

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2021] NZERA 82  
3093172

BETWEEN JORDAN REEVES-CRAWFORD  
Applicant

AND THE HOMEGROWN JUICE  
COMPANY LTD  
Respondent

Member of Authority: Geoff O’Sullivan

Representatives: Ira White, advocate for the Applicant  
Michael McAleer, advocate for the Respondent

Investigation Meeting: 17 November 2020

Submissions [and further 1 December 2020  
Information] Received:

Date of Determination: 2 March 2021

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Jordan Reeves-Crawford was employed by the Homegrown Juice Company Ltd (Homegrown) as a general factory worker, starting on 29 May 2019. His terms and conditions of employment were set out in an employment agreement (IEA) signed sometime in May 2019 but undated. Mr Reeves-Crawford says during the course of his employment he raised multiple grievances with Homegrown, including his managers Neville Dennis and Steve Brownlie. He says he found he was being passed backwards and forwards between the managers and his complaints were not addressed.

[2] Mr Reeves-Crawford complains that Homegrown made variations to the employment agreement without his consent and in early December 2019 he was asked to change his day shifts to a night shift, to cover another employee. When he advised his employer he could not work night shifts due to prior commitments, this was ignored and Mr Reeves-Crawford was advised on Friday 13 December 2019 that his shifts were changing to night shifts. When he again advised he could not work these shifts, he was told there was no other work for him and his employment effectively ended on Friday 13 December 2019.

[3] In respect of unresolved grievances, Mr Reeves-Crawford says he was subjected to bullying and threats in the workplace and that he was not given his contracted days and hours of work.

[4] Homegrown rejects Mr Reeves-Crawford's allegations, saying that no personal grievances were raised by him during his employment and issues relating to a threat by another employee were resolved. Homegrown denies making unlawful variations to the employment conditions, saying it relies on clause 6.2 of the employment agreement to justify a variation of days and hours of work. Homegrown says Mr Reeves-Crawford was having problems with co-workers and in order to protect his employment they needed to move him to a different shift. They say it is ludicrous for Mr Reeves-Crawford to suggest that transferring a problem employee to a night shift brought about an unjustified dismissal. Homegrown denies dismissing Mr Reeves-Crawford, saying he abandoned his employment.

### **Issues**

[5] The following are the issues for determination:

- (a) Did the employment agreement signed by the parties enable Homegrown to transfer Mr Reeves-Crawford to a night shift against his will, relying on clause 6.2 of the employment agreement?
- (b) How did Mr Reeves-Crawford's employment end?
- (c) Was Mr Reeves-Crawford paid correctly and in accordance with the employment agreement?
- (d) Did Mr Reeves-Crawford raise concerns during his period of employment, which were not addressed by Homegrown?

- (e) If Mr Reeves-Crawford was unjustifiably dismissed, what remedies would flow?

### **The Authority's investigation**

[6] At the investigation meeting I heard evidence from Mr Reeves-Crawford, Mr Dennis the General Manager, and Mr Brownlie the Managing Director.

### **The evidence**

#### *The employment agreement*

[7] Homegrown argues that the employment agreement allowed it to require Mr Reeves-Crawford to work any shift it wished. For the sake of completeness, I set out the relevant clause below:

#### 6.2 Variation to hours of work

It is accepted by the employer and the employee that because of the nature of the employer's work demands the days and hours of the employee's work could or will on numerous occasions vary significantly.

[8] Appendix 2 also refers to hours of work as follows:

3. The employee's hours of work are a minimum of 40 hours on Monday to Friday from 7.30am until 5pm but overtime both during the week and on weekends will be required to get the job done.

#### *Mr Reeves-Crawford*

[9] Mr Reeves-Crawford said that he had been verbally guaranteed 45 hours per week but acknowledged that his employment agreement provided for a minimum of 40 hours. He states that in the first week he worked three hours, four hours then five hours respectively over three days. He gave further evidence that for a period of two weeks he worked 12-hour days followed by a week of zero hours and on the fourth week lost one day through a shift being cancelled; on the fifth week lost two days because of shift cancellation; and on the sixth week worked 47 hours.

