

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Vaifa 'Aluesi (Applicant)  
**AND** South Sea Limited (Respondent)  
**REPRESENTATIVES** Sione Fonua and Lepeka Tatila, Counsel for Applicant  
Peter Stephenson, Advocate for Respondent  
**MEMBER OF AUTHORITY** R A Monaghan  
**INVESTIGATION MEETING** 3 February 2005  
**SUBMISSIONS RECEIVED** 12 April 2005  
**DATE OF DETERMINATION** 18 April 2005

**DETERMINATION OF THE AUTHORITY**

**Employment relationship problem**

[1] South Sea Limited (“South Sea”) operated the Shilton Hotel. It employed Vaifa ‘Aluesi as a security guard/barman at the hotel. Mr Aluesi says that on or about 19 September 2003, and following a disagreement about the availability of a cash float in the bar till, he was unjustifiably dismissed.

[1] South Sea says that although it had initiated a meeting to discuss Mr Aluesi’s conduct during the bar incident, Mr Aluesi left before it was completed. There was no dismissal.

**The events leading to the alleged dismissal**

[2] Mr Aluesi began his employment at the Shilton Hotel as a security guard, but later he took on bar duties and preferred to work as a barman.

[3] The incident leading to the termination of Mr Aluesi’s employment occurred on or about 17 September 2003. Mr Aluesi was rostered to work a bar shift which started at 4.00 pm. Bar practice was that the night manager, Sylvester, was responsible for ensuring the cash floats for the tills were ready at the start of the shift. Sylvester would check the cash left in the tills at the end of the day shift, identify how much was needed to make up the float for the 4 pm shift, and approach Peter Stephenson, the ‘owners’ representative’ for the cash to complete the floats.

[4] When Mr Aluesi started his shift at 4.00 pm on 17 September, Sylvester had not completed this process and there were no coins in Mr Aluesi’s till. Since Sylvester had not been to see Mr Stephenson either, Mr Stephenson went to look for him. When he went into the bar Mr Aluesi called out to Mr Stephenson. When Mr Stephenson asked what the problem was, Mr Aluesi said

“where is the change. You are sitting there like an arsehole and not getting the change.” He demanded the immediate production of the necessary coins.

[5] Mr Aluesi knew Sylvester was responsible for getting the tills ready. Mr Stephenson suggested Mr Aluesi speak to him. However it seems Mr Stephenson himself was able to speak to Sylvester and the matter was soon in hand.

[6] Mr Stephenson remained concerned about Mr Aluesi’s behaviour. He sought advice, and on or about 19 September he asked the hotel’s general manager, John, to bring Mr Aluesi to the office for a meeting.

[7] John opened the meeting by saying its purpose was to discuss Mr Aluesi’s language and behaviour over the till float. Mr Stephenson went on to ask Mr Aluesi why he had behaved as he did. Mr Aluesi merely responded “who do you think you are?” Mr Stephenson explained his role at the hotel, saying he was John’s boss, and Mr Aluesi chose to take the position that he did not believe Mr Stephenson.

[8] That position was unreasonable, not least because John was present at the time and did not disagree with Mr Stephenson’s statement. Moreover a few weeks earlier there had been a disagreement between Mr Aluesi, Mr Stephenson and a director of the company over Mr Aluesi’s hours of work. Mr Aluesi knew who Mr Stephenson was, and that Mr Stephenson had a role in the management of the hotel. He even called Mr Stephenson an ‘arsehole’ on that occasion too, although he later apologised.

[9] Mr Stephenson’s account of what happened next during the meeting of 19 September was that Mr Aluesi announced he was going back to work. When Mr Stephenson told him he could not do that yet, Mr Aluesi replied “I will never bow to a white boy like you” and started to leave the office. Mr Aluesi refused a further instruction to stay, so Mr Stephenson said “I don’t want you at work, please leave the premises until we sort this out.” Mr Aluesi gave him a one-fingered gesture and walked away.

