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Ball v Belfast Automotive Limited (Christchurch) [2011] NZERA 935; [2011] NZERA Christchurch 133 (13 September 2011)

Last Updated: 24 April 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2011] NZERA Christchurch 133
5320904

BETWEEN WILLIAM ROBERT FRANCIS BALL

Applicant

AND BELFAST AUTOMOTIVE LIMITED

Respondent

Member of Authority: Philip Cheyne

Representatives: Mark Henderson, Counsel for Applicant

No appearance for Respondent Investigation Meeting: 13 September 2011 at Christchurch Determination: 13 September 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] William Ball worked for Belfast Automotive Limited from August 2007 until his employment was terminated on 24 December 2009 purportedly for redundancy. Mr Ball says that he was unjustifiably dismissed and unjustifiably disadvantaged as a result. There are also claims for payment of outstanding holiday pay and arrears of wages in relation to a period of sick leave. Finally there are claims for a penalty, interest and costs.

[2] The company lodged a statement in reply in October 2010. The company says that it employed Mr Ball when it purchased the business from the previous proprietor in August 2007, Mr Ball having worked in the business for the previous proprietor. It says that Mr Ball sought an indefinite amount of time off in early 2009 due to health problems, effectively resigning. The company says that it then reemployed Mr Ball

and he started work in September 2009. In December 2009 the company made him redundant. The company says that it justifiably dismissed Mr Ball at that time.

[3] The parties were not able to resolve this matter despite mediation. Arrangements were originally made for an investigation meeting on 10 March 2011. That date had to be abandoned following the February 2011 earthquake. The matter was eventually rescheduled for 13 September 2011.

[4] The company did not meet the requirement to lodge statements of evidence by

2 September 2011. When the Authority followed up that failure with counsel he advised that he was no longer instructed and was unsure if the company's director would participate in the investigation meeting.

No appearance by the respondent

[5] As foreshadowed, there was no appearance for the company this morning.

[6] There being no good reason shown, I decided to continue with the investigation meeting.

Arrears

[7] I accept that Mr Ball did not resign but rather took unpaid leave with his employer's agreement for several months in 2009. He resumed working in early September 2009.

[8] Mr Ball required three days off work in November 2009 because he had the flu. The following week when he returned to work he noticed that he was not paid for this time. He raised the matter with Bob Greenhill, the company's principal. Mr Greenhill told him he was a new employee and was not entitled to any sick pay. Mr Ball sought advice and later asked Mr Greenhill if he would attend mediation to discuss the sick pay issue. Mr Greenhill responded angrily.

[9] I accept Mr Ball's evidence that he was entitled to paid sick leave in respect of these three days. The amount owing is \$456.00 (gross).

[10] It is accepted that Mr Ball received all his holiday entitlements prior to his period of unpaid leave. Mr Ball's gross earnings between September 2009 and December 2009 were \$12,464.00. He was not paid holiday pay when his employment was terminated. He should have received \$997.12 less two day's pay to account for holidays taken during this period, leaving a balance of \$693.12. The company must pay him that amount.

Grievances

[11] I accept that Mr Ball was unjustifiably dismissed and unjustifiably disadvantaged so that he has personal grievances arising from the termination of his employment. The two grievances are factually linked and it makes sense to deal with remedies on a global basis.

[12] There is a claim for lost remuneration of \$5,320.00 covering the period from the end of the notice payment made to Mr Ball until February 2010 when he commenced alternative employment. I accept that Mr Ball lost this sum and that he is entitled to be reimbursed for that loss.

[13] To some extent the lost remuneration was addressed by an alternative claim for reasonable notice of the dismissal. Mr Ball was dismissed on 24 December 2009 but paid until 31 December 2009. In the absence of any agreement about what notice would be required to terminate the employment, Mr Ball says (correctly) that he is entitled to reasonable notice. I am referred to *Hunt v Forklift Specialists Limited* [2000] NZEmpC 176; [2000] 1 ERNZ 553 as an analogous case where the Employment Court found that two months was reasonable notice. If I had not awarded compensation for lost remuneration arising from the grievance I would have applied *Hunt* but it is not necessary to do so.

[14] There is a claim for compensation of \$15,000.00 for distress. I accept the evidence about the effects visited on Mr Ball by his personal grievances. I assess

\$10,000.00 as the appropriate sum to redress those effects.

[15] There is no evidence to indicate that Mr Ball contributed to the circumstances giving rise to his grievances.

Penalty

[16] Before he started work for the company in 2007 Mr Ball asked for a written employment agreement. Mr Greenhill told him he would provide a written agreement but that never happened. In failing to provide a copy of the intended employment agreement Mr Greenhill caused the company to breach [s.63A\(2\)](#) of the [Employment Relations Act 2000](#). That is the basis of the present claim for a penalty.

[17] The difficulty with imposing a penalty now for this breach is that the present proceedings were commenced more than 12 months after the date when the cause of action first became known to Mr Ball: see [s.135\(5\)](#) of the [Employment Relations Act](#)

2000.

[18] In 2011 the [Employment Relations Act 2000](#) was amended to permit the imposition of a penalty for a failure by an employer to comply with [s.65](#) of the Act which includes the requirement for an individual employment agreement to be in writing. That power is not available in the present circumstances because the amendment post dates the present circumstances and an application under [s.65\(4\)](#) can only be made by a Labour Inspector.

[19] For these reasons a penalty is not available.

Orders

[20] Pursuant to [s.131\(1\)](#) of the [Employment Relations Act 2000](#) Belfast

Automotive Limited is to pay Mr Ball arrears of wages and holiday pay amounting to

\$1,149.12 (gross).

[21] Pursuant to [s.123\(1\)\(b\)](#) and [s.128\(2\)](#) of the [Employment Relations Act 2000](#)

Belfast Automotive Limited is to pay Mr Ball compensation for lost remuneration amounting to \$5,320.00 (gross).

[22] There is a claim for interest on these sums. Belfast Automotive Limited is to pay Mr Ball interest on the sums mentioned in paragraphs [20] and [21] at the rate of

5% per annum starting on 24 December 2009 until the sums are paid in full.

[23] Pursuant to [s.123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act 2000](#) Belfast

Automotive Limited is to pay Mr Ball \$10,000.00 compensation for distress.

[24] There is a claim for costs. I am asked to treat the matter as a half day investigation meeting and apply a daily tariff approach. I agree that this is appropriate. Belfast Automotive Limited is to pay Mr Ball costs of \$1,500.00.

Philip Cheyne

Member of the Employment Relations Authority

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