

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2011] NZERA Christchurch 208  
5365713

BETWEEN AL BELCHER  
Applicant

AND BETHANY PARK TRUST  
BOARD  
Respondent

Member of Authority: Philip Cheyne

Representatives: Russell Drake, Advocate for Applicant  
Martin Logan, Counsel for Respondent

Investigation Meeting 19 December 2011 at Nelson

Determination: 22 December 2011

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Bethany Park Trust Board (the Trust) is incorporated under the Charitable Trusts Act 1957. It operates a camp facility near Nelson called Bethany Park Christian Camp.

[2] Al Belcher was employed as Camp Director from 1 March 2011 until 25 November 2011 when his employment was terminated for redundancy. Mr Belcher says that there was no genuine redundancy, that the Trust did not properly consult with him about the supposed redundancy, that he should have been redeployed to any new position in any event and that those trustees involved in the decision to dismiss him do not properly hold any office in terms of the deed under which the Trust must operate. The Trust disputes these claims.

[3] To remedy his personal grievance Mr Belcher seeks permanent reinstatement to his former position and compensation. Mr Belcher also seeks interim

reinstatement. This determination resolves Mr Belcher's claim for interim reinstatement. As usual, the claim for interim reinstatement has been investigated by considering the affidavits lodged in support and in opposition and by giving the parties an opportunity to make submissions. The findings expressed in this determination are solely for the purposes of resolving the claim for interim reinstatement. Final findings of fact and law will have to wait the opportunity to fully test all the evidence relevant to this problem.

[4] I will mention several procedural matters. Mr Belcher initially lodged his and several other statements with the Authority which were described as affidavits but were not sworn or affirmed properly. There were no documents annexed although several were mentioned in the statements. The undertaking required by the Employment Relations Act 2000 was signed by Mr Belcher's representative. At the commencement of the investigation meeting I raised these matters and, without objection from the respondent, I required Mr Belcher to provide the statements and specific documents properly sworn or affirmed as affidavits and his own signed undertaking by Tuesday 20 December 2011. In meeting this requirement Mr Belcher's representative took the opportunity to provide further information and some written submissions, despite neither requesting nor being offered that chance. While I have considered this material it has made no difference to the result.

[5] The Trust did not lodge and serve its affidavit in opposition within the time originally stipulated. Mr Logan explained the delay and provided the affidavit at the beginning of the investigation meeting. There was no objection from Mr Belcher to me reading the affidavit and we adjourned to allow us all to do so.

[6] I also allowed the Trust an opportunity to respond to the affidavits and documents lodged by Mr Belcher after the investigation meeting. I have considered these submissions and material. However, it is not necessary to set them out in any detail.

[7] I note s.219 and clause 13 of the 2<sup>nd</sup> schedule to the Act. To the extent necessary I enlarge time and validate any informality.

## **Interim reinstatement**

[8] Neither party addressed me on the law. However, I note *Cliff v Air New Zealand* [2005] ERNZ 1. I also note the recent judgment of the Employment Court in *McKean v Ports of Auckland Limited* [2011] NZEmpC 128 where the Court said regard must be had to:

- *whether the plaintiff has an arguable case that he was dismissed unjustifiably as defined by s 103A of the Act;*
- *whether the plaintiff has an arguable case for interim reinstatement in employment under s 125 of the Act if he is found to have been dismissed unjustifiably;*
- *where the balance of convenience lies between the parties in the period until the Court's judgment is given on those issues; and*
- *the overall justice of the case.*

## **Arguable case**

[9] If Mr Belcher can establish the truth of his claims as set out in his affidavit he will have a strong case of unjustified dismissal and reasonable prospects of permanent reinstatement.

[10] Mr Belcher says he was told by the Trust chairperson (Mr Rollo) that the Trust was considering disestablishing his position for financial reasons. However, the Trust did not provide Mr Belcher with any financial information to support this contention. The Trust then attempted to explain the restructuring partly for financial reasons and partly because the Camp would be operated by the Trustees. There was opposition to the restructuring from one Trustee (Rick Stokes) and an umbrella group called Christian Camping New Zealand became involved in support of Mr Belcher. Both Mr Stokes and the umbrella group through its chairperson (Paul Shutte) express their view that there is no genuine redundancy and, if wrong on that point, that Mr Belcher should have been redeployed to the new position established to cover many of Mr Belcher's duties.

[11] Despite these problems with the process Mr Belcher was dismissed, paid a month's salary in lieu of notice and required to vacate the premises provided as part of his employment.

