

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 262/07
5071574

BETWEEN NEIL BUCK
 Applicant

AND GOURMET FOODS LIMITED
 Respondent

Member of Authority: Leon Robinson

Representatives: Kerry Single for Applicant
 Matthew Ward-Johnson for Respondent

Investigation Meeting: 8 August 2007

Submissions Received: 17 August 2007
 24 August 2007

Determination: 28 August 2007

DETERMINATION OF THE AUTHORITY

The problem

[1] The applicant Mr Neil Buck ("Mr Buck") says he was unjustifiably constructively dismissed from his employment with Gourmet Foods Limited ("Gourmet Foods"). Gourmet Foods denies Mr Buck's claim.

[2] Mr Buck commenced employment with Gourmet Foods in August 2005 as a sales representative. Subsequently he was employed as Area Sales Manager and at the time his employment ended he reported to operations manager Mr Bryce Cole ("Mr Cole"). The terms of the employment were recorded in a written individual employment agreement.

[3] Mr Buck gave one months notice of resignation on 8 November 2006 but actually left the employment on 17 November 2006.

[4] The parties were unable to resolve the differences between them by mediation.

The issues

[5] These issues arise:-

- (i) Did Mr Buck resign?
- (ii) Was Mr Buck's resignation caused by a breach of duty on the part of Gourmet Foods?
- (iii) If it was, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach

Did Mr Buck resign?

[6] Mr Buck resigned from his employment on 8 November 2006 giving four weeks notice in writing. He did not make any reference to the reasons why he was resigning. He wrote:-

*Dear Bryce,
I hereby tender my resignation from the company. In accordance with the terms of my Employment Contract, my last day of employment will Friday 8th December 2006.*

Was there a breach of duty by Gourmet Foods?

[7] Both parties owe to each other a duty of good faith. That duty is imposed on the parties by section 4 of the *Employment Relations Act 2000*. The duty of good faith is wider in scope than the implied mutual obligation of trust and confidence.

[8] Mr Buck says he resigned because of "*the cavalier attitude that the owners of [Gourmet Foods] took in not attempting to resolve the many issues that were coming forward and were impeding [his] relationships with clients and customers*". He says Gourmet Foods did not provide him with the support required or the follow up information that would enable him to promote and faithfully represent the company to clients and customers. He says matters got to the stage where his relationships with clients and customers were affected and they no longer had trust and faith in Gourmet Foods' product or him. He also says he was losing clients and customers.

[9] Mr Buck tells the Authority matters began "to escalate" when a new quiche product was introduced in September 2006 before it had been fully tested. He complains that he had to locate a plastic spoon for use with the product. He says the first samples made available for presentation were substandard because there were

spillage marks on the packaging. He says management acknowledged the product was substandard. He also says that spoons accompanying the product were unpackaged, and there was no actual launch date available.

[10] About one month before his resignation, Mr Buck says he was embarrassed because he had advised local Mobil clients there would be a promotion of Gourmet Foods' pies which he later learned was not correct. He had been misinformed by Gourmet Foods' management. Mr Buck noted his embarrassment in his daily report on 13 October 2006 and wrote "*finding it very hard to function as a rep for this company*". He also complains that the issue was never raised with him and he concludes management did not read his report.

[11] The new product quiche samples were to be presented to major Tauranga customers on 6 November 2006. However, Mr Buck says 90% of the cellophane lids on the quiche containers had lifted, and issues remained about the placement of accompanying plastic spoons and their integrity when heated. Mr Buck regarded these issues as basic faults which continued to remain unresolved by Gourmet Foods' management.

[12] Mr Buck also complains that he was not informed of a presentation of product to Caltex. He was embarrassed because he could not answer enquiries from Caltex customers because he had not been informed by management. He says that when he approached management he was referred to Gourmet Foods' office staff but they too could not provide him with the necessary information. He says at this point he became frustrated at the lack of response or action and apparent disinterest by Gourmet Foods' management. The following day he considered he was left with no alternative but to resign.

[13] On 8 & 9 November 2006, Mr Buck was servicing clients in the Gisborne region. He discovered that samples of the quiche product that had been sent to clients had the tops lifting and had spoons inside on the food product. Once again he says he was put in the embarrassing position of having to make excuses for Gourmet Foods and its products. He considered he had been let down by Gourmet Foods and had to defend a substandard product that was clearly not ready for the market.

[14] Mr Buck maintains that he had made every effort to inform Gourmet Foods' management of problems and concerns with its products. He says no apparent changes were made to give him trust and confidence of being able to represent Gourmet Foods' products in the manner which required him to believe in what he was selling. He says he believed he was losing credibility with his clients and customers, and that he was losing clients and customers who had been encouraged to purchase Gourmet Foods product by his sales ability. He says his client base was built on trust and confidence in him as Gourmet Foods' agent. He says that that once this trust and confidence had gone from the client, his own trust and confidence in Gourmet Foods also went. He says he was not prepared to let this continue and as Gourmet Foods was not prepared to make changes and appeared to not really be concerned or interested in supporting him as its Areas Sales Manager, he tendered his resignation.

[15] Mr Buck was obliged to present the quiche product to customers to obtain feedback. He was not satisfied with the product and held his own clear views. He elected not to market the product. Mr Buck communicated his concerns to management but he did not inform Gourmet Foods that he regarded the matter sufficiently serious as to put in question his continued employment. Although management acknowledged the product was not of an acceptable standard and subsequently withdrew it, I find there was no breach of any duty owed to Mr Buck.

[16] Although Gourmet Foods concedes that Mr Buck was not fully provided with all the necessary information relating to Caltex, I find that subsequently he was. Gourmet Foods provided him with the necessary information as and when it became available. I find there was no breach of duty owed to Mr Buck.

[17] Mr Buck complains that he had to *"bear the continual brunt of complaints about products and delivery causing embarrassment, loss of face and confidence in [him]"*. But he offers the Authority no evidence of a continual brunt of complaints or any specific instances of customers losing confidence in him. While his obvious dedication and commitment is commendable, the clients he serviced were not his clients. They were his employer's clients.

[18] While Mr Buck complains about Gourmet Foods management and the standard of communication, it is clear that he had a good relationship with his operations

manager Mr Cole. They interacted together on a daily basis and Gourmet Foods operated an "open door policy". Mr Buck did from time to time express his personal views and there is evidence that Gourmet Foods did take those views into account.

[19] As for the customer complaints Mr Buck refers the Authority to, neither of them involve any breach of duty to him.

[20] I find there was no breach of any duty owed to Mr Buck. There was no breach of duty which caused Mr Buck's resignation.

A reasonably foreseeable substantial risk of resignation?

[21] Whether or not there was any breach of duty owed to Mr Buck, which I have found there was not, on an objective basis, none of the alleged breaches would have been reasonably foreseeable as posing a substantial risk of resignation.

Determination

[22] I find that the substantial merits of this employment relationship problem lie with Gourmet Foods. **I find that Mr Buck was not unjustifiably constructively dismissed. There will be no formal orders.**

Costs

[23] In the event that costs are sought, I invite the parties to resolve the matter between them, but failing agreement, Mr Ward-Johnson is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Mr Single is to lodge and serve a memorandum in reply thereafter but within 28 days of the date of this Determination.

Leon Robinson
Member of Employment Relations Authority