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Dominion Trading Company Ltd v Jane (Christchurch) [2007] NZERA 237 (30 January 2007)

Determination Number: CA 9/07 File Number: 5046407

Under the [Employment Relations Act 2000](#)

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY OFFICE

BETWEEN

Dominion Trading Company Ltd (Applicant)

AND

Noel Irvine Jane (Respondent)

REPRESENTATIVES

Suzanne Billsborough on behalf of the applicant No appearance for the respondent

MEMBER OF AUTHORITY

Philip Cheyne

INVESTIGATION MEETING

30 January 2007

DATE OF DETERMINATION

30 January 2007

DETERMINATION OF THE AUTHORITY

[1] Dominion Trading Company Limited employed Noel Jane fulltime as a battery buyer and driver. There is a written employment agreement which I accept is signed by Mr Jane that incorporates the terms of the company handbook.

[2] Mr Jane called in sick on Monday 3 July 2006. This was only a few weeks after the employment had started. This was the last that the company heard from Mr Jane. A director rang and left messages both on Mr Jane's home phone and mobile phone but there was no response. A letter dated 11 July 2006 was then sent to Mr Jane referring to the provision in the employment agreement requiring two weeks notice or forfeiture of two weeks pay. A further letter was sent dated 17 July 2006, again without response.

[3] By this application, Dominion Trading Company Limited seeks to recover from Mr Jane two weeks wages in lieu of notice plus the cost of overalls supplied to Mr Jane.

No Appearance by Respondent

[4] The statement of problem was served by the applicant on Mr Jane on 7 September 2006. In response to attempts to organise a phone conference, Mr Jane wrote to the Authority saying he was not prepared to attend a conference. He also characterised the present application as an attempt by the company to use a document to gain a pecuniary advantage and a fraud. He claimed to have instructed a solicitor to lay criminal complaints with the police and to initiate *private legal proceedings*. Despite that nonsense, the Authority attempted to contact Mr Jane at the time indicated for the phone conference but without success. Arrangements were agreed with just the applicant for an investigation meeting.

[5] I am satisfied that the notice of direction and notice of investigation meeting were served on Noel Jane on 30 December 2006.

[6] There was no appearance by or on behalf of Mr Jane this morning even though the matter was delayed until about 10.00 am. There being no good cause for the failure to appear, I proceeded with the investigation with just Suzanne Billsborough on behalf of the company in attendance.

Determination

[7] I am satisfied that the applicable employment agreement required Mr Jane to forfeit two weeks wages for his failure to give notice to terminate the employment agreement. Under the agreement, he abandoned his employment and is deemed to have terminated it without notice. Dominion Trading Company Limited is entitled to two weeks pay, a sum they calculate as \$1,077.53 after making allowance for a small amount of holiday pay and bonus payments due to Mr Jane.

[8] I am further satisfied that Mr Jane is in breach of his employment agreement by failing to return two pairs of work overalls supplied to him by Dominion Trading Company Limited. Dominion Trading Company Limited is entitled to damages for that breach. Ms Billsborough was not sure about the cost but estimated it at about \$60.00 per pair. There should be an allowance for wear and tear and to accommodate the uncertainty about the original cost, I fixed the damages at \$100.00.

Summary

[9] Mr Jane is to pay Dominion Trading Company Limited \$1,077.53 being the forfeiture under the employment agreement for his failure to give notice of termination.

[10] Mr Jane is to pay Dominion Trading Company Limited damages of \$100.00 arising from his breach of the obligation under the employment agreement to return the overalls supplied.

[11] Mr Jane is to pay Dominion Trading Company Limited costs of \$70.00 being the lodgement fee.

Good Faith

[12] The file discloses that Mr Jane obstructed rather than facilitated the Authority's investigation and that he did not act in good faith.

Philip Cheyne

Member of Employment Relations Authority