

[4] There is nothing further in the record of settlement to assist the Authority in discerning what, if anything, was agreed.

[5] Some brief background is relevant. The du Buissons worked for McKerchar Investments on a mid Canterbury dairy farm. The relationship was not of long duration and came to an end by terms of settlement agreed in the mediation I referred to above.

[6] McKerchar Investments is not the owner of the subject property, but is itself a contractor to the owner, so McKerchar Investments is essentially a contract manager of a farm property owned by others.

[7] It is common ground that at the beginning of the engagement, there was a meeting between the du Buissons and Mr Ben McKerchar of McKerchar Investments and at that meeting the supply of beef was discussed.

[8] When the employment relationship came to an end in terms of the mediated settlement, the parties determined to implement their agreement in respect to the provision of beef. Sadly, there is dispute between them as to what was agreed at the initial discussion and, as I have already noted, there is no detail in the record of settlement to assist the Authority in determining the issue.

[9] Moreover, the record of settlement does not refer to a date on which the beef was to be provided.

[10] The du Buissons told me that they expected the beef to be provided on 24 December 2007, the date that the mediated agreement required certain other final matters to be attended to, but of course the agreement does not say that. The du Buissons told me on oath (and I accept the evidence on this point) that they had indicated to Mr McKerchar during the mediation that they expected all matters to be concluded by 24 December 2007. However that stipulation is clearly not in the record of settlement and was not Mr McKerchar's understanding.

[11] When I spoke to Mr McKerchar, he indicated that the matter had been dealt with as expeditiously as was possible and that the delay was not occasioned by any inadvertence on his part but rather by the unavailability of the butcher, who he told me was in effect a travelling butcher who attended at farms to slaughter and cut up carcasses as and when required.

[12] The meat was eventually delivered to the du Buissons on 14 February 2008 and a total of 38.2kgs of meat was provided. The de Buisson's position is that the total quantity of meat provided was significantly less than they had expected, although the quality of the meat provided was excellent.

[13] Mr McKerchar told me that there was never an understanding about the total weight of meat that was to be provided, or the particular cuts of meat and that the du Buisson's got all the useable meat from this particular animal.

[14] The essence of the claim by the du Buissons is that they are entitled to the balance of the meat which they say they should have received or money value. They say that a beef carcass should weight about 200kgs and that therefore they are entitled to the difference between what they received and what they say was agreed to.

[15] That claim as I mentioned earlier, is resisted by McKerchar Investments who say that they provided the du Buissons precisely what was agreed to.

[16] Clearly that dispute can only be resolved by inquiring into the nature of the agreement between the parties.

The agreement

[17] It is clear from what I was told by the protagonists that there was an agreement about the supply of beef at the point at which Mr McKerchar engaged the du Buissons. The du Buissons told me that they went for interviews with Mr McKerchar in April 2007 and that is not disputed. At the interview, it was apparently agreed that two cattle beasts would be slaughtered for the four people who worked on the farm; that is not disputed. One of the cattle beasts was to be shared by the du Buissons who are father and son; that is not disputed.

[18] The first significant point of difference is the du Buisson's contention that they requested and that Mr McKerchar agreed to their being physically present and able to direct the butcher in the way that the animal was cut up after slaughter. The du Buissons are South African and they told me that the way we cut up our cattle beasts is different from the way that cattle beasts are slaughtered in their home country. They say they simply sought to have the animal cut up in the way they were used to so that they could use the meat in their traditional way.

[19] Mr McKerchar recalls none of that although he accepts that it was possible that there was such a discussion; he noted that he had not employed South African workers before.

[20] Both protagonists agree that weight was not discussed nor was the age of the animal discussed or agreed. However, the du Buisson's had a expectation that the animal would have been between 15-18 months old.

[21] Mr McKerchar is adamant that there was no agreement about the age of a beast and that in fact the animal that was slaughtered was only nine months old and it was slaughtered because it was surplus to requirements.

[22] Critically, Mr McKerchar makes the point that the du Buissons appeared to be expecting a beef animal, that is to say a cattle beast bred and reared specifically for the purpose of being slaughtered for beef, whereas what was supplied was the traditional milking cow animal which was surplus to the dairy farm's requirements.

[23] Furthermore, Mr McKerchar was adamant that all the meat from the animal slaughtered went to the du Buissons; there was nothing else.

[24] What then can we say was agreed? Clearly there was a discussion about the provision of meat and I am satisfied that the parties cannot have intended that McKerchar Investments would supply a cattle beast bred for the purpose of providing beef. The agreement must have contemplated the culling of a dairy animal which was surplus to the farm's requirements rather than the provision of a particular cattle beast bred for beef purposes. I reach this conclusion because that is a traditional practice in the dairy industry and I am absolutely satisfied on the basis of the evidence I heard from Mr McKerchar that there was no intention of bringing in a specific animal from a beef herd. What was intended, I hold, was the slaughter of a dairy cattle beast which was surplus to the herd's requirements.

[25] That finding of course affects not only the size and age of the animal but more particularly the out-turn in the way of the quantity of meat produced. Faced with Mr McKerchar's adamant evidence that the du Buissons got every last bit of useable meat from the animal slaughtered is that not then enough to fulfil the obligations of McKerchar Investments?

[26] The du Buissons say not, because in their judgement a cattle beast would weigh around 200kgs and 38.2kgs of meat, they say, equates to the weight of a middle sized human child and not to a cattle beast.

[27] McKerchar Investments have supplied an animal culled from the herd in the customary way which happens to have been an animal which was neither fully grown nor indeed fully mature, thus affecting the quality of meat delivered to the du Buissons.

[28] While I am satisfied that there was no agreement strictly speaking about either weight or age of the animal, I think the du Buisson's reasonable expectation was of an animal that would produce more meat than the quantity of meat produced by this animal. I accept that the agreement is imperfect and certainly has not been adequately reduced to writing as part of the mediated settlement or indeed at any other place but on balance I am inclined to the view that an ordinary dairy cow culled from the herd as a consequence of the normal process of providing meat would usually be capable of producing more meat than 38.2kgs.

[29] However, I do not accept the du Buisson's evidence that such an animal would necessarily be capable of producing 200kgs of beef. I think in the nature of things, a cattle beast slaughtered for meat from a dairy herd would of necessity be an animal which had some deficiencies for the business going forward.

[30] In essence, I am satisfied that McKerchar Investments contemplated the provision of what is known in the industry as a *cull cow* for the provision of meat for the du Buissons while the du Buissons may have it in their contemplation that they were to receive a slaughtered beef animal.

[31] In all the circumstances, I think the reality is that the quantity of meat received by the du Buissons was less than they could reasonably have expected, even from a cull cow and is certainly significantly less than the du Buisson's expectation of a beef animal which I hold was never promised by Mr McKerchar.

Determination

[32] I am satisfied that justice can best be done between the parties by the payment to the du Buissons of a sum of \$200 by McKerchar Investments to make up for the difference between what the du Buisson's received and what they could have

reasonably expected to receive from an average cull cow. That payment is to be made by McKerchar Investments Limited to the du Buissons to conclude matters between the parties and finalise the performance of the terms of the mediation settlement of 29 November 2007.

Costs

[33] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority