

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Anthony Francis Hirst (Applicant)
AND Japanese Auto Services Limited (Respondent)
REPRESENTATIVES Anthony Hirst In person
Sam Liu, Advocate for Respondent
MEMBER OF AUTHORITY R A Monaghan
INVESTIGATION MEETING 19 April 2005
DATE OF DETERMINATION 19 April 2005

DETERMINATION OF THE AUTHORITY

- [1] Mr Hirst says he was unjustifiably dismissed from his job as a panel beater with Japanese Auto Services Limited (“JAS”).
- [2] On 9 February 2004 Mr Hirst sought to return to work after a two week absence because of illness. He says that when he telephoned to discuss his return his workshop manager, Liang Wang, told him that he was not wanted back at work. Mr Hirst says further that when he came to the premises to collect his final pay Sam Liu, the company’s managing director, told him he would not be paid monies Mr Hirst says were owed to him.
- [3] Mr Wang says he was aware of Mr Hirst’s illness, and intended to convey to Mr Hirst that he should take the time he needed to recover fully. Indeed it transpired that Mr Hirst was very ill, to the extent that he was hospitalised for several weeks shortly afterwards and has since been unable to work for medical reasons.
- [4] Neither Mr Wang nor Mr Hirst had a good recollection of the relevant conversation. Mr Hirst could not tell me whether Mr Liang actually told him he was not wanted back at work, or whether that was merely the impression Mr Hirst gained from the conversation. Mr Hirst said further that he believed his employment had been terminated because not enough work was available, but he had misinterpreted the significance of a fluctuation in the company’s workload. Not only was there work available, but the availability of work had nothing to do with the termination of his employment.
- [5] Overall I am not persuaded there was a dismissal, and accordingly Mr Hirst does not have a personal grievance.
- [6] However there remains an issue in respect of the company’s failure to pay Mr Hirst his final pay. In my investigation of that matter I was told the company does not keep pay records. That was a most unacceptable response. For the company’s information, s 130 of the Employment

Relations Act 2000 obliges it to keep a written record of a number of employment matters, including but not limited to:

- . the hours between which an employee works on each day;
- . the days an employee has worked in each pay period;
- . the wages paid to the employee each pay period and the method of calculation.

[7] The failure to keep such a record can attract a penalty of up to \$10,000 in the case of a company. I urge the company to ensure it maintains the proper records in respect of all of its employees.

[8] Returning to Mr Hirst's claim for monies owed, I accept he is entitled to payment in respect of the four statutory holidays occurring during the Christmas-New Year period of 2003-2004, as well as for Auckland Anniversary Day and Waitangi Day 2004.

[9] In addition he is entitled to 15 days' annual leave in respect of the year June 2003 (being the anniversary of the commencement of his employment) to June 2004. He was paid for 10 of those days. The best I can ascertain without records is that he is entitled to a pro rated payment in respect of the remaining 5 days. I assess that at $.58 \times 5 = 3$ days.

[10] Mr Hirst is entitled to 9 days' pay. On the figures he gave me, the amount owed is \$648.00. However those figures were nett of tax and no-one was able to provide me with gross figures. Accordingly JAS is ordered to pay to Mr Hirst the sum of \$648.00 nett, on the understanding that it retains its statutory liability to account for the tax to the Inland Revenue Department.

[11] The company is also ordered to reimburse Mr Hirst in the sum of \$70 in respect of the fee for filing this matter in the Authority. In the circumstances no other costs order is appropriate.

Summary of orders

[12] JAS is ordered to pay to Mr Hirst:

- (a) \$648.00 nett; plus
- (b) \$70 in costs.

R A Monaghan
Member, Employment Relations Authority