[10] Mr Reeves-Crawford also gave evidence that he was given little or no training and then when he had requested training, nothing happened. He said this resulted in mistakes being made such as not putting the right products on orders. He gave evidence that he was moved around the factory multiple times because other employees had issues with him not knowing his job. He said he had been yelled at and threatened by an employee because he hadn't done

something he was meant to have done and when he complained, Homegrown did not deal with his concerns. However, he acknowledged he had signed off a letter dated 18 October 2019 agreeing that no further investigation was required on the basis the person concerned had apologised. He said he felt he had no choice other than to sign the letter and claimed duress.

[11] Mr Reeves-Crawford also complained that he had been threatened with disciplinary action but then given a letter dated 12 September 2019 advising no disciplinary action was being proceeded with. He was concerned there had been no apology, explanation, or anything. Just how this may have disadvantaged him, was not explained.

*Mr Dennis*

[12] Mr Dennis gave evidence that he was the General Manager of Homegrown. Homegrown produces a wide range of fruit and vegetable juices and is one of the major players in this sector in New Zealand. He gave evidence that Mr Reeves-Crawford was a challenging personality to deal with. He described him as vexatious. He said that the factory had five broad departments, despatch, high pressure process, filling, blow moulding and blending. He advised that Mr Reeves-Crawford had worked in all departments other than blending. He said this was because the team leader in blending had flatly refused to have him in the team. He said that Mr Reeves-Crawford was shifted between departments because his employment with the company couldn't have continued unless it occurred as Mr Reeves-Crawford fell out with co-workers in every department he had been put in.

[13] Mr Dennis strongly rejected the suggestion that the 15 October 2019 letter was signed by Mr Reeves-Crawford under duress. He said when the complaint was made he took it seriously. He had been preparing to interview the parties when Mr Reeves-Crawford had come to his office to tell him the situation had been resolved and the other party had apologised. It was following that he prepared the letter, after first asking Mr Reeves-Crawford if he was sure he did not want it investigated further. He says he was reassured by Mr Reeves-Crawford that was indeed the case.

[14] Mr Dennis rejected the suggestion Mr Reeves-Crawford suffered from a lack of training. He said he was employed as an unskilled factory worker and his tasks were menial and repetitive, with very little training required for him to safely carry out his tasks.

[15] Mr Dennis said his door was always open to any concerns regarding health and safety or indeed any concerns in the workplace however the applicant did not raise any issues with him other than the one he later withdrew.

[16] As far as Mr Dennis was concerned, Mr Reeves-Crawford had abandoned his employment and there had been no dismissal. He referred to the letter written on 19 December 2019 by his representative, confirming that it had been issued on his instructions. He says the letter invited Mr Reeves-Crawford to attend a meeting on 23 or 24 December 2019 however the response was the filing of a personal grievance. He said that Mr Reeves-Crawford had said he failed to turn up to the meeting because he needed to get legal advice noting that it later became clear he had been receiving legal advice at least from 17 December 2019. He reiterated his view that Mr Reeves-Crawford was not dismissed, nor was he sent away.

*Mr Brownlie*

[17] Mr Brownlie gave evidence that he was the Managing Director of Homegrown. He described Homegrown's factory as fast paced and busy. His evidence was that there had been problems with Mr Reeves-Crawford right from the beginning of his employment. He had received negative feedback not only from Mr Dennis, but from others. It was for this reason that Mr Reeves-Crawford was shifted from one department to another with the exception of blending. He says that Mr Reeves-Crawford was ultimately placed in blow moulding because there was minimal interaction with other staff in that department. He rejected all claims of bullying and made it clear that Homegrown did not tolerate bullying in the workplace.

[18] He reiterated the view of Mr Dennis, that Mr Reeves-Crawford abandoned his employment on 13 December 2019 and failed to turn up to meetings arranged for 23 and 24 December 2019.

[19] The claims regarding changes to Mr Reeves-Crawford's hours were denied. Mr Brownlie said that for various reasons, Mr Reeves-Crawford failed to work contracted hours but this was not at the instigation of Homegrown.

[20] Mr Brownlie confirmed that Homegrown believed it could insist on Mr Reeves-Crawford working the night shift because it had the power to do so under clause 6.2 of the employment agreement.

