

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2020] NZERA 29
3049835

BETWEEN SOLOMON TAPUTORO
Applicant

AND HEALTHCARE HORIZONS
LIMITED (in liquidation)
Respondent

Member of Authority: Andrew Dallas

Representatives: Anna Oberndorfer, advocate for the Applicant
Michael Coursey for the Respondent

Investigation Meeting: 7 August 2019

Submissions received: 23 August 2019, 11 September 2019 and 21 November
2019 for the Applicant
4 September 2019 for the Respondent

Date of the Determination 24 January 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Solomon Taputoro raised a number of issues, including several personal grievances, about his employment as a “first responder” with Healthcare Horizons Limited (Horizons), an ambulance company. The directors and shareholders of Horizons are Michael Coursey and Stephanie Dann.

[2] In essence, Mr Taputoro’s employment relationship problem against Horizons said he had been constructively dismissed. Horizons denied this. As permitted by the Employment Relations Act 2000 (the Act), this determination proceeds on the basis of resolving that problem.¹

¹ Employment Relations Act, s 160(3)

The Authority's investigation

[3] During the investigation meeting I heard evidence from a number of former and (then) current employees of Horizons who, along with Mr Taputoro, gave evidence in support of his case. For Horizons, witness statements were provided by Mr Coursey and Ms Dann. Ultimately, the key contest in the evidence was, however, been Mr Taputoro and Mr Coursey.

[4] Having regard to s 174E of the Act, I have not referred to all the evidence received during my investigation or the submissions advanced on behalf of the parties at the investigation meeting in this determination, however, I record for completeness, I have fully considered all material placed before the Authority.

[5] Prior to issuing this determination, Horizons was placed into liquidation following an application to the High Court by the Inland Revenue Department. In response to this, I wrote to the liquidators, Deloitte Limited under s 248 of the Companies Act 1993 requesting their concurrence to carrying on with my investigation of Mr Taputoro's employment relationship problem. Concurrence was granted by the liquidators on 8 November 2019. I record my appreciation for this.

Issues

[6] The issues that arose for determination were:

- (i) Was Mr Taputoro's dismissal, and how the decision was made, what a fair and reasonable employer could have done in all the circumstances at the time?;
- (ii) If Horizons' actions were not justified, what remedies should be awarded to Mr Taputoro, considering:
 - a) Lost wages; and
 - b) Compensation for hurt, humiliation and injury to feelings; and
- (iii) Should Horizons contribute to the costs of representation of Mr Taputoro?

What caused Mr Taputoro's employment relationship problem with Horizon's?

[7] Mr Taputoro commenced employment with Horizons on 15 December 2016. His employment was governed by an individual employment agreement.

[8] In July 2018, Mr Taputoro became concerned about breaches of his employment agreement, including that he, and some of his co-workers, had not received full payment of wages for approximately five weeks. Mr Coursey advised Mr Taputoro that Horizons was facing financial difficulty and purported to invoke a clause in his employment agreement which purported to "temporarily" release Horizons from its obligations to pay wages. Mr Taputoro disputed the legality of the clause.

[9] Mr Taputoro subsequently raised concerns with Mr Coursey about excessive hours; with a number of hours being subject to unilateral change. Mr Taputoro also raised concerns that he and his co-workers were not been compensated for being "on-call". Mr Coursey advised Mr Taputoro there was on-call compensation because Horizons could not afford to pay it.

[10] In August 2018, Mr Taputoro raised concerns about late breaks when driving the Christchurch hospital shuttle. Mr Coursey advised Mr Taputoro that the shuttles schedule was set by the Canterbury District Health Board (CDHB) but they (the DHB) were looking into the matter.

[11] Unsatisfied with this response, Mr Taputoro made a number of inquiries with DHB staff in an attempt to ascertain what was going on. Evidently, Mr Coursey was made aware that Mr Taputoro was making such inquiries, and on 22 August 2018 approached him at the ambulance station and requested he provide information as to what he had been saying and directed him to refrain from making further inquiries. Mr Taputoro believed this was unfair because he believed that the scheduling issue was not being addressed. Mr Coursey then proceeded to suspend Mr Taputoro and directed him to leave the workplace. Mr Coursey then followed Mr Taputoro off the premises and said to him as he was departing "we'll be in touch".

[12] Not long after, Mr Coursey emailed Mr Taputoro and requested he attend a disciplinary meeting the next day (23 August 2018) at 10.00am. The email did not provide any details of Mr Taputoro's alleged conduct. When Mr Taputoro questioned Mr Coursey further, he was advised that he was being investigated for raising his concerns with the DHB about the shuttle schedule and his "aggressive attitude towards management".

