

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2016] NZERA Auckland 241  
5631792

BETWEEN            DARCY and MELANIE  
                          BEEHRE t/a BEE HAPPY BEES  
                          Applicants

A N D                JOSHUA LAWRENCE  
                          Respondent

Member of Authority:      Rachel Larmer

Representatives:          Megan Leaf, Counsel for Applicants  
                                  Warwick Reid, Advocate for Respondent

Investigation Meeting:    11 July 2016 at Tauranga

Date of Determination:    13 July 2016

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**DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY**

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**Employment relationship problem**

[1]     The applicants, Mr Darcy Beehre and Mrs Melanie Beehre are a husband and wife who carry on business as beekeepers under the trading name Bee Happy Bees.

[2]     The Beehres' employed the respondent, Mr Joshua Lawrence, from 03 August 2015 until he was dismissed on 03 October 2015 after the Beehres' concluded he was unsuitable to continue working for them as a beekeeper.

[3]     The Beehres' have applied to the Authority to recover damages (loss) they claim to have incurred as a result of Mr Lawrence's negligent performance of his duties at work. The specific negligence claims involve allegations that Mr Lawrence negligently:

- (a) Drove into a shed door in a work vehicle causing damage to the shed which the Beehres' estimate at \$400;
- (b) Failed to do his job properly regarding maintenance of beehives which the Beehres' claim caused the loss of five hives which they estimate cost them approximately \$6,000 (\$1,200 x 5 hives).

[4] The Beehres' also seek to recover \$660 from Mr Lawrence for sick leave that was paid to him in advance of his sick leave entitlement arising. The Beehres' claim Mr Lawrence agreed to repay the paid sick leave they advanced him if his employment ended before he had worked for them for six months.

[5] Mr Lawrence agrees that he was advanced five days paid sick leave from 14 to 18 September 2015. However he says he only agreed to repay the advance paid sick leave if he was responsible for ending his employment. He says that because the Beehres' dismissed him before his statutory paid sick leave entitlement arose he should not be required to reimburse them.

[6] Mr Lawrence denies that he conducted his work duties in a negligent manner. Mr Lawrence denies wilfully, deliberately or knowingly failing to follow instructions from the Beehres' as to how his work activities should be carried out. He says he performed his work to the best of his ability and followed the instructions he was given by the Beehres' about how to do the work he had been assigned.

### **The issues**

[7] The issues to be determined are:

- (a) Does the Authority have jurisdiction to determine the Beehres' negligence claim against Mr Lawrence?
- (b) Can the Beehres' recover the advance paid sick leave they gave Mr Lawrence in September 2015?
- (c) What if any costs should be awarded?

**Does the Authority have jurisdiction to determine the Beehres' negligence claim against Mr Lawrence?**

[8] The Authority must be satisfied that it has jurisdiction to investigate the Beehres' negligence claim. I am not satisfied that it does.

[9] While the parties were in an employment relationship, s.161(1)(r) of the Employment Relations Act 2000 (the Act) expressly provides that the Authority's jurisdiction does not extend to actions founded on tort.<sup>1</sup> Negligence is a tort.

[10] The section in the Beehres' Statement of Problem asking them to identify the problem or matter that they want the Authority to resolve states:

“Negligent action by the respondent causing loss to the applicant.”

[11] It is clear that the Beehres' are seeking to pursue a tort claim before the Authority in circumstances in which the Authority does not have jurisdiction to investigate a tort action.

[12] I therefore find that the Beehres' negligence claim against Mr Lawrence does not succeed for want of jurisdiction.

**Can the Beehres' recover the advance paid sick leave they gave Mr Lawrence in September 2015?**

[13] Whether or not the Beehres' can recover the paid sick leave they advanced Mr Lawrence depends on what the parties agreed about that.

[14] There is no written documentation signed by the parties recording their agreement. However Mr Lawrence's letter dated 11 November 2015 to Work and income New Zealand (WINZ) following his dismissal informed WINZ that he had agreed to repay his advance sick leave *“if he worked for less than 12 months”*.

[15] The parties evidence during the investigation meeting confirmed that Mr Lawrence agreed to repay any advance sick leave he received if his employment ended within 6 months.

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<sup>1</sup> *BDM Grange Ltd v Parker* [2006] 1 NZLR 353, [2005] ERNZ 343 (HC)

[16] Mr Reid sought to put a gloss on this agreement in his submissions by suggesting that the agreement to repay was limited to circumstances in which Mr Lawrence resigned. I find that the evidence did not support such a submission.

[17] While it was open to the parties to have agreed to limit repayment to a resignation situation only, I find as a matter of fact that they did not actually do so. Mr Lawrence simply agreed to repay the amount advanced if his employment ended before he became entitled to paid statutory sick leave.

[18] I am satisfied the normal contract formation elements offer, acceptance, intention or create legal relations, certainty of terms etc all exist in respect of the recovery of advanced paid sick leave.

[19] Mr Lawrence's employment ended before he had worked for six months so he is liable (as per the parties' agreement) to repay the amount the Beehres' advanced to him while employed.

[20] Mr Lawrence is ordered to pay the Beehres' \$660 to reimburse them for the paid sick leave they advanced him for his sickness absence from 14-19 September 2015.

### **Costs**

[21] The parties asked that costs be reserved on the basis there had been Calderbank offers exchanged.

[22] The parties have 14 days within which to agree on costs. If costs are not agreed then the Beehres have 7 days within which to file costs submissions and Mr Lawrence has 7 days within which to reply. Proof of actual costs incurred must be provided in support of any costs application.

[23] This timetable will be strictly enforced and any departure from it requires the prior leave of the Authority.

**Rachel Larmer**  
**Member of the Employment Relations Authority**