

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2015] NZERA Christchurch 177
5521072

BETWEEN STEVEN HAMILTON
Applicant

ADVANCE
INTERNATIONAL
CLEANING SYSTEMS (NZ)
LIMITED
AND Respondent

Member of Authority: Christine Hickey

Representatives: Jenny Beck, Counsel for the Applicant
Jiwa Nadan, Advocate for the Respondent

Submissions Received: 4 November 2015 from both parties

Determination: 18 November 2015

DETERMINATION (No. 3) OF THE AUTHORITY

[1] I reopened this investigation on my own account, under clause 4 of Schedule 2 of the Employment Relations Act 2000 (the Act), because I had not dealt with the issue of Mr Hamilton's contribution as I was required to do under s 124 of the Act.

[2] I also stayed the Orders made in my first determination dated 13 October 2015.

[3] I called for written submissions from the parties' representatives about the issue of Mr Hamilton's contribution.

[4] Both parties made submissions. Mr Nadan's submissions on behalf of Advance International Cleaning Systems (NZ) Limited are detailed and consist of a critique of the first determination. The assertion that the Dunedin business failed to perform under Mr Hamilton's sales management is the only specific that relates to how Mr Hamilton's actions contributed to the situation giving rise to his personal grievance of unjustified dismissal. The behaviour that relates to Mr Hamilton being

sent home on 19 December 2013 was that Mr Hamilton had been telling people he had been made redundant and that *would cause disadvantage to the business*.

[5] The rest of the criticisms of the first determination are more properly directed to a challenge to the substantive determination.

[6] Ms Beck submitted on behalf of Mr Hamilton that none of his actions had contributed to the situation leading to his two personal grievances in a blameworthy way that should result in any reduction to the remedies ordered.

Determination

[7] In order to reduce remedies under s 124 of the Act any action of the applicant must be both blameworthy and causative of the outcome in order to be taken into account as contributing behaviour. In addition, only the employee's conduct that occurred prior to any breach of the employer's obligations can be taken into account.

[8] The main causative factors for the findings of unjustified disadvantage and unjustified dismissal were that the processes used to carry out the redundancy and the sending away early were unfair.

[9] The processes used by the company to make the redundancy decision were entirely out of Mr Hamilton's control and therefore Mr Hamilton's behaviour cannot have contributed to his personal grievance of unjustified dismissal. If it was Mr Hamilton's failure to perform as the Dunedin sales manager that caused his redundancy then that is not a justifiable reason for redundancy but instead should have been the catalyst for a performance management process.

[10] I now turn to the unjustified disadvantage grievance on 19 December 2013. The news of Mr Hamilton's redundancy was first conveyed to him by Mr Nadan over the telephone. It is not clear that Mr Nadan verbally made it clear to Mr Hamilton that he could not discuss the fact of his termination of employment with anyone.

[11] At 2.57 pm Mr Nadan sent an email to Mr Hamilton with a letter attached confirming his redundancy and giving the date for his last day. That letter was marked *private and confidential*. At 4.26 pm Mr Nadan sent Mr Hamilton the letter requesting that he complete the handover and finish work that day.

[12] Again the main shortcoming in the company's action that day was a lack of procedural fairness. Mr Hamilton did not contribute to the lack of procedural fairness.

[13] I do not consider that Mr Hamilton's actions on 19 December 2013 were so blameworthy as to mean that his remedies should be reduced.

[14] Therefore, there is no change to the orders made in the first determination dated 13 October 2013 and the stay on enforcement of the orders is lifted.

[15] Costs remain reserved and given the re-opening may have muddied the waters for the parties. I give the party seeking costs 14 days from the date of this determination to make submissions on costs. The other party then has 14 days from the date it receives the costs submissions in which to file and serve its submissions in reply.

[16] For the avoidance of doubt the enforceable orders are:

- A. Steven Hamilton was unjustifiably dismissed and unjustifiably disadvantaged.**

- B. Advance International Cleaning Systems (NZ) Limited must pay Steven Hamilton:**
 - (i) \$6,957.53 gross lost wages and**
 - (ii) \$8,000.00 compensation for humiliation, loss of dignity and injury to his feelings.**

- C. Costs are reserved and a timetable has been set.**

Christine Hickey
Member of the Employment Relations Authority