

**Attention is drawn to the order  
prohibiting publication of  
certain information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2015] NZERA Christchurch 60  
5535378

BETWEEN            MICHAEL DANILEWICZ  
                                 Applicant

A N D                SPRINGS ROAD QUARRY  
                                 LIMITED T/A CCL  
                                 CONSTRUCTION  
                                 CONTRACTING  
                                 Respondent

Member of Authority:     David Appleton

Representatives:         Applicant in person  
                                 Hamish Wright, Director for the Respondent

Investigation Meeting:     Determined on the papers by consent

Submissions Received:     Last information received 6 May 2015

Date of Determination:     11 May 2015

---

**DETERMINATION OF THE AUTHORITY**

---

- A.     For the reasons set out in this determination, on a balance of probabilities I find that Mr Danilewicz was dismissed from his employment with the respondent. The respondent is therefore ordered to pay him one week's wages.**
- B.     The respondent is also to reimburse to Mr Danilewicz the Authority's lodgement fee in the sum of \$71.56.**

**Prohibition from publication order**

[1] Written evidence comprising notes made by an officer of Immigration New Zealand was put before the Authority by Mr Danilewicz which contained sensitive personal information about him which is not relevant to the issues under investigation. I therefore prohibit from publication any of that evidence, save to the extent set out in this determination.

**Employment relationship problem**

[2] By way of a determination of the Authority dated 30 March 2015<sup>1</sup> the Authority found that the respondent owed Mr Danilewicz unpaid holiday pay and unpaid wages. However, the Authority was unable to determine at that point whether Mr Danilewicz was also owed one week's pay in lieu of notice as further evidence was required.

[3] The claim for one week's wages is in dispute because Mr Danilewicz asserts that he was dismissed on Tuesday 16 September 2014 and was not paid his contractual one week's notice, whereas the respondent claims that Mr Danilewicz abandoned his employment.

[4] If Mr Danilewicz was dismissed, on his evidence he would be entitled to notice pay as the respondent did not carry out any investigation that enabled it to conclude that Mr Danilewicz had committed serious misconduct entitling it to dismiss him summarily.<sup>2</sup>

[5] If Mr Danilewicz abandoned his employment, he would not be entitled to any notice pay.

**Discussion**

[6] As Mr Danilewicz asserted during the investigation meeting on 30 March 2015 that he had received a telephone call from Mr Wright on 16 September 2014 dismissing him, the Authority applied to Vodafone New Zealand Limited for telephone records in relation to Mr Danilewicz's mobile telephone number and to

---

<sup>1</sup> [2015] NZERA Christchurch 39

<sup>2</sup> Mr Danilewicz did not raise a personal grievance for unjustified dismissal within the 90 day period stipulated by s.114(1) of the Employment Relations Act 2000 and has not applied for leave to do so out of time and so the Authority does not have jurisdiction to consider a personal grievance for unjustified dismissal.

Spark New Zealand Limited for records in relation to the mobile telephone number registered in the name of Mr Wright.

[7] Vodafone advised the Authority on 31 March 2015 that it no longer held any records for the period in question as Mr Danilewicz's telephone number was a pre-pay account and they had purged records at the end of February 2015.

[8] However, Spark produced records for Mr Wright's number on 14 April which the Authority examined. The records showed that there were eleven contacts between Mr Wright's telephone number and Mr Danilewicz's telephone number between 12 and 14 September 2014. Six of these were calls, although only one lasted more than 10 seconds. The remainder were texts. The records did not show any communication between the two numbers on 16 September 2014.

[9] I gave the parties the opportunity to comment on this information. Mr Danilewicz then produced extracts of records from Immigration New Zealand which he wished to rely on. The details contained in the notes are of a personal nature, although there were two references to the Police advising the Immigration Officer that Mr Danilewicz had been *fired from his job*.

[10] Mr Danilewicz advised the Authority that he did not know who from the New Zealand Police had made those statements, although he claims that they were made to Immigration New Zealand in order to *try and force them to deny [him] a visa*. Mr Danilewicz is of the view that the Police wanted to have Mr Danilewicz deported and that they were being influenced by Mr Wright. I infer from Mr Danilewicz's assertions that he is saying that the Police could only have got the information about him being fired from Mr Wright.

[11] Mr Wright provided a comment to the Authority in reply, in which he stated:

*In none of our reports to the Police was it noted that Michael was dismissed, only stood down.*

[12] I cannot come to any firm conclusion about this as the police were not called to give evidence, and no police documents have been put before the Authority.

[13] It is not possible to ascertain from the respective oral evidence of Mr Danilewicz and Mr Wright alone which of them is correct about how

Mr Danilewicz's employment came to an end. They were both, on the face of it, credible in their testimony. I must therefore rely on other evidence.

[14] It is clear that, if Mr Wright did telephone Mr Danilewicz on 16 September 2014, he did not do so using his mobile telephone. That does not, however, on its own, prove that the telephone conversation did not take place.

[15] Whilst the notes made by the Immigration Officer refer to Mr Danilewicz being fired from his job, it appears that the Immigration Officer got that information from the Police rather than from the respondent directly. However, it is not clear where the Police obtained that information. It is certainly the case that the respondent made a complaint to the Police about Mr Danilewicz but it is possible that the Police obtained this information from Mr Danilewicz himself or simply inferred it.

[16] Finally, there is evidence of texts passing between Mr Danilewicz and Mr Wright on Thursday 18 September 2014. These texts were as follows:

*Mr Danilewicz: So ill see you in court about my pay?*

*Mr Wright: feel free to come into the office tomorrow if you'd like to discuss anything.*

*Mr Danilewicz: What's to discuss? You refuse to pay me my wages.  
End of.*

*Mr Danilewicz: Hamish is refusing to pay my last wages. Any advice?*

[17] It is not clear to whom the final text referred to above was directed, but it is noteworthy that it refers to Mr Danilewicz's last wages. This certainly strongly suggests that Mr Danilewicz believed by that date that he had been dismissed.

[18] Furthermore, the respondent has not disclosed any evidence that it communicated with Mr Danilewicz to advise him that it regarded his employment as having come to an end by way of abandonment. If that had been the case, one would have expected the respondent to have written to Mr Danilewicz to have told him that.

[19] Whilst the documentary evidence and telephone records, when considered separately, are not particularly strong in their probative value individually, I am of the view that, when taken together, they more strongly suggest that Mr Danilewicz is correct that he was dismissed. The standard of proof to be applied in the Authority is

a balance of probabilities and, on a balance of probabilities, I am satisfied that Mr Danilewicz was expressly dismissed from his employment by Mr Wright on or around 16 September 2014.

**Conclusion**

[20] Having established this, I am able to be satisfied that Mr Danilewicz should have been paid one week's wages in lieu of notice.

**Order**

[21] I order the respondent to pay to Mr Danilewicz one week's pay calculated at \$22 per hour gross.

**Costs**

[22] Neither party was legally represented at the investigation meeting, or subsequently. However, Mr Danilewicz has incurred a lodgement fee of \$71.56 and I also order the respondent to pay to Mr Danilewicz this sum.

David Appleton  
Member of the Employment Relations Authority