

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Peter Gillette (Applicant)
AND Jeffrey Cooley (Respondent)
REPRESENTATIVES No appearance by or for the applicant
Jeffrey Cooley on his own behalf
MEMBER OF AUTHORITY G J Wood
INVESTIGATION MEETING 5 September 2006
DATE OF DETERMINATION 5 September 2006

ORAL DETERMINATION OF THE AUTHORITY

1. The applicant, Mr Peter Gillette, claims that he was constructively dismissed and that monies are still owing to him under his employment agreement with the respondent, Jeffrey Cooley, entered into in April 2005. Mr Cooley denies all of Mr Gillette's claims.
2. Mr Gillette did not attend the investigation meeting, nor was he represented. Neither Mr Cooley, nor Mr Gillette's former representative (who was given leave to withdraw the day before at the investigation meeting), knew how to contact him. He left his representative no forwarding address or other contact details. I was informed by his former representative that Mr Gillette was aware of the investigation meeting today. Despite my waiting a reasonable period Mr Gillette did not attend the investigation meeting.
3. It follows that Mr Gillette showed no good cause for failing to attend or be represented at the investigation meeting. I therefore determined to act as fully in the matter before me as if Mr Gillette had duly attended or been represented, pursuant to clause 12 of Schedule 2 of the Act.

4. Mr Cooley was the only person to give evidence at the investigation meeting. He answered all of my questions to my satisfaction. In the absence of any direct evidence to the contrary, I accept that evidence.
5. With reference to the claim for unjustified constructive dismissal, Mr Gillette has never directly told Mr Cooley why he left after five weeks of employment. It was Mr Cooley's evidence that Mr Gillette simply left work after being paid for the week and never returned. Mr Cooley has had no direct contact with Mr Gillette over these issues until the employment relationship problem was filed in the Authority. In the statement of problem Mr Gillette's reasons for leaving were said to be because of a failure by Mr Cooley to investigate a fight between Mr Gillette and a fellow worker and the method of dismissal of that other worker by Mr Cooley.
6. The fight between the two co-workers took place after work and well away from work premises. Mr Cooley determined not to investigate the fight because it happened off the work site and outside of work time. This was a decision that a fair and reasonable employer would likely make, I find.
7. That other employee was dismissed for poor performance during the period when Mr Gillette was employed by Mr Cooley. I find that this had no direct impact on Mr Gillette in the employment context, affecting as it did another worker. Having accepted Mr Cooley's evidence on this point I find that there was no breach of duty to Mr Cooley over this dismissal of another worker.
8. For these reasons, and in the absence of any direct evidence to the contrary, I find that there was no breach of duty by Mr Cooley, nor any causal connection between Mr Gillette leaving and the above events. I therefore dismiss his claim for unjustified constructive dismissal.
9. Mr Gillette has also claimed that he was not paid all the wages owing to him. I accept that Mr Cooley arranged for his workforce to receive pay slips each week and that Mr Gillette made no complaints during his period of employment amount the amounts he was paid. I also accept Mr Cooley's evidence that all wages owing to Mr Gillette have been paid. I therefore dismiss that claim.

10. I turn finally to the claim for monies owing. Mr Gillette has claimed that Mr Cooley was obliged to pay him \$25 per week in transport money. Mr Cooley accepts that in the first week of another worker's employment he gave that worker \$25 to assist him to get to work. That agreement was only for the first week because the worker was having immediate transport difficulties. As it turns out Mr Gillette received that money, as he took that worker to the place of work with him.
11. I therefore find that Mr Cooley's obligation to pay \$25 per week did not continue beyond the first week of the other worker's employment and that no monies are owing to Mr Gillette under this arrangement.
12. All Mr Gillette's claims are therefore dismissed.
13. Costs are reserved.

G J Wood
Member of the Employment Relations Authority