms of legal analysis, Mr Wright-St Clair's claim is a claim that he was disadvantaged by unjustified actions of his employer, Corcel, and in order to satisfy me of his claim in that regard, he needs to prove first that he was disadvantaged by Corcel's action and secondly that the actions that it took (or indeed the inactions) were unjustified.

[32] I am not satisfied either that Mr Wright-St Clair was disadvantaged for reasons already advanced nor do I think there is any evidence before the Authority that Corcel took any action that was unjustified. The worst that could be said about Corcel is that it was trading in a competitive marketplace with new technology and that there were some teething problems at a point in the past but that those problems appear to have been resolved. That, in my judgment, does not constitute an unjustified action or series of unjustified actions by the employer.



[33] I am satisfied then that Mr Wright-St Clair did in fact raise a personal grievance in his email of 20 June 2014, that that grievance concerned his anxiety that his reputation was affected adversely both by the way his departure was represented by Corcel and by Corcel's alleged failure to deliver to its customers, but that Mr Wright-St Clair has not sustained a personal grievance for reasons I have already set out.

**Could Corcel make deductions from the final pay?**

[34] As I indicated to the parties at the investigation meeting, I am satisfied on the evidence before me that there is a clear provision in the employment agreement at clause 15 entitled "*Deductions from pay*" which provides amongst other things that the employer may deduct "*from your final pay ... any money owing to Corcel Limited, including (but not limited to) the following debts: ...*".

[35] The examples listed thereunder do not include the deductions made by Corcel but the provision I have just quoted is very clear and refers to a general right to make deductions with the specific provisions following being no more than examples of deductions that are appropriate.

[36] It follows from the foregoing analysis that Corcel was perfectly entitled to make the deductions from Mr Wright-St Clair's final pay provided they can demonstrate that the money deducted was owing to them.

[37] I have already referred to the categories of deduction made by Corcel. First, there is the cigarette burn on the fabric of the car seat. Mr Wright-St Clair acknowledged that was his fault so no issue can be taken about a deduction for this purpose.

[38] Next, was a sum of \$441.60 for breaking four sander belts at the factory which Corcel say Mr Wright-St Clair was responsible for. A statement was put into evidence by the Company Engineer maintaining that Mr Wright-St Clair caused significant damage in the factory, including breaking the four sander belts.

[39] Mr Wright-St Clair says in effect that he may have caused the damage but that, if he did, he was not properly trained. Moreover, he says he was never advised during the employment of the damage he supposedly caused and the first occasion he was told of the issue was when the deduction was made after the employment ceased.



[40] There is no evidence before the Authority to suggest that Mr Wright-St Clair was advised of any difficulties with his work in the factory environment before the employment ended and on that footing, it seems to me unfair to apply a pay deduction for breakages, once the employment has ended. Accordingly, I do not allow this deduction.

[41] The final deduction relates to the cellular phone that Mr Wright-St Clair used during the employment. I am satisfied this is a legitimate deduction. Mr Wright-St Clair insisted on an up graded cellular phone when he commenced the employment. This was arranged at additional cost to Corcel on a monthly plan arrangement which arrangement had to be terminated early when the employment suddenly came to an end. I am satisfied Corcel is entitled to recover those costs from Mr Wright-St Clair.

[42] On this basis then, Corcel are to repay to Mr Wright-St Clair the sum of \$441.60 which was deducted in error from his final pay.

**Was there a delay in providing final payslips?**

[43] It is I am satisfied common ground that there was a delay in the production of final payslips for Mr Wright-St Clair but that delay was occasioned by a genuine medical emergency and Mr Wright-St Clair had the reasons for the delay carefully explained to him by a telephone call from the payroll officer whose family had sustained the genuine medical emergency.

[44] In those circumstances, I do not think it is appropriate for me to draw any adverse inference from the failure to provide timely payslips.

**Determination**

[45] I have not been persuaded that Mr Wright-St Clair has any claim against his former employer, Corcel, except in respect to the erroneous deduction of \$441.60 from his final pay. Corcel is to repay to Mr Wright-St Clair that sum of \$441.60.

[46] I indicated earlier in this determination that I would make orders concerning the cellular phone that Mr Wright-St Clair used during the employment. As I have already noted, I am satisfied that the phone itself belonged to Mr Wright-St Clair. However, Corcel is fearful that the phone may contain confidential information belonging to it. Mr Wright-St Clair must take his cellular phone into an appropriate



Vodafone outlet, have the cellular phone purged of any material belonging to Corcel and then provide a certificate from Vodafone to Corcel that that material had been removed from Mr Wright-St Clair's cellular phone. Mr Wright-St Clair told me during the investigation meeting that he had no idea what had happened to the SIM card originally provided to him by Corcel and accordingly it is impossible for me to direct that he return that SIM card as he is unable to find it.

[47] I also note for the sake of completeness that Corcel, in responding to Mr Wright-St Clair's various claims, disclosed that in cleaning out the office formerly occupied by Mr Wright-St Clair it discovered material belonging to a former employer of Mr Wright-St Clair. It proposed and I agreed that after the hearing, it should return that material to its rightful owner. Mr Wright-St Clair acknowledged that he had no right to have the material in question.

### Costs

[48] As both parties have had a measure of success and neither was represented at hearing, costs are to lie where they fall.

  
James Crichton  
Member of the Employment Relations Authority

