

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2011] NZERA Christchurch 144  
5338422

BETWEEN JAMES CRIMP  
Applicant  
AND TALLEY'S GROUP LIMITED  
Respondent

Member of Authority: James Crichton  
Representatives: Kushla Crimp for Applicant  
Graeme Malone, Counsel for Respondent  
Investigation Meeting On the papers  
Submissions Received: 2 August 2011 from Applicant  
5 September 2011 from Respondent  
Date of Determination: 26 September 2011

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant (Mr Crimp) alleges that he was short paid by his employer (Talley's) and the latter resists that claim.

[2] The issue is a simple one; Mr Crimp says he is owed payment for his "*trip off*" and for his "*work by*" while Talley's says that Mr Crimp is not entitled to either of those payments for the periods they are sought because he failed to give notice in accordance with his employment agreement, thus forfeiting those entitlements.

[3] Mr Crimp was employed as a chief engineer on deep sea fishing vessels operated by Talley's. Mr Crimp finished sea time on a particular voyage on 17 January 2011 but remained on board the vessel after it berthed, in accordance with his contractual obligations, until 21 January 2011, returning home on Saturday, 22 January 2011. Before departing the vessel, Mr Crimp told his immediate superior,

Ian Shaw, that he was looking for other work. On 4 February 2011, Mr Crimp told Mr Shaw via text that he had found work and would not be returning. Talley's says that, in failing to give one trip's written notice of termination, Mr Crimp was in breach of clause 10.1 of his individual employment agreement and that, in consequence, he is not entitled to the additional payment that he seeks. Furthermore, Talley's refers me to clause 21.3 of its "*standard terms of employment on fishing vessels*" which provides that failure to give proper notice has the consequence of cessation of future earnings.

[4] By agreement between the parties, the matter was to be determined by the Authority on the papers. Mr Crimp is now working in Australia and it would be difficult for him to return to New Zealand to give his evidence. It was also considered by both parties that the issue was a narrow one which the Authority could deal with appropriately without hearing oral evidence.

### **Issues**

[5] The only issues for the Authority revolve around the relevant contractual provisions and those are considered next.

### **The relevant terms of the employment**

[6] Mr Crimp's signed employment agreement has disappeared. As a consequence, the parties, and the Authority, have had to rely on generic agreements which Talley's assures me are in the same terms as Mr Crimp's signed agreement would have been. Fundamental to the employment relationship is that Mr Crimp and other seagoing engineers like him are paid a salary and so as a general principle, a global sum expressed on an annualised basis is fixed for the employment, and the expectation is that, generally, work will be performed as and when required and not accounted for by time sheets or other timekeeping systems.

[7] Having said that, the nature of seagoing duties is such that engineers are not required to work continuously and will be rostered for "*trip off*" time in accordance with the contractual provisions. Where this happens, and there is no actual work required of the employee, the specific terms of the employment agreement at clause 9.5 provides that salary continues but the payment is treated as annual holiday leave in advance. As a general rule, typically seagoing engineers would work one trip on followed by one trip off, but that is not a hard and fast rule and it will depend on the

crewing requirements of the employer, the length of each voyage and matters such as accident and sickness issues affecting other marine engineers.

[8] Mr Crimp's claim falls into two distinct heads. The first is a claim for "*work by*". This is work performed on the vessel when she is alongside, that is, when she is not at sea. But there is no entitlement to an additional emolument for this class of work for marine engineers because, under the terms of the individual employment agreement, they are, as I have already noted, paid a salary. That salary includes payment for time alongside and there are no additional payments made when work is required but the vessel is not at sea. The only additional payment that might conceivably be applicable relates to annual survey situations and then only for a very limited number of days. I am satisfied that none of the time claimed involved survey of the subject vessel and so that exception cannot apply. It follows that I am satisfied on an interpretation of the agreement that there is no additional payment due to Mr Crimp for "*work by*".

[9] Having dealt with the first head of Mr Crimp's claim, we come now to the nub of his principal contention which is that he is entitled to be paid for his trip off having concluded his trip on shortly before giving notice of his resignation. It will be remembered that Mr Crimp gave an intimation to his immediate superior of his intention of seeking alternative work on 21 January 2011, and he subsequently confirmed a resignation by text on 4 February 2011. Mr Crimp's position is that, as the vessel that he was employed on as chief engineer sailed that morning (4 February 2011), that day represented the start of his trip off and he is therefore entitled to receive payment for it.

[10] But that cannot be right. It is true that the ship sailed either on 3 or 4 February, but Mr Crimp's notice took effect on 4 February too. In order for his argument to find favour, he would need to have given his notice on 4 February to expire on the ship's return to port from that voyage. Then he could reasonably say that he had given one trip's notice in writing as he is required to do under the terms of clause 10.1 of his individual employment agreement. Plainly, under the terms of the employment agreement (clause 9.5), if Mr Crimp had not resigned on 4 February 2011, he would have continued to receive payment. As I have already noted, that payment is treated as, in effect, anticipated annual leave but the salary continues in the normal way.

[11] Whatever the sailing date of the vessel (Mr Crimp's evidence is that she sailed on 4 February while Talley's says she sailed on 3 February), the fact remains that Mr Crimp's notice of the termination of his employment was deficient in that he gave notice with **immediate effect**. Had he given notice on 3 or 4 February, such notice to take effect from the end of the vessel's voyage, then his notice would, in my opinion, have been efficacious and would have entitled him to continue to receive payment of salary until the end of that voyage.

[12] There is a side issue between the parties about whether Mr Crimp was asked to go to sea on the voyage in question because of the illness of another marine engineer. This would have meant he would have effectively been at sea for two trips in a row which is specifically contemplated by clause 4.11 of the employment agreement. Whether Mr Crimp was asked to perform this duty (as Talley's alleges) or not (as Mr Crimp alleges), is in my view neither here nor there. His notice was fatally defective if he wanted to continue receiving salary during the ship's voyage on and from 4 February 2011.

[13] The requirements for notice is clear in the employment agreement and is not able to be varied or avoided. It is, in that sense, black letter law. But even aside from that, the requirement for notice is a reasonable condition of the employment agreement. The failure to alert the employer of the intention to withdraw service puts the employer at a grave operational disadvantage, as plainly happened in this case. The evidence of Talley's is very clear, that Mr Crimp's sudden announcement of his departure placed considerable strain on Talley's ability to cover that situation.

### **Determination**

[14] I am satisfied on the analysis of the relevant contractual provisions that Talley's has correctly interpreted the employment agreement by failing to pay Mr Crimp any moneys by way of salary or parts thereof in respect of either his claim for "*work by*" and/or his claim for payment of the voyage immediately after he gave his effective notice date.

[15] My answers to those two questions effectively posed to the Authority would have been different, in the first case, if up to three days of the vessel's annual survey was involved and, in respect of the notice period, if Mr Crimp had given his notice at

the commencement of the voyage, to **take effect from** the date on which the voyage ended.

### **Costs**

[16] Costs are reserved but Talley's, the successful party, is urged to consider whether it would seek an award of costs or not; this matter was dealt with by both parties in an expeditious way so as, amongst other things, to reduce cost to either party and, without expressing a conclusive view on the matter, the Authority would be unlikely to be influenced to make an award against Mr Crimp, he having the genuine although mistaken belief as to his position and having not taken legal advice himself.

James Crichton  
Member of the Employment Relations Authority