[10] Mr Aluesi denied making the ‘white boy’ comment, but whether he made it or not, it is clear his attitude during the meeting was defiant and insubordinate. The same was true of his recent behaviour in the bar, which struck me as no more than an attempt to taunt or bait Mr Stephenson. He knew Mr Stephenson had authority in respect of the management of the hotel, but he decided that since there had been no formal written notification of it he did not accept it.

[11] After he left the office, Mr Aluesi purported to go back to work. However Mr Stephenson had become concerned about Mr Aluesi’s defiance and aggression to the extent that he called the Police. The Police arrived, and after a disagreement with them about Mr Stephenson’s power to ask him to leave, Mr Aluesi left the premises.

[12] There was no further immediate contact between the parties, with the exception of an approach from a person purporting to represent Mr Aluesi and who again questioned Mr Stephenson’s authority. Mr Stephenson sought to discuss Mr Aluesi’s attitude, but the representative said that was not the issue. The discussion went no further.

[13] Mr Stephenson took the view that Mr Aluesi had abandoned his employment.

[14] However he was not left with that understanding for long because, by letter dated 29 September 2003, Mr Aluesi’s solicitors wrote raising a personal grievance on the ground of unjustified dismissal.

**Was there a dismissal**

[15] This is not the first time I have addressed an employment relationship problem arising between a ‘representative’ of the owner of a bar or hotel, and an employee of the bar or hotel. On each occasion the representative has taken pains to emphasize the representative is not an employee or a manager, and indeed has had a very vaguely-defined role as far as the employees are concerned. Even so, vaguely-defined as it is, in practice the role has cut across those of the employed managers and appears to carry some authority. At best this has caused confusion in the workplace, and at worst defiance and resentment. In general it is desirable that owners and their ‘representatives’ ensure it is clear to all of the affected employees (including at the level of general manager) exactly where lines of authority, accountability and responsibility lie.

[16] Having said that, I find Mr Aluesi’s attitude to Mr Stephenson was not founded on a misunderstanding of Mr Stephenson’s role, rather a blatant refusal to accept Mr Stephenson had any authority. As well as the direct information he was given about the matter on 19 September, he had enough prior contact with Mr Stephenson to make this refusal unsustainable. Moreover nothing in any lingering confusion he might have felt about Mr Stephenson’s role excused his unacceptable behaviour on 17 and 19 September.

[17] As for whether there was a dismissal, Mr Stephenson is the one who told Mr Aluesi to leave the premises, and called the Police to ensure he did so. Mr Aluesi did not take as a dismissal the instruction to leave, since he did not accept Mr Stephenson’s authority to give it. Instead he purported to return to work.

[18] At that point it was not open to Mr Stephenson to conclude Mr Aluesi was abandoning his employment, as there was no abandonment at all. Nor did Mr Aluesi leave the meeting because he thought he had been dismissed. Instead Mr Aluesi eventually left the premises because his behaviour had caused Mr Stephenson to call the Police to ensure he did so. Subsequent further questioning of Mr Stephenson’s authority meant it was not possible to complete the disciplinary meeting or have any further dialogue about the future of Mr Aluesi’s employment.

[19] I do not believe any of this amounted to a dismissal. Mr Aluesi’s behaviour on 17 September, his attitude to the attempts to discuss it on 19 September and walking out before the discussion was finished, and his rejection of Mr Stephenson’s authority, meant it was not possible for the employment relationship to continue. Mr Aluesi initiated that state of affairs. Accordingly I find Mr Aluesi was not dismissed and does not have a personal grievance.

**Costs**

[20] Mr Aluesi is in receipt of a grant of legal aid. As the successful party South Sea is entitled to consideration of a contribution to its costs. It should be aware, however, that on the face of the matter the Legal Services Act 2000 limits the contribution to \$50.

[21] However I leave the matter of costs in the hands of the parties. If either seeks an award of costs they may apply to the Authority, giving reasons. A copy of the application should be provided to the other party at the same time.

**R A Monaghan**  
**Member, Employment Relations Authority**