



# New Zealand Employment Relations Authority Decisions

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## Fairbairn v McClean [2011] NZERA 73; [2011] NZERA Auckland 53 (10 February 2011)

Last Updated: 6 May 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 53 5296653

BETWEEN

AND

DAVID FAIRBAIRN Applicant

JEFF MCCLEAN Respondent

Member of Authority: Representatives:

Vicki Campbell

Chris Muston for Applicant Jeff McClean in Person

Investigation Meeting: 7 February 2011

Determination: 10 February 2011

### DETERMINATION OF THE AUTHORITY

**A The Applicant failed to attend the investigation meeting and therefore the Authority has concluded its investigation and no orders will be made against the Respondent.**

**B Costs shall lie where they fall.**

[1] The Applicant, Mr David Fairbairn, lodged an application with the Authority claiming he was unjustifiably dismissed. Mr Jeff McClean, filed a statement in reply acknowledging the dismissal but denying it was unjustified.

[2] The date of Monday 7 February 2011 was set for an investigation meeting in the Authority to enquire into this employment relationship problem. A copy of the Notice of Investigation Meeting was sent to and received by Mr Fairbairn's representative. Mr Fairbairn met with Mr Muston after 27 October 2010 and lodged witness statements in accordance with the timetable set down by the Authority.

[3] Mr Fairbairn, however, did not present himself to the investigation meeting at the notified date, time or place, to pursue his problem. Mr McClean was present.

[4] After waiting until 10.50am I advised Mr McClean that in view of Mr Fairbairn's failure to pursue his problem, the Authority would conclude its investigation without making any orders against him. In effect I determined that the employment relationship problem was resolved without further enquiry being necessary. In this regard clause 12 of Schedule 2 of the [Employment Relations Act 2000](#) is relevant. It permits the Authority to proceed if any party fails to attend or be represented in a matter before the Authority.

### Costs

[5] Where an applicant fails to attend an investigation meeting the Respondent may be entitled to an award of costs in his

favour. I advised Mr McClean that in this case I would not be making any award for costs as I determined that this was a case where costs should lie where they fall.

Vicki Campbell

Member of Employment Relations Authority

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