

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 94/09
5143333

BETWEEN ARTHUR ATTRILL
 Applicant

AND GREEN CABS LIMITED
 Respondent

Member of Authority: G J Wood

Representatives: Arthur Attrill on his own behalf
 Callum Brown for the Respondent

Investigation Meeting: 9 June 2009 at Wellington

Determination: 15 July 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Arthur Attrill claims that he was unjustifiably constructively dismissed due to Green Cabs' unscrupulous and duplicitous behaviour over the parties' respective roles in merging Wellington City Cabs into an operation involving Wellington City Cabs, Alert Taxis and Green Cabs. Green Cabs considered that Mr Attrill left its employment in order to try and ensure the ongoing viability of Wellington City Cabs, as the company using the Wellington City Cabs brand was owned entirely by Mr Attrill himself. It also denies any improper business dealings or other dealings with Mr Attrill.

[2] Mr Attrill further claims that he was entitled to be paid a salary of \$60,000 per year. This was denied by Green Cabs. Mr Attrill also claims that Green Cabs unlawfully deducted moneys from his wages to pay a Wellington City Cabs' fine. Green Cabs claimed that Mr Attrill specifically authorised the deduction.

[3] The issues for determination are:

- What was the cause of Mr Attrill's resignation?
- Whether a significant factor in that decision involved a breach of duty towards Mr Attrill by Green Cabs in his capacity as an employee.
- If so, whether the breach of duty was sufficiently serious as to found a personal grievance for unjustified dismissal.
- If so, what remedies should be awarded?
- Was the salary paid to Mr Attrill was what was agreed?
- Finally, whether Green Cabs unlawfully deducted sums from Mr Attrill's wages.

Relevant Background

[4] This case has its genesis in unclear business dealings between the parties and the owners of another taxi company based in Auckland (Alert Taxis). I have been unimpressed by the evidence of all witnesses in this case, as they all seem to have their own agendas to pursue and positions to protect. Even the documentary evidence is self serving in many respects, such as Mr Attrill's letter of personal grievance, which was prepared two weeks in advance. Further, the oral evidence given by most if not all witnesses was equally self serving. I have not attempted to determine what took place in the business dealings between the parties, but have limited my findings of fact to those matters impacting directly on the employment relationship.

[5] Mr Attrill was the principal of Wellington City Cabs Limited. He had over 20 years experience as a working director. Unfortunately, Wellington City Cabs had, by mid 2008, become beset by serious financial difficulties. It was in debt to the tune of more than \$100,000 and Mr Attrill had personally guaranteed a number of loans to his bank. In fact, he still owes over \$40,000 to the bank over Wellington City Cabs' debts and is financially destitute as a result.

[6] He approached Alert Taxis in Auckland and Green Cabs in Wellington in order to try and salvage the company. An arrangement appeared to have been reached, following discussions between all three bodies involved, for Mr Attrill's

company to be sold to another company, mostly owned by Alert Taxis and Green Cabs, but with a small minority interest for himself. The idea appeared to be to eventually bring Alert (through the Wellington City Cabs fleet) into the Green Cabs fold as a budget rather than premium or green brand. This would allow Alert Taxis customers to operate in Wellington, Christchurch and Auckland and give Green Cabs more critical mass, while also retaining a financial interest for Mr Attrill. This arrangement was due to come into affect on 1 August. It appears, however, that the sale and purchase agreement prepared was not, as envisaged, signed by all three parties.

[7] Separate to that business arrangement, Green Cabs agreed to hire Mr Attrill directly as a dispatcher/fleet manager for the Wellington City Cabs and Regency Cabs brands, which were operated or to be operated by Green Cabs.

Salary

[8] Mr Attrill negotiated an outline of an agreement with Mr Callum Brown, the Managing Director of Green Cabs. No salary was ever agreed and this must be seen in the context of Mr Attrill's desperate plight, which was well known to Green Cabs and Alert Taxis.

[9] When Mr Attrill started work on 4 August he was provided with an employment agreement by Ms Margaret Gerbes, the General Manager of Green Cabs. It provided that Mr Attrill would work shifts, yet he had agreed with Mr Brown that he would only work Monday to Friday, 8am to 5pm. He took this up with Ms Gerbes and that matter was remedied.

[10] I do not accept that Mr Attrill had agreed with Green Cabs that he would be paid \$60,000 per annum. In his letter of personal grievance submitted to the employer the day he left he mentions his frustration that an ex-employee of his, who was Dispatch Manager for Green Cabs, was being paid \$60,000 a year and that he was paid considerably less, which was at odds with the management role he had been promised. This matter had been addressed at the time by changing Mr Attrill's title to Fleet Manager for Wellington City Cabs and Regency Cabs.

[11] The letter does not, however, state that he should have been paid \$60,000. Similarly, it does not make sense that under the business arrangement Green Cabs would be paid \$100,000 for providing all the administration and dispatch services for

the Wellington City Cabs/Alert brand, yet Mr Attrill's salary would take up 60% of that sum. Furthermore, Mr Attrill worked for several months under the conditions arranged and did not put anything in writing about the level of his salary. It is my conclusion therefore, that he accepted the salary offered and paid to him of \$18 per hour, which Mr Attrill considered should have been \$20 per hour, as that is what he paid his dispatchers at Wellington City Cabs. His claim for remuneration at the level of \$60,000 per year is therefore dismissed.

