

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2024] NZERA 380
3245999

BETWEEN SHAUN CHURCH
Applicant

AND JOHN HARRISON T/A JOHN
HARRISON CONTRACTING
Respondent

Member of Authority: Geoff O’Sullivan

Representatives: Hayley Johnson, advocate for the Applicant
Carlton Mateer, advocate for the Respondent

Investigation Meeting: 26 March 2024 at New Plymouth

Submissions Received: 5 April 2024 from the Applicant
5 April 2024 from the Respondent

Determination: 26 June 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Shaun Church was employed by John Harrison t/a John Harrison Contracting (Mr Harrison) and his terms and conditions of employment were set out in an employment agreement between the parties signed on 30 June 2023. Mr Church had worked for Mr Harrison undertaking relief milking prior to taking up full time employment on 1 June 2023.

[2] Mr Church claims that on 16 July 2023 he and Mr Harrison disagreed about how to deal with a cow with a sore foot. Mr Harrison became verbally abusive and Mr Church advised him that if he continued with the abuse he would have to give him his notice. Shortly thereafter he says that Mr Harrison texted him saying: U told me you were finishing in four weeks so there is no job now as I am making that job redundant after 4 weeks”. Mr Church says on 17 July 2023 he received an email from

Mr Harrison which attached a letter advising that his position was redundant, and his last day of employment would be 14 August 2023. The reason for the redundancy was said to be financial challenges and that Mr Harrison could not afford Mr Church's position at this stage. Mr Church says he would never say that and leave his employment in four weeks and that the termination of his employment this way was an unjustified dismissal. In respect of the letter advising of redundancy, Mr Church says that at no stage was he made aware of any proposal to terminate the employment relationship.

[3] Mr Church also says he was required to leave the farm rental accommodation which had been provided for him but a further \$300 covering two weeks rental was deducted from his final pay.

[4] Mr Church seeks the following:

- (a) Compensation for hurt and humiliation pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000 (the Act) in the sum of \$20,000;
- (b) Lost wages covering the period from his dismissal until the time he found new employment;
- (c) Penalties;
- (d) Costs.

[5] Mr Harrison denies that he has done anything wrong and says there was no dismissal. He says that Mr Church quit his position following an altercation on 16 July 2023 and indeed did so twice. He says that following this he took advice from a company called Employsure who prepared a redundancy letter for him which he emailed to Mr Church. He says he could have dismissed him for serious misconduct but chose a softer option because he did not wish to financially disadvantage him and considered a redundancy option would be more favourable to Mr Church. Mr Harrison accepted the redundancy was a fiction but was adamant Mr Church had resigned.

The issues

[6] The following are the issues for investigation and determination:

- (a) Did Mr Church resign from his employment on 16 July 2023?
- (b) If not, was Mr Church's employment ended by way of redundancy?

- (c) If not, how did Mr Church's employment end?
 - (i) Did he resign?
 - (ii) Was he dismissed?
 - (iii) Was he constructively dismissed?
- (d) If Mr Church did not resign was he unjustifiably dismissed and if so what remedies should he be awarded?

The Authority's investigation

[7] Prior to the investigation meeting, I was told that both Mr Church and Mr Harrison are neurodiverse. Mr Harrison suffered from ADHD, dyslexia and at times had difficulty understanding and reading. Mr Church also suffered from ADHD, depression and anxiety. I was assured by both the representatives that neither of their clients needed special assistance in either giving or understanding evidence provided they were both given leeway to ensure both Mr Church and Mr Harrison had full comprehension of the other side's arguments and that when they were giving their evidence in reply, the Authority could assist by ensuring they were addressing the appropriate points.

[8] At the investigation meeting I heard evidence from Mr Church and his mother, Sharlene White and from Mr Harrison. Mr Church was at the time of the hearing subject to bail conditions which prevented him from associating or having contact directly or indirectly with a number of individuals. Some of those individuals had filed statements of evidence but Mr Harrison's representative wished the investigation meeting to proceed on 26 March 2024 rather than an attempt being made to change the bail conditions or adjourn the investigation meeting. Accordingly, on that basis the investigation meeting proceeded.

[9] Having regard to s 174E of the Employment Relations Act 2000 (the Act), I do not refer in this determination to all the evidence received during the investigation meeting. Further, whilst I have not referred to all the submissions from the parties in this determination, I record I have fully considered them.

Background and evidence

[10] Mr Church started relief milking for Mr Harrison prior to taking up full time employment with him on 1 June 2023. His hours of work were generally 5.00am or 6.00am until 3.00pm or 5.00pm depending on what work was required.

[11] Mr Church's day to day tasks were assisting Mr Harrison on the farm which was feeding out when he commenced his employment, tractor work, stock work, break feeding cows, preparing calf pens for calving and then other tasks Mr Harrison directed him to complete.

[12] It is not disputed by either party that on or about 16 July 2023 Mr Church and Mr Harrison had an argument about drafting out a cow. Mr Church says he was experienced in the farming business and the cow needed to be drafted out. He suggested to Mr Harrison that they move the gate the opposite way to get the cow out. He says Mr Harrison became angry and Mr Church said to Mr Harrison that if he did not like what he was doing, he (Mr Church) would go home. He was adamant that at no stage was he offering a resignation. The comment was not about handing in notice. Mr Church walked away from Mr Harrison but then came back and the tasks were completed.

