

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2012] NZERA Wellington 17  
5330228

BETWEEN                      KAYDEN CACHEMAILLE  
   Applicant  
  
AND                                HERBERT CONSTRUCTION  
   COMPANY LIMITED  
   Respondent

Member of Authority:        G J Wood  
  
Representatives:              No attendance by or for the Applicant  
   Lyn Porter for the Respondent  
  
Investigation Meeting:        8 February 2012 at Napier  
  
Submissions Received:        8 February 2012  
  
Determination:                10 February 2012

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**DETERMINATION OF THE AUTHORITY**

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[1]     The applicant, Mr Cachemaille, did not attend the investigation meeting, nor was he represented. This was consistent with his failure to provide witness statements as directed in advance of the investigation meeting. His counsel had been granted leave to withdraw because he was unable to get any instructions. Furthermore, Mr Cachemaille's previous counsel had forwarded the respondent's evidence on to Mr Cachemaille.

[2]     The only contact for Mr Cachemaille has been through his mother. On the morning of the investigation meeting contact was made with his mother, who indicated that Mr Cachemaille was working on a dairy farm elsewhere in the region. A cell phone number was provided, but Mr Cachemaille did not answer.

[3]     Given Mr Cachemaille's failure to facilitate the Authority's investigation and also to remain in contact with his previous legal counsel and his mother or the

Authority on this investigation meeting, I determined that no good cause had been shown for his failure to attend or be represented. I therefore determined, pursuant to clause 12 of Schedule 2 of the Act, to act as fully in the matter as if Mr Cachemaille had duly attended or be represented.

[4] The respondent, Herbert Construction Company Limited (“Herbert”) had provided a number of witness statements in advance, as directed. Furthermore, evidence was given in person by Ms Lyn Porter, an executive at Herbert. I have accepted Ms Porter’s evidence, which is backed up by the statements and documents provided by other witnesses associated with Herbert.

[5] Mr Cachemaille’s claim is that his redundancy by Herbert in November 2010 was not genuine, but was based on other personal issues involving the parties and their families. On the basis of the evidence put before the Authority by Ms Porter and the financial records of the company, I am satisfied that while there may have been some unfortunate comments of a personal nature directed towards Mr Cachemaille, the redundancy was made for genuine reasons and carried out fairly. In particular, I am satisfied that by November 2010 Herbert was looking at going into Christmas with no forward work, and that it was not making any money that year. As a result, I accept that Herbert’s principals decided that redundancies were necessary. Mr Cachemaille was specifically consulted about the prospect of him losing his job with Herbert, and provided no feedback to the employer about the proposal. The genuineness of the redundancy is reinforced by the fact that Herbert has subsequently had to make other staff redundant.

[6] In these circumstances I am satisfied that what Herbert did in making Mr Cachemaille redundant, and how it acted, particularly by consulting him over the prospect of redundancy, were what a fair and reasonable employer would have done in all the circumstances at the time. I therefore dismiss his claim for unjustified dismissal.

### **Costs**

[7] Costs are reserved.

**G J Wood**  
**Member of the Employment Relations Authority**