

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 209  
3006211

BETWEEN            GREIG PURCELL  
                                 Applicant

A N D                NEI PRYOR trading as PRYOR  
                                 PASTROL LIMITED  
                                 First Respondent

                                 BRAILSFORD TAM FARMS  
                                 LIMITED  
                                 Second Respondent

Member of Authority:    Anna Fitzgibbon

Representatives:        Hamish Burdon and Margaret Revell, Representatives  
                                 for Applicant  
                                 No appearance by or for Respondents

Investigation Meeting:    18 July 2017 at Hamilton

Date of Determination:    18 July 2017

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Non-appearance of Respondent**

[1]     The first respondent, Mr Nei Pryor trading as Pryor Pastoral Limited, failed to file a statement in reply to the statement of problem and also failed to attend the investigation meeting today. A statement of reply was filed by Ms Clare Brailsford, director of the second respondent, Brailsford Tam Farms Limited (Brailsford), on behalf of Brailsford. The statement in reply denies any involvement in the employment of the applicant, Mr Greig Purcell. There was no attendance at the investigation meeting today by Ms Brailsford or anyone else on behalf of Brailsford.

[2] I am satisfied that both respondents, Mr Pryor and Brailsford were properly served with the statement of problem and subsequent correspondence from the Employment Relations Authority together with a notice of the investigation meeting.

[3] A check of the Companies Office register confirms Brailsford has not been struck-off and that Ms Brailsford remains the director.

### **Investigation Meeting**

[4] Being satisfied that Mr Pryor and Brailsford were properly served with the proceedings and notice of investigation meeting, I proceeded to investigate the issue as to whether or not Mr Purcell is owed wages and holiday pay and whether he was unjustifiably dismissed.

[5] I conducted my investigation in the absence of Mr Pryor or Ms Brailsford or any other representative from Brailsford as they failed to appear.

[6] Mr Purcell filed a witness statement prior to the investigation meeting and he swore on oath that his evidence was true and correct.

[7] As allowed under s.174 of the Employment Relations Act 2000 (the Act), this determination does not set out all of the evidence. Relevant facts and legal issues are set out along with the Authority's conclusions.

### **Employment relationship problem**

[8] Brailsford operates a dairy farming business in Tirau. Brailsford was incorporated as a company on 17 July 2015. Its registered office is in Tirau. Ms Clare Brailsford is the sole director and she and Mr Naden Tamihere are joint shareholders. Apparently Mr Tamihere goes by the name of Mr Nei Pryor, the first respondent in this matter. Mr Purcell was introduced by Mr Pryor, to Ms Brailsford as his partner. It seems to me that Ms Brailsford and Mr Pryor managed the farming business together.

### **Correct employer**

[9] From my investigation it is clear to me that Mr Purcell's employer was Brailsford. I have seen bank statements which demonstrate that Brailsford paid Mr Purcell's wages. The offer of employment was in the name of Brailsford and the

individual employment agreement was between Mr Purcell and Brailsford. Further, as mentioned, Mr Pryor is also known as Mr Tamihere who is a shareholder in Brailsford. For all of these reasons I find that Brailsford is the correct employer.

### **Mr Purcell's job applicaton**

[10] Mr Purcell is an experienced dairy farmer with more than 16 years' experience. In July 2016, Mr Purcell was looking for work and saw an advertisement on Fencepost, which is a website serving the farming community. The advertisement was seeking a herd manager for a dairy farm in the Bay of Plenty. Mr Purcell has a partner and four daughters aged 10, 8, 2 ½ and 15½ months.

[11] The role that was advertised was a permanent full-time position starting on 15 July 2016. The rate of salary was stated to be \$42,000. Hours of work were an average of 40 hours a week, with a working pattern of eight days on and two days off. A three bedroomed house with an office was on offer for the right applicant. Mr Purcell emailed his CV in response to the advertisement. Mr Pryor, the operations manager, telephoned Mr Purcell and invited him to an interview for the position. Mr Purcell went to an interview at the farm in Mamaku on 16 July 2016. Mr Purcell viewed the farm and farmhouse and talked to Mr Pryor about the job.