## Discussion

[21] Mr Reeves-Crawford's main claim is that he has been dismissed, or at least constructively dismissed, and his dismissal was unjustified. Homegrown's defence to that is that no dismissal took place. Rather, it says he abandoned his employment and points to clause 15.4 of the employment agreement which provides:

### 15.4 Abandonment of employment

If the employee is away from work for two consecutive working days in a row without telling the employer or getting their permission and the employer has made reasonable efforts to contact the employee at the address and telephone number that has been provided to the employer, to clarify the reason for their absence, the employer may regard the employment as abandoned.

[22] In the amendment statement of reply, filed on 27 July 2020, Homegrown states that Mr Reeves-Crawford had abandoned his employment as at 15 December 2019. It says it did what it was required to do under the employment agreement and make contact with Mr Reeves-Crawford to ascertain why he was not at work. Unfortunately for Homegrown, the responses it received from Mr Reeves-Crawford's representative, made it clear he had not abandoned his employment.

[23] In saying he was dismissed, Mr Reeves-Crawford points to the letter he received on 19 December 2019 from Homegrown's representative. That letter contains, amongst other things, the following clauses:

2. We are instructed that as a consequence of a co-worker resigning, HGJ wishes to vary your days and hours of work so as to keep machines running.
3. Your employment agreement at clause 6.2 contains a clause which enables your employer to vary your days and hours of work.
4. The second paragraph of clause 3.2 in your employment agreement requires you to perform "all other reasonable duties" as required by the employer.
5. We are instructed that you are stating that the variation in days and hours of work needs to be in writing.
6. This is in fact not correct as clause 6.2 of your employment agreement enables your employer to vary your days and hours of work.
7. We are also instructed that you advised your employer that you cannot work the varied days and hours of work because of transport difficulties.
8. Your employer is now at a point where it believes that the contract of employment is frustrated.

This is because you are no longer able to perform your duties as required by your employer.

9. The frustration of an employment agreement can only mean the end of the agreement.
- 10 We wish to meet with you as a matter of urgency to discuss this matter on either Monday or Tuesday of next week.
11. Can you please contact the writer about this.

[24] I accept a plain reading of the above letter means it was open to Mr Reeves-Crawford to believe his employment was to come to an end. Exactly when this was to be however is not so clear. What is clear is that it is not open for Homegrown to argue employment was abandoned as at 15 December 2019. This is because the letter written on Homegrown's instructions makes it clear that:

- (a) It considered the employment agreement has been frustrated; and
- (b) Needs to come to an end.

[25] Further, the meaning that Mr Reeve-Crawford ascribed to the letter was reinforced by texts between the parties preceding this. Homegrown texted Mr Reeves-Crawford stating they wished him to work the 2.00 pm to 10.00 pm shift starting on the Monday. When Mr Reeves-Crawford responded saying he couldn't do those hours, he was told, "*unfortunately those are the only hours we can offer you Jordan*". When Mr Reeves-Crawford again protested, he was texted, "*I'm sorry Jordan but our understanding is that we can change your hours of work if we need to. As I explained we need to make this change...*".

[26] Mr Reeves-Crawford's response to the letter, was to instruct his representative to write to Homegrown requesting information and on the following day, 20 December, to write raising personal grievances and seeking mediation. The grievance letter did not refer to a dismissal. Correspondence between the parties' representatives continued and on 15 January 2020, Homegrown's representative wrote:

The first issue is whether by refusing to work varied days and hours of work the contract of employment has become frustrated.

The second issue is whether Jordan is refusing a lawful directive of his employer which is serious misconduct in terms of his employment agreement.

The third issue is whether Jordan has abandoned his employment and finally, it is very clear to us that he has abandoned his employment.

[27] And further, Homegrown's representative wrote on 22 January 2020 stating:

We see little need in going to mediation given that your client abandoned his employment.

[28] Ms White's letter meant Homegrown knew that Mr Reeves-Crawford had not abandoned his employment. Homegrown knew that if the employment was ending, it was because Mr Reeves-Crawford believed he had been dismissed. Homegrown knew that the reason for this was because it was insisting on a change in shifts, relying on clause 6.2 of the employment agreement.