Wages Deduction

[12] Wellington City Cabs had been fined for breaches of the legislation banning smoking in the workplace. This fine had to be paid. I hold that because Mr Attrill was paying off other debts of Wellington City Cabs, then Green Cabs would not have accepted responsibility for those debts as Mr Attrill claims, because it never bought the assets and liabilities of Wellington City Cabs. I also conclude that Mr Attrill and Ms Gerbes had discussed the issue of the fine; otherwise there appears no reason why Ms Gerbes would have arranged for the fine to be paid to the Court through Green Cabs' payroll system, by being deducted from Mr Attrill's wages. There was, however, no agreement in writing between Mr Attrill and Green Cabs allowing it to be so deducted.

[13] The Wages Protection Act 1983 provides that any deductions from employees' salary must be authorised in writing. As there is no such authorisation here, the law requires that Green Cabs compensate Mr Attrill for the deductions made from his wages of \$125 per week. Mr Attrill did not provide specific details of the monies deducted. It is only known that the deductions started after the commencement of his employment. Mr Attrill was employed for approximately 9 weeks. Given the time that it would take to set up an arrangement with the Court, I conclude that an appropriate period of time for the wrongful deductions is 7 weeks, namely \$875.

Mr Attrill's Departure

[14] At a business level there were disputes between the three bodies involved about what radio telephone system should be installed into Wellington City Cabs. The principal of Alert Taxis wanted them to move to the system it used, while Green Cabs wanted the drivers to move onto a different system. Wellington City Cabs' drivers were concerned about the costs of any new system. There were also concerns

about whether levies should continue to be paid to Wellington City Cabs (i.e. to Mr Attrill) or direct to Green Cabs.

[15] In effect there came to be a stand off over the dispatch phone arrangements because Alert Taxis wanted its system used and Green Cabs wanted to use its system, so that it only had to use one dispatch system in the Green Cabs operation. A meeting was called by Mr Brown on 8 September, whereby the Wellington City Cabs drivers were told of the stand off. Mr Brown suggested that the drivers could set up a separate company to Wellington City Cabs and work for Green Cabs under that operation, with a dispatching system compatible with that of Green Cabs. Nothing was resolved from that meeting, however.

[16] Drivers were becoming extremely concerned, as was Mr Attrill, who could see that if a new company was set up he would be out in the cold. There were also concerns raised about the amount of overflow work that was going to Green Cabs drivers over Wellington City Cabs drivers through the dispatch process.

[17] Around the same time Mr Attrill became aware that the ownership of the phone numbers for Wellington City Cabs had somehow been transferred to Green Cabs. Alert Taxis were informed by Mr Attrill and it took action to have that situation resolved. I do not accept that Mr Attrill had no knowledge of this process as he claims, particularly given the timing of events.

[18] It is clear, therefore, there was a substantial business dispute in train between Green Cabs and Alert Taxis, with Wellington City Cabs and Mr Attrill to some extent being caught in the middle, although Mr Attrill's sympathies lay with Alert rather than with his employer, Green Cabs.

[19] Matters simply did not improve over the next month. On 8 October another meeting was called of Wellington City Cabs drivers. They were told by a representative of the owner of Alert Taxis that they should shift to Hutt and City Taxis, which they resolved to do.

[20] The next day Mr Attrill took the dispatch equipment that was the property of Wellington City Cabs from Green Cabs to Hutt and City Taxis, where he operated the business until it was abandoned in early January 2009.

[21] Mr Attrill claims that he was constructively dismissed because of the underhand actions of Green Cabs over renegeing on the business arrangements involving his company, taking Wellington City Cabs' phone numbers, improperly not allocating Wellington City Cabs with sufficient work, taking Wellington City Cabs' levies for its own use (and requiring him to be complicit in that) and not paying him the salary he had been led to expect.

[22] For there to be a constructive dismissal, the real reason for Mr Attrill leaving must be related to his employment. I conclude that the real reason for Mr Attrill leaving was to save Wellington City Cabs, as he was the sole shareholder and personally responsible for over \$40,000 of its debt. He simply could not afford to let the company fold and therefore when the drivers elected to go to Hutt and City Taxis he decided to go with them, agreeing with them that this was the best option. This decision had little if anything to do with his employment as a dispatcher for Green Cabs. In fact, as he himself acknowledged, once Wellington City Cabs had moved from being dispatched through Green Cabs he would have had no job. Furthermore, I have already found that there was no agreement for Mr Attrill to be paid significantly more than he was by Green Cabs.

[23] Therefore while their business dealings do not appear to not reflect well on either of the parties involved, that does not mean that Green Cabs is responsible in employment law for Mr Attrill leaving its employment. I therefore dismiss his claim of unjustified dismissal.

[24] Mr Attrill is, however, entitled to be reimbursed for the unlawful deductions from his wages. I therefore order the respondent, Green Cabs Limited, to pay to the applicant, Mr Arthur Attrill, the sum of \$875 net in monies owing to him.

Costs

[25] Costs are reserved.

G J Wood

Member of the Employment Relations Authority