[12] The Trust says that there was a genuine redundancy and that it attempted to fully consult with Mr Barber. According to the Trust, rather than engaging in the consultation process Mr Barber decided to attack Trust members and make repeated requests for information that either the Trust did not have or which it says was irrelevant. I have been provided with a nine page document headed up *Bethany Park Trust Board and Al Belcher – Factual Background*. It sets out the sequence of events from the Trust's perspective. If the Trust can establish this as a completely accurate account of events it may be able to successfully defend the grievance or at least defend the permanent reinstatement application.

[13] As an aside, the Trust's outline refers to a substantial number of documents relevant to the exchanges between the parties prior to the dismissal. Neither party provided the Authority with any documents initially. As mentioned, counsel for the Trust explained the delay and limited response partly by reference to the flooding problems experienced in the Nelson area just prior to the investigation meeting. I also accept that there was a tight timeframe as the Authority was concerned to determine this matter prior to the Christmas break. The usual obligation on an applicant seeking interim orders based on affidavit evidence is to disclose all relevant matters including those contrary to his or her case. A party's failure to do so is material when considering the balance of convenience and overall justice considerations. However, in the present case, it will not be necessary to take significant account of the applicant's lack of full disclosure for the reason explained below.

[14] To return to the issue at hand, I accept for current purposes that Mr Belcher can prove the assertions in his and the other supporting affidavits. It follows that Mr Belcher has a strongly arguable personal grievance claim with the prospect of permanent reinstatement or perhaps a remedy based on a right to redeployment.

### **Balance of convenience**

[15] Mr Belcher says that he is distressed as a result of his personal grievance. However, the evidence of this is not so compelling as to require the remedy of interim reinstatement.

[16] Mr Belcher says that he is extremely concerned that the actions of the Trust members (professing to be Christian) who he has dealt with over the restructuring and dismissal have been dishonest and deceitful. Such assessments, if they need to be made, must await the full investigation. The presently relevant point from this is as follows. The way this is expressed makes it difficult to have confidence that Mr Belcher would be able to work properly with and report to these very same people if reinstated in the meantime.

[17] Mr Belcher says that the manner of his dismissal including having to immediately cease duties and return all property made him feel as if he had been dismissed for serious misconduct. Interim reinstatement might sometimes be appropriate as a remedy for such concerns but generally they are more appropriately considered if a personal grievance is established and it is necessary to assess compensation. In this case, the latter approach is the better course.

[18] Significantly, Mr Belcher is concerned about the effect on his family situation because of his dismissal and lack of employment and because he and his family have lived on site as part of his employment. It is unclear from his affidavit whether Mr Belcher and his family are still living on site or whether they have actually shifted elsewhere. However, in his statement of problem Mr Belcher says that he will be unemployed and homeless by Christmas if the unjustified action is not addressed.

[19] There are several points made for the Trust in the affidavit of its treasurer Christopher Hardiman. Mr Hardiman says that the camp can be run over the Christmas/New Year period without the marketing and management skills of a director. On his account what is needed are the practical skills of a camp manager. Apparently the Trust has been approached by such a person who is agreeable to a temporary appointment. The Trust is concerned that the Authority might prevent it engaging this person in the meantime. Mr Hardiman says that it is not fair to expect Trust members to work with Mr Belcher in light of the allegations he has made against them. Mr Hardiman also points out the inconsistency of Mr Belcher seeking interim reinstatement to actively work under the direction of individuals who he says (as part of his grievance) do not validly hold their current positions.

[20] Overall I find that the balance of convenience favours Mr Belcher but by only a slight margin.

### **Overall justice**

[21] The formal position of the Trust is that, while it presently intends to defend Mr Belcher's grievance claim, it would nonetheless agree to reinstate him on a *garden leave* basis pending determination of his substantive grievance. I take that offer to include reinstatement to the accommodation entitlement in accordance with the terms of the employment agreement.

[22] The Trust's offer substantially addresses Mr Belcher's concerns that are relevant for present purposes. It means that the overall justice of the case at present favours the Trust.

### **Conclusion**

[23] I accept that it is appropriate for Mr Belcher to be reinstated on a *garden leave* basis. The following order does not prevent the Trust from engaging others to perform any work. However the Trust should be mindful that any such arrangements are unlikely to be persuasive in a defence to permanent reinstatement.

[24] Subject to Mr Belcher's undertaking as to damages and with effect from 23 December 2011 I order the Bethany Park Trust Board to reinstate Mr Belcher to his former position but on a *Garden Leave* basis pending further order of the Authority.

[25] Costs are reserved.

[26] The Authority will shortly convene a conference call to make arrangements to investigate Mr Belcher's grievance.

Philip Cheyne  
Member of the Employment Relations Authority