[29] Clause 6.2 of the employment agreement did not allow Homegrown to unilaterally make such a significant change to Mr Reeves-Crawford's terms and conditions of employment as he had been guaranteed 40 hours of work to be completed within specified hours. Further, reasons behind the direction were never explained to Mr Reeves-Crawford, i.e., Homegrown's belief that other workers would not work with him and accordingly the only shift left for him was the night shift. Homegrown made it clear that it believed it could insist on this change and if Mr Reeves-Crawford did not agree to it, then his employment would end through frustration. Its belief that it could rely on this clause is reiterated not only in its statement in reply but also in its response of 15 January 2020 where it puts forward the view that in refusing a lawful directive of the employer, Mr Reeves-Crawford may be guilty of serious misconduct.

[30] Homegrown knew that Mr Reeves-Crawford believed he was being dismissed and rather than clarifying this, it instead held he had abandoned his employment. That was not the action of a fair and reasonable employer and not a stance a fair and reasonable employer could take. It follows therefore that Mr Reeves-Crawford's employment ended by way of dismissal and that dismissal was unjustified.

#### *The other claims*

[31] Mr Reeves-Crawford has not produced evidence indicating he was bullied or harassed by other staff. There was one incident where on 15 October 2019, Mr Reeves-Crawford reported an incident where he felt he had been threatened. Having heard the evidence of Mr Dennis and Mr Brownlie, and having considered the 18 October 2019 investigation letter, I am satisfied that Mr Reeves-Crawford was not forced to sign a letter indicating the issue was at an end and no investigation was required. The reasons for this are that I am satisfied Mr Reeves-Crawford approached Mr Dennis who at the time wanted to investigate the matter. Mr Reeves-Crawford asked him not to. I am satisfied Mr Dennis dealt with the matter appropriately and no grievance arises out of this issue.

[32] Mr Reeves-Crawford's claim he was not given the hours he was contracted for and was therefore underpaid, has been more problematic. This is especially so when this matter was not raised during employment but seems to have been raised after the employment ended as part of his grievances. I prefer the evidence of Homegrown which has produced records indicating Mr Reeves-Crawford worked varying hours. I accept Homegrown's evidence that those weeks where Mr Reeves-Crawford worked less than 40 hours, were not at the instigation of Homegrown but were part of an irregular work pattern Mr Reeves-Crawford was working. The irregular work pattern seemed to be at Mr Reeves-Crawford's behest as evidenced by numerous texts between the parties regarding working hours and days. I also accept Homegrown's evidence that the position was a low skilled position and indeed Mr Reeves-Crawford did not seem to have a serious objection to that description.

### **Conclusion and summary of orders**

[33] Mr Reeves-Crawford was dismissed by Homegrown and his dismissal was unjustified. Mr Reeves-Crawford gave compelling evidence of the effect this dismissal had on him, he struggled to sleep, felt humiliated and worthless and depressed. He said it also caused him to leave the area to seek work elsewhere. His evidence justifies his claim for \$15000.

[34] Mr Reeves-Crawford was disadvantaged in his employment to the extent it was never properly explained to him that Homegrown believed that there were significant issues between him and his co-workers causing it not only to move him around to different departments but also to believe no position was possible other than the 2.00 pm to 10.00 pm shift. There is no evidence however that these issues were properly raised with Mr Reeves-Crawford.

[35] I find that there is no evidence that Homegrown bullied Mr Reeves-Crawford, or that it acted inappropriately in respect of his claim of threats and intimidation. This is because Mr Reeves-Crawford signed off on the approach saying that there had been an apology and he did not wish to take the matter further. There is no evidence of duress. In respect of the hours worked, the text messages both parties relied on to prove various points, together with the time records, show that there was to and froing between the parties regarding hours. There is insufficient evidence for me to conclude that any reduction in contracted hours was the fault, or at the instigation, of Homegrown. Homegrown is ordered to pay Mr Reeves-Crawford the following:

- (a) A sum of \$15,000 pursuant to s 123(1)(c)(i) of the Act.

- (b) Mr Reeves-Crawford was paid \$20 an hour for a 40-hour week. Homegrown is ordered to pay him lost wages (less \$300 earned through casual employment) for a period of three months totalling \$10,100 (less PAYE).

**Costs**

[36] Costs are reserved. The Authority generally adopts a tariff approach to costs with the current tariff being \$4,500 for the first day. The parties are encouraged to settle the matter of costs between themselves. However, if agreement cannot be reached, then the applicant may file a memorandum of costs within 14 days of the date of this determination, with the respondent having a further 14 days within which to respond.

**Geoff O'Sullivan**  
**Member of the Employment Relations Authority**