### **Offer of employment**

[12] Two days after the interview, Mr Purcell was offered employment by letter. The letter was signed by Mr Pryor and stated:

Dear Greig

Re Letter of Offer

After our interview with you on the 16 July 21,[sic] 2016, we would like to offer you the position of Herd Manager on our Cecil Road property located in the Mamaku area.

The remuneration package we have put together for you is as follows:

**Salary Gross \$40,000 paid fortnightly into your nominated bank account**

**Accommodation 4- bedroom brick house with office and internal garage**

The position start date is 25th July 2016.

A full job description and employment agreement will be available to you upon accepting this offer and before the first day of employment.

**Sincerely,**

**Nei Pryor  
Operation Manager**

The letterhead is on Pryor Pastrol Limited's letterhead.

[13] Mr Purcell expected a full employment agreement and job description as stated in the offer of employment, and before his first day of employment. However, this did not occur.

### **Starting work – 24 July 2016**

[14] Mr Purcell and his family moved into the farm accommodation and Mr Purcell began working on the farm on 24 July. Following starting work, Mr Purcell asked Mr Pryor repeatedly for the employment agreement but this was not provided. Mr Purcell worked very hard on the farm which he says was in poor condition. Mr Purcell says he worked between 60 and 65 hours a week during the period of his employment. Work included fixing fences and gates, 16 hour milkings and calvings. Mr Purcell only managed to have two days off for every eight days work on three occasions. Mr Purcell is seeking payment for the excessive hours worked during the period of employment. The offer of employment was that he work 40 hours a week, whereas in fact he was working between 60 and 65 hours.

[15] Mr Purcell says often his pay, which was supposed to be paid fortnightly, was late. This put a great deal of pressure on his whole family. He was also required on occasion to put fuel into farm vehicles at his own cost. All Mr Purcell's dealings were with Mr Pryor. Wages were paid into Mr Purcell's bank account by Brailsford.

### **Discussions concerning written employment agreement**

[16] In early September 2016, Mr Pryor and Mr Purcell began communicating about the written employment agreement. Mr Pryor eventually posted Mr Purcell a written employment agreement on 5 October.

## Letter of offer- 5 October 2016

[17] The letter is as follows:

5/10/2016  
GM Purcell  
362 Cecil Road  
Mamaku  
Dear GM Purcell

### Offer of Employment

I am pleased to offer you the position of Assistant Manager at Brailsford Tam Farms Limited, based at 362 Cecil Road, Mamaku starting on 02/09/2016. Attached is an employment agreement setting out the proposed terms and conditions.

You can discuss this offer and seek advice on the agreement with your family, a union, a lawyer or someone else you trust.

If there is anything you are unclear about, disagree with or wish to discuss about the agreement or about the position please contact Nei Pryor on phone or [brailsfordtamfarms@gmail.com](mailto:brailsfordtamfarms@gmail.com).

If you are happy with the proposed terms and wish to accept this offer please sign the attached copy of this letter and return it to me by 10 October 2016. Please also sign a copy of the agreement and return it to me by the same date. If I have not heard from you by that date this offer will be automatically withdrawn.

I look forward to working with you.

Yours sincerely,

**N. Pryor**  
**Operations Manager**  
**Brailsford Tam Farms Limited**

[18] The letter of offer and the employment agreement attached to it were quite different to what Mr Purcell understood the employment arrangement to be. The employment agreement contained a fixed term which had never been discussed or agreed to. No reason for having a fixed term was included in the employment agreement, and no reason was ever given to Mr Purcell for having a fixed term. Hours of work differed and there were a number of other provisions Mr Purcell was unhappy about and which differed from that contained in the advertisement, the original letter of offer and the letter of offer received by him on 5 October 2016.

[19] Mr Purcell sent a text to Mr Pryor on 9 October stating he could not sign the employment agreement in its present form. Mr Pryor immediately replied stating:

“Ok well we cant have u work for us then greig as thats our only contract sorry”. This was followed up with another text from Mr Pryor a few minutes later saying “A formal letter will be sent out tomorrow with indtruction[sic] on when to vacate the house and everything greig”.

