

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 26/10
5281231

BETWEEN

TERRY GIFKIN
Applicant

AND

DUKE OF DORSET
FARMING GROUP LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Applicant in person
Walter Cavendish for Respondent

Investigation Meeting: 18 January 2010 and 29 January 2010 both at Christchurch

Determination: 4 February 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Gifkin) alleges that he is owed wages by the respondent (the Farming Group) including final holiday pay. The statement of problem is expressed in such a way as to imply (without stating so) that Mr Gifkin thinks that he has been unjustifiably dismissed although that allegation is not stated explicitly. On examination, it is clear from talking to Mr Gifkin at the investigation meeting that he believes he was unjustifiably dismissed. I include that allegation then as an issue that must be investigated.

[2] For its part, the Farming Group denies that Mr Gifkin was unjustifiably dismissed and doubts that Mr Gifkin is owed wages.

[3] Mr Gifkin told me that he was employed in July 2009 as a general hand. Mr Gifkin claimed to have been employed by the Farming Group for *a couple of months* and was dismissed by Kylie Pearson who was Walter Cavendish's partner.

The dismissal is said to have occurred on 28 August 2009 at around 8am. Ms Pearson said to Mr Gifkin (according to his evidence) *we don't fucking well need you there is nothing for you to do.*

[4] Mr Gifkin then asked to speak with Mr Cavendish (who he considered was his employer) and was told by Ms Pearson that she was as good as Mr Cavendish. When Mr Gifkin went back to try to talk to Mr Cavendish later on, he was confronted by Ms Pearson who said that he was not welcome on the property and he was to remove himself. When he refused, Ms Pearson issued a Trespass Act notice leaving it on the deck of Mr Gifkin's truck. Attempts by Mr Gifkin to get the Farming Group to mediation were unsuccessful and the matter then came before the Authority.

[5] Mr Cavendish, in giving his evidence, acknowledged that Mr Gifkin had been employed by the Farming Group but indicated that the employment relationship had not been a success from the employer's perspective. In his view, Mr Gifkin had only worked effectively for two weeks and while accepting that there were wages still owing to Mr Gifkin, indicated that payments had been made to Mr Gifkin totalling approximately \$1,000 on account of unpaid wages. Mr Gifkin denies that and says only about \$400 was received. Mr Cavendish claimed that it was impossible to pay Mr Gifkin because he refused to give any bank information (for direct credit purposes) and failed to provide his IRD number as well, thus making the normal employment relationship very difficult to effect.

[6] Mr Cavendish said that Mr Gifkin was dismissed by Ms Pearson at the end of August because there was simply no more work for him; Mr Gifkin had been a good worker apparently on some of the Farming Group's operations (particularly working the power saw in the company's firewood operation) but that Mr Gifkin had been very slow to the point of being uneconomic at building chicken houses when that was required of him. He was dismissed according to Mr Cavendish because the company simply had no further work for him that it could profitably engage him on.

Issues

[7] The two questions for the Authority are whether Mr Gifkin is owed wages and whether he was unjustifiably dismissed.

Was Mr Gifkin unjustifiably dismissed?

[8] I am satisfied applying the test required of me by the Employment Relations Act 2000 that Mr Gifkin's dismissal was unjustified in all the circumstances. The process used by the Farming Group to dismiss Mr Gifkin from his employment was not in my opinion a process that a fair and reasonable employer would use. If the Farming Group had simply run out of work for Mr Gifkin to perform, this could have been explained to Mr Gifkin in an appropriate way and with adequate notice, the employment relationship could have been brought to an end decently. In the result, the fact that Mr Gifkin was spoken to in the yard at the beginning of the working day without being given any opportunity to respond appropriately was simply unfair. What made things worse was the subsequent Trespass Act notice served on Mr Gifkin when he came back to the employer's premises to seek further clarification from Mr Cavendish who was not physically involved in the dismissal.

[9] Mr Gifkin's evidence was that he got on well with Mr Cavendish (Mr Cavendish confirmed that in his evidence) but Mr Gifkin and Mr Cavendish both said that Mr Gifkin's relationships with others at the Farming Group were less satisfactory. In particular, Mr Cavendish told me that Mr Gifkin had a poor relationship with the man that he was working with, Mr Donald McGilvary. Mr McGilvary was effectively Mr Gifkin's supervisor and according to Mr Cavendish, the two of them did not get on; that fact contributed materially to the decision that the Farming Group had no further work to offer Mr Gifkin, according to Mr Cavendish. However, Mr Gifkin said that the Farming Group dismissed Mr McGilvary as well and he was away for a time but then seemed to return.

Is Mr Gifkin owed wages?

[10] I am satisfied Mr Gifkin is owed wages. It is clear from the evidence before the Authority that Mr Gifkin was not paid wages on a regular basis. However, Mr Cavendish said that Mr Gifkin had been paid two amounts of \$200 each, one in the first week of employment and one in the second week of employment and a further sum of \$500 odd to assist Mr Gifkin to get his vehicle fixed and warranted. In addition, Mr Cavendish said that diesel was provided to Mr Gifkin for his vehicle.

[11] Mr Gifkin denies that evidence. He says he was paid a total of \$400 on account of wages. There is also a dispute about the length of time the employment

relationship continued. Mr Gifkin says it lasted two months while Mr Cavendish says that Mr Gifkin only worked effectively for two weeks. The absence of proper records makes calculation difficult but I conclude that a proper basis for decision is to allow for six weeks employment and to deduct the \$400 from the total sum which ought to have been available to Mr Gifkin by way of wages.

[12] While it is impossible given the paucity of the records available to me to calculate exactly what wages might have been due and owing to Mr Gifkin in their entirety, I am satisfied that on the basis of the payments made by the Farming Group to Mr Gifkin and the brief period of the employment, a contribution to Mr Gifkin's wages in the sum of the \$3,000 would be appropriate.

Determination

[13] I am satisfied that Mr Gifkin was unjustifiably dismissed in the process adopted by the Farming Group and I award Mr Gifkin the sum of \$1,000 as compensation for hurt, humiliation and injury to feelings in the way in which that dismissal was effected. I have considered the question of contribution and concluded that no behaviour of Mr Gifkin contributed to his unjustified dismissal.

[14] The Farming Group is to pay \$1,000 net to Mr Gifkin.

[15] I also determine that Mr Gifkin is owed wages and I assess the unpaid wages owing to Mr Gifkin as \$3,000 gross. That amount less the appropriate tax which is to be accounted for to the Inland Revenue Department is to be paid to Mr Gifkin by the Farming Group as well.

James Crichton
Member of the Employment Relations Authority