

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Tom Allen (Applicant)  
**AND** Welding Engineers (N.Z.) Limited (Respondent)  
**REPRESENTATIVES** Dylan Marriott, Advocate for Applicant  
P Blackwell, Advocate for Respondent  
**MEMBER OF AUTHORITY** Dzintra King  
**INVESTIGATION MEETING** 19 January 2005  
**WITNESS INTERVIEW** 3 February 2005  
10 February 2005  
**DATE OF DETERMINATION** 7 March 2005

DETERMINATION OF THE AUTHORITY

The applicant, Mr Tom Allen, alleges that he was unjustifiably dismissed by the respondent, Welding Engineers NZ Ltd. The respondent says that Mr Allen resigned.

Mr Allen was employed as a storeperson and commenced employment in September 2003. About a month later Mr Allen's employment terminated. Mr Allen maintained that Mr Blackwell, the director of the company, behaved abusively towards him. He said that when he could not locate a torch Mr Blackwell said "I'm pissed off . . . I'll get it myself." He claimed that when he could not locate a lead Mr Blackwell lost his temper. The final incident occurred when Mr Blackwell asked Mr Allen for the whereabouts of some nuts. Mr Blackwell said he needed to know whether they had been delivered in order to ascertain whether he should pay the invoice. Mr Allen said Mr Blackwell had a nut on his finger and asked Mr Allen where the rest of them were. He also said "Be careful how you answer this question. I saw these on the shelf – where are they? Be careful how you answer this question and don't cover your arse." Mr Allen took this as an accusation of dishonesty and asked Mr Blackwell what he was being accused of. Mr Blackwell told him he wasn't being accused of anything.

It became apparent that Mr Blackwell and the two other staff, Ms Blanchard and Mr Colin Lewis, found Mr Allen's performance of his duties to be less than satisfactory. Mr Blackwell said he had told Mr Allen that he wanted to have a meeting to discuss how to "add value" to Mr Allen's employment. Mr Allen denied this, but I accept Mr Blackwell's evidence that he had told Mr Allen he wanted to have a meeting.

In the meantime, Mr Allen told his wife about events at work and he decided to write a letter setting out his concerns. The letter, dated 23 October 2003, reads:

*Dear Peter,*

*I'm writing to let you know my problem at work here. You may not know but you have been swearing and screaming at me, and, in front of other workers. I had been humiliated by your treatment. On Tuesday you asked me a loaded question about a box of missing nuts, saying to 'think carefully before I answer' and 'don't try to cover my arse'. I told you this was saying you don't trust me. Stressed out I found no nuts in the paperwork you told me you saw with your own eyes. You continue to rant and rave at me on a daily basis. I dread coming to work now each day, and don't want come here anymore, I like my job but feel you have wrecked any trust and confidence there was. I could be wrong so I'll let you decide how to be a good boss soon. I only ask that you accept responsibility for your choice soon or I will have no choice but to leave. The only decision you will have to make is whether you want me to work my notice or not.*

*Tom Allen*

Mr Allen alleges that on the morning a meeting was held to discuss the letter he heard the employer say "the only thing we can do is get rid of Tom". Mr Blackwell denied saying this. Ms Blanchard said it had not been said to her. Mr Lewis, who was interviewed after the Investigation Meeting, said he did recall Mr Blackwell saying something along those lines and that he and Mr Blackwell had had conversations about how best to dispense with Mr Allen's services.

Mr Lewis is also bringing a personal grievance against the respondent. His evidence was taken by phone. Mr Blackwell told me that before Mr Lewis hung up he had heard Mr Lewis say to someone else "I really wanted to hang him out to dry." Neither Mr Marriott nor I heard that remark. I, however, heard someone say "It's not worth lying to a judge about". Mr Lewis, when I contacted him later, denied making either remark or that anyone else had made the latter remark. I have concluded that it would be unsafe for me to give any weight to Mr Lewis' evidence and the decision I make will be based on the other evidence I have heard.

When the meeting to discuss the letter was held Mr Blackwell and Mr Lewis were present. Mr Allen's own evidence is as follows. He said Mr Blackwell referred to the letter and said it was obvious that Mr Allen was not happy working there. He then said "Well, what are we going to do?" Mr Allen said he realised then that there was no intention to address the issues in the letter and that there was no apology or expression of remorse. In reply Mr Allen said he could give two weeks' notice and that he expected that Mr Blackwell would say that was an unacceptable outcome for him. He was shocked when he did not say that. Mr Lewis said "It's a matter of when you go". Mr Allen said it was up to them and he was given a week's pay.

The evidence from Ms Blanchard, which I accept, was that Mr Allen misconstrued some of the conversations and incidents to which he adverted in his evidence.

On Mr Allen's own evidence, the events of the final meeting cannot constitute a constructive dismissal. In response to the employer asking what were they going to do about the letter Mr Allen gave notice. I accept Mr Blackwell's evidence that he didn't get the opportunity to talk about the contents of the letter because Mr Allen resigned.

Mr Allen was not constructively dismissed and does not have a personal grievance.

The parties should attempt to resolve the issue of costs. Should that not be possible the parties should exchange memoranda with copies to the Authority.

Dzintra King  
Member of Employment Relations Authority