### **Termination of employment**

[20] Mr Purcell and his family were required to vacate the farmhouse within four days and Mr Pryor refused to pay Mr Purcell his salary for the previous fortnight until they vacated the premises.

[21] Mr Purcell had been working on the dairy farm from 24 July and was not given the employment agreement for over 2½ months. When he was given the employment agreement Mr Pryor refused to discuss its terms and conditions and gave Mr Purcell an ultimatum to sign it or he could not continue working. This was a dismissal in my view and it was not the action of a fair and reasonable employer. In my view Mr Purcell was unjustifiably dismissed by Brailsford.

### **Wage arrears and holiday pay owing**

[22] Mr Purcell has remedies as a result of his unjustified dismissal. Firstly, dealing with the wage claim, Mr Purcell was not paid for 243 extra hours worked by him during the period of his employment. These were hours worked in excess of his 40 hour week which was set out in the offer of employment and in the employment agreement. This amounts to a sum of \$4,672.89 gross.

[23] Mr Purcell was not paid for the last week of work. This amounts to \$1,537.78 gross.

[24] Mr Purcell was not paid two weeks’ notice in writing. In my view Mr Purcell was entitled to two weeks’ notice in writing as he had been paid fortnightly and the employment agreement, despite not being signed, required parties to give each other two weeks’ notice of termination in writing. Two weeks’ notice amounts to \$3,075.56 gross. The total amount owing to Mr Purcell at the day of termination amounted to \$9,286.23 gross.

[25] Mr Purcell was not paid holiday pay on any of the above amounts. Holiday pay amounts to \$742.24 gross.

### **Order for payment of arrears of wages and holiday pay**

[26] This makes a total sum owing to Mr Purcell of \$10,028.47 gross. I order Brailsford to pay Mr Purcell the sum of \$10,028.47 gross within 14 days of the date of this determination.

[27] Under s.128 of the Employment Relations Act 2000 I have a discretion to reimburse loss of earnings. Mr Purcell's employment was terminated from 21 October. He gained short-term employment within a few days but was then unable to find work until 12 June 2017. Mr Purcell expected to work for the entire dairy season which would have been until 31 May 2017. If Mr Purcell had continued to work for Brailsford until the end of the dairy season he would have earned \$19,223.00 gross. Mr Purcell earned \$13,211.17 gross, leaving a shortfall of \$6,012.00 gross. Holiday pay on that amount amounts to \$480.96.

[28] I order Brailsford to pay Mr Purcell the sum of \$6,492.96 gross for loss of remuneration under s.128 of the Employment Relations Act within 14 days of the date of this determination.

[29] I calculate the total of the above wage arrears, holiday pay and loss of earnings amounts to \$16,521.43, which is to be paid to Mr Purcell by Brailsford within 14 days of the date of this determination. For clarity, this sum is the total of the sums referred to in paras [26] and [28] and is not payable in addition to those sums.

### **Hurt and humiliation**

[30] Turning now to hurt and humiliation suffered by Mr Purcell. Mr Purcell says he was "gutted" by his dismissal and that he had never been dismissed before. He had worked very hard and became stressed and worried about his family, where they were going to live and what they were going to live on. It was fortunate that he was able to secure a short-term position with accommodation a short time after leaving Brailsford. However, this work and accommodation came to an end and at that time Mr Purcell found that he had to move home to his parents' place in Kawerau, in order to live and his partner and his children moved to Tauranga as they had no other place to go.

[31] I consider the way in which Mr Purcell's employment was terminated was grossly unfair. The impact on him emotionally and financially was significant. I consider \$15,0000 net under s.123 of the Employment Relations Act to be appropriate. This sum is to be paid within 14 days of the date of this determination by Brailsford to Mr Purcell.

### **Contribution**

[32] When awarding remedies under the Employment Relations Act I must consider whether or not Mr Purcell contributed to his dismissal. I do not consider Mr Purcell contributed to his dismissal and therefore there will be no reduction in remedies.

### **Costs**

[33] With regard to costs, the investigation meeting took 3½ hours. The Authority's daily tariff is \$4,500 for the first day of an investigation meeting. I award a contribution of \$1,968.75 costs to enable Mr Purcell to pay the costs associated with this matter.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**