[13] Mr Harrison had a different review regarding this conversation. He said he told Mr Church how the gates were to be set but the cows were going into the wrong pen. He says when he raised this Mr Church exploded and ended his conversation saying I'm not putting up with this and stormed off. Mr Harrison says he told Mr Church to go home and not come to work the next day but he would still be paid for it.

[14] The following day, Mr Harrison sent a letter headed "Confirmation of redundancy". The letter advised Mr Church that his employment was ending because the role was redundant due to the financial challenges the business was facing. It provided that his last day of employment was to be 14 August 2023.

[15] Mr Harrison stated that following the altercation with Mr Church he had rung an employment advisory service known as Employsure. Mr Harrison had earlier advised the Authority that he was dyslexic and suffered from other learning disabilities. He said that following the altercation with Mr Church, he had rung an employment advisory service known as Employsure. He says he was told by Employsure that because of Mr Church's refusal to follow an instruction, he could dismiss him on the

spot but he felt this was too harsh so instead, on Employsure's advice he sent him the redundancy letter because this would mean he would have no stand down in respect of any unemployment benefit.

[16] Mr Harrison said there were also other matters that he could have dismissed Mr Church for including his behaviour at a prior party. He confirmed however that no allegations of misconduct had been properly put to Mr Church, there was no investigation, and no finding of misconduct other than the issuing of a letter of expectation.

Analysis

[17] Mr Harrison was adamant that Mr Church had not been dismissed but had resigned. He confirmed his view that Mr Church had resigned after the altercation in respect of the cow. Mr Church had an entirely different view, namely he did not resign and had no intention to do so.

[18] The test as to whether or not an employee has resigned, is an objective test. Both parties agree there was an altercation and a disagreement over the drafting of the cow. I find that the words Mr Church used in saying if Mr Harrison did not like what he, Mr Church, was doing, then he would go home, falls short of submitting a resignation. Further, Mr Church texted Mr Harrison making it clear he thought he had been fired. As soon as Mr Church then queried whether he was returning to work the next day, Mr Harrison sent him a letter advising him he was redundant. That letter only came after Mr Church had texted Mr Harrison making it clear he thought he had been fired.

[19] I accept Mr Harrison's evidence that he rang Employsure and replied on their advice. However, at the end of the day it was his decision to issue the letter to Mr Church advising him he was redundant. I note that during the investigation meeting it was clear that Mr Harrison could not have drafted that letter. Nonetheless, I find it was drafted on his instruction.

[20] Further, the copy of texts between the parties shows Mr Harrison advised Mr Church he was not working on 17 July. Mr Church questioned the contractual basis for this and clearly was not happy with not being at work. He ended the text trail stating:

I'm absolutely gutted that you firing me this morning was you're only option. I've rung WINZ and they want the termination letter so can you get that to me today please.

[21] Mr Harrison's response was that "Position will be redundant in four weeks". This of course was followed up by the redundancy letter.

[22] There is insufficient evidence to say that Mr Church resigned his employment. Equally, it is clear from Mr Harrison's own evidence that there was no redundancy. It follows therefore that Mr Church was unjustifiably dismissed and is entitled to remedies. At the time of the dismissal, Mr Church was earning \$1,641 gross per week. He started his new job on 14 August 2023. Accordingly, he claims \$3,282 on account of lost wages.

[23] At the end of Mr Church's employment, Mr Harrison deducted a sum of \$300.00 on account of rent. Whilst Mr Church initially claimed that amount, during the investigation meeting it became clear there should have been rental of one week deducted. Accordingly, Mr Harrison deducted \$150.00 more than he should have, from Mr Church's final pay. That sum needs to be reimbursed.

[24] Mr Church claims penalties for the various breaches. Considering the dismissal as a whole I have concluded this is not an appropriate case in which to award penalties.

Injury to feelings, loss of dignity and humiliation

[25] Mr Church claims \$20,000.00 pursuant to s 123(1)(c)(i) of the Employment Relations Act 2000. Sharlene, Mr Church's mother gave evidence that Mr Church had trusted Mr Harrison and his family. She said that when his employment fell to pieces he was devastated. He was acting like he was browbeaten, and she said the whole thing just broke him. His confidence took a big hit. Like Mr Harrison he suffered from ADHD and anxiety. She said that the termination of Mr Church's employment took a significant toll on him.

[26] Mr Church himself gave evidence that he was still dealing with the trauma of his dismissal at the date of the investigation. He said he felt very upset and angry. He was worried financially and was concerned about how he would support his daughter in Australia. He was very worried he would not be able to obtain further employment.

[27] Considering the evidence before the Authority and guidance from the Court, I consider an award of \$20,000.00 to be appropriate.

[28] I have awarded remedies so S.124 of the Act requires me to consider whether Mr Church has contributed to the situation which gave rise to his personal grievance. I have concluded did not contribute, accordingly there will be no reduction in remedies.

Orders

[29] John Harrison trading as John Harrison Contracting is to pay Shaun Church the following:

- (a) \$3,282.00 on account of lost wages;
- (b) \$150.00 unlawfully deducted from his wages;
- (c) A sum of \$20,000.00 as compensation for humiliation, loss of dignity, and injury to feelings suffered by Mr Church as a result of his unjustified dismissal.

Costs

[30] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[31] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Mr Church may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum John Harrison Contracting will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[32] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.¹

Geoff O’Sullivan
Member of the Employment Relations Authority

¹ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1