

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 111/10
5282323

BETWEEN TROY BROOKY
 Applicant

AND HAKASA FARMING
 LIMITED
 Respondent

Member of Authority: R A Monaghan

Representatives: T Brooky in person
 No appearance for respondent

Investigation Meeting: 9 March 2010

Determination: 10 March 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Troy Brooky says his former employer, Hakasa Farming Limited (HFL) removed him from his employment and owes him various reimbursing and compensation payments as a result, as well as owing him wages underpaid during his employment.

[2] The employment relationship problem was not framed as a dismissal, but in the circumstances set out in this determination the legal effect of the employer's actions and Mr Brooky's response was the termination of Mr Brooky's employment at the initiative of the employer. I have approached the matter accordingly.

Preliminary matter

[3] HFL did not file a statement in reply, and did not appear and was not represented at the investigation meeting.

[4] The statement of problem was served on the company at its registered office, which was also its registered address for service. The registered office confirmed to the Authority that the statement was received. The notice of investigation meeting was also served at the company's registered office, and on its director and shareholder at his personal address. I am satisfied that the documents were properly served.

[5] HFL has not sought leave to reply, or provided any reason for its failure to appear or be represented at the investigation meeting. Accordingly I have proceeded to hear and determine this problem in its absence under Clause 12, Schedule 2 of the Employment Relations Act 2000.

Background

[6] Eruera (Ed) Raumati, the director and shareholder of HFL, employed Troy Brooky on Te Nana farm commencing 1 January 2009. In effect, Mr Brooky ran the farm on a day to day basis.

[7] The agreed terms of employment included that: accommodation was provided; the salary was \$35,000 pa; a work ute would be provided and fuel charges would be met by HFL; and HFL would meet the cost of feeding Mr Brooky's dogs. Although a written employment agreement was later given to Mr Brooky to sign, he refused to sign it because the document specified a salary less than the agreed salary, and did not provide for a work vehicle. Mr Brooky pointed this out to Mr Raumati, who undertook to produce a corrected agreement but failed to do so.

[8] Where there is a difference between the terms of the written but unsigned agreement produced and Mr Brooky's account of the parties' oral agreement, I accept Mr Brooky's account. In addition the written agreement provided for a notice period of two weeks, which accorded with Mr Brooky's expectation so I find that notice period was an agreed term of employment.

[9] On 7 May 2009 Mr Raumati asked Mr Brooky if he would be interested in moving to work at another farm, which at the time Mr Raumati was seeking to purchase. Accommodation would be available. Mr Brooky was interested, and preparations began for the move. In response to Mr Brooky's subsequent queries

about progress with the purchase, Mr Raumati advised that he 'had' the farm and was meeting with stock agents. Mr Brooky expected to leave his accommodation at Te Nana farm on or about 25 May and start work on the new farm on 1 June 2009.

[10] Meanwhile Mr Raumati recruited a replacement for Mr Brooky at Te Nana farm. That person was ready to move into the accommodation on or about 25 May and did so. Mr Brooky could not stay there and was obliged to move his possessions. He again asked Mr Raumati what was happening with the new farm, to be told that the purchase had not been completed. He was offered one week's holiday pay and Mr Raumati said he would find a new farm for Mr Brooky to work on.

[11] Mr Brooky found temporary accommodation nearby for three weeks. He did not hear from Mr Raumati again despite frequent efforts to make contact. He was paid until 7 June 2009, and received no further payments.

[12] I find Mr Brooky's employment terminated on 1 June 2009 when Mr Raumati failed to make employment available at the new farm as had been agreed. The termination was at the initiative of the employer and amounted to a dismissal.

Remedies in respect of the termination of employment

[13] Mr Raumati did not keep Mr Brooky properly informed of the progress of the expected purchase of the new farm, leaving him without work when the purchase did not proceed. Mr Brooky raised a grievance with his employer in respect of these actions. Although he did not frame the grievance as an unjustified dismissal, he did enough to warrant proceeding with the matter as if the grievance had been framed in that way.

[14] The circumstances amounted to an unjustified dismissal and Mr Brooky has a personal grievance.

1. Reimbursement of lost remuneration

[15] Mr Brooky is entitled to the reimbursement of remuneration lost as a result of the dismissal. Since I have found the date of termination to be 1 June 2009, and the

subsequent payment was of holiday pay, he lost income from 1 June to the date of commencement of his new employment at the end of June 2009.

[16] At a salary of \$35,000 pa, the amount is 4 weeks x \$673.08 = \$2,692.32.

[17] There was no contributory fault on Mr Brooky's part.

[18] HFL is therefore ordered to reimburse Mr Brooky for remuneration lost as a result of his personal grievance in the sum of \$2,692.32.

2. Compensation for injury to feelings

[19] Mr Brooky suffered injury to feelings by being left in the lurch as he was. The injury was relatively moderate and fortunately Mr Brooky obtained new employment quickly.

[20] HFL is therefore ordered to compensate Mr Brooky for injury to his feelings resulting from his personal grievance in the sum of \$4,000 under s 123(1)(c)(i) of the Employment Relations Act.

Reimbursement in respect of vehicles and fuel

[21] The failure to provide a vehicle as agreed meant Mr Brooky used and fueled his own vehicle, and also fueled a quad bike used on the farm. He estimated the cost of the fuel at \$110 per week for both vehicles. Since the vehicles were used between 1 January and 25 May, the calculation is 21 weeks x \$110 per week = \$2,310.

[22] HFL is therefore ordered to reimburse Mr Brooky for fuel in the sum of \$2,310.

Reimbursement of rent payments

[23] Mr Brooky seeks reimbursement for the rent he was obliged to pay after moving out of the farm accommodation on 25 May. He seeks 3 weeks' repayment in the sum of \$240.

[24] Mr Brooky is entitled to reimbursement of the first week's rent on the basis that his employment continued during that week, and the two remaining weeks in respect of what should at least have been a notice period.

[25] HFL is therefore ordered to reimburse Mr Brooky for rent in the sum of \$240.

Reimbursement for dog food

[26] Mr Brooky seeks reimbursement for the cost of feeding his dogs for the same three-week period. He said the cost was \$120.

[27] HFL is therefore ordered to reimburse Mr Brooky for dog food in the sum of \$120.

Wages underpaid during employment

[28] Mr Brooky says that, on a salary of \$35,000 pa he should have received nett payments of \$522 per week. On average he received \$500 per week (nett).

[29] He is entitled to payment of wages underpaid in respect of the period 1 January to 1 June, being 22 weeks x \$22 (nett) per week = \$484 (nett).

[30] Any payment owed in respect of the period after 1 June is accounted for in the order for reimbursement of wages lost as a result of the unjustified dismissal.

[31] HFL is therefore ordered to pay Mr Brooky \$484 (nett) in respect of underpaid wages.

Summary of orders

[32] HFP is ordered to pay to Mr Brooky:

- a. \$2,692.32 (gross) as reimbursement of remuneration lost as a result of his personal grievance;

- b. \$4,000 under s 123(1)(c)(i) as compensation for injury to feelings resulting from the personal grievance;
- c. \$2,310 as reimbursement of fuel costs;
- d. \$240 as reimbursement of rent payments;
- e. \$120 as reimbursement for dog food; and
- f. \$484 (nett) in respect of underpaid wages.

[33] Interest is to be paid on the above amounts, except for that in (b) above, calculated at the rate of 4.8% pa from 1 June 2009 to the date of payment.

Costs

[34] Mr Brooky is also entitled to the reimbursement of the filing fee of \$70, and I further order accordingly.

R A Monaghan

Member of the Employment Relations Authority