[13] The disciplinary meeting, at which Mr Taputoro was represented, achieved very little beyond a further articulation of the allegations levelled by Mr Coursey and a refusal by Horizon to deal with any other of Mr Taputoro's concerns. Further, while notionally on paid suspension Mr Taputoro was, in fact, not actually being paid by Horizons.

[14] With no income and no prospect of his suspension being lifted, Mr Taputoro formed the view that he had no choice but to resign his employment from Horizons and he did so on 4 September 2018. At the time of his resignation, Mr Taputoro was owed \$12,544.21 in unpaid wages, annual leave, sick leave and public holiday pay.

[15] At a meeting on 10 October 2018, Horizons accepted it owed Mr Taputoro this amount and paid the same in two instalments on 15 October 2018 and 17 October 2018 after it obtained further, presumably, bank finance.

The Authority's view of Mr Taputoro's employment relationship problems

Mr Taputoro's constructive dismissal

[16] Having carefully considered the evidence and the submissions advanced by the representatives, I find that Mr Taputoro was constructively dismissed by Horizons due to a serious breach of duty which completely repudiated his employment.² Cumulatively this was:

- (i) failure to pay wages, holiday pay, sick pay and public holiday pay;
- (ii) unlawful deprivation and retention of wages; including minimum wages; and
- (iii) unlawful suspension;
- (iv) failure to properly particularise allegations of misconduct; and

² See, *Auckland Shop Employees IUOW v Woolworths (NZ) Limited* [1984] ACJ 41 and *Auckland Electric Power Board v Auckland Provincial District Local Officers Union IUOW* [1994] 2 NZLR 415

- (v) subsequent failure to investigate allegations of misconduct, regardless of their obvious deficiencies; and,
- (vi) failure to rescind an unlawful suspension.

Remedies

[17] As Mr Taputoro has been found to have a personal grievance for unjustified constructive dismissal, he is entitled to an assessment of remedies.

Lost wages

[18] Mr Taputoro found work after a period of solemn reflection on employment with Horizons. This is entirely understandable in the circumstances and he ought not be criticised for it. Mr Taputoro calculated his lost wages as \$13,586.40 and it is appropriate to award this amount.

[19] So then, subject to any contribution, Horizons must pay Mr Taputoro \$13,586.40 as reimbursement for lost wages.

Compensation for hurt, humiliation and injury to feelings

[20] Mr Taputoro sought compensation for hurt, humiliation and injury to feelings arising out of his constructive dismissal by Horizons. Mr Taputoro suggested that \$20,000 was an appropriate compensatory figure in his statement of problem.

[21] I accept Mr Taputoro felt degraded, demeaned and diminished as a result of his constructive dismissal by Horizons and the circumstances within which that occurred. His evidence in this regard was supported by another witness. Taking these matters in account, it is appropriate for Horizons to pay Mr Taputoro \$20,000 under s 123(1)(c)(i) of the Act. As with other similar matters, this award is made mindful of the upward trend in non-economic compensatory awards being made by the Authority and is consistent with guidance provided by the Court.

Contributory conduct by Mr Taputoro?

[22] Having found that Mr Taputoro was entitled to a remedy for a personal grievance for unjustified dismissal, I am required by s 124 of the Act to consider whether he contributed to the situation giving rise to his grievance.

[23] There was no evidence before the Authority of any conduct by Mr Taputoro that contributed to his constructive dismissal by Horizons. Consequently, no deduction for contribution is made.

Summary of orders

[24] Horizons must pay Mr Taputoro the following amounts within 28 days of the date of this determination:

- (i) As a remedy for his personal grievance, \$13,586.40 gross as reimbursement for lost wages under s 128(2) of the Act;
- (ii) As a further remedy for his grievance, \$20,000 as compensation for hurt, humiliation and injury to feelings under s 123(1)(c)(i) of the Act.

Costs

[25] Having considered Mr Taputoro's claim for costs against Horizons, I am satisfied that the Authority's daily tariff of \$4,500 for a one day investigation meeting is appropriate in all the circumstances.

[26] Horizons must pay Mr Taputoro \$4,500 as a contribution to the costs of his representation within 28 days of the date of this determination. I am further satisfied that he should be reimbursed the Authority's filing fee of \$71.56. Horizons must also pay this to Mr Taputoro within 28 days of the date of this determination.

Andrew Dallas
Chief of the Employment Relations Authority