

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2022] NZERA 301
3133919

BETWEEN

PAUL KING
Applicant

AND

ICE FIRE PROTECTION
LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: No appearance by the Applicant
Keith Blind for the Respondent

Investigation Meeting: 17 June 2022 at Auckland

Date of Determination: 7 July 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr King claimed he had been constructively dismissed as a result harassment, bullying and hostility he said he had suffered following a work-related injury, that he attributed to his employer's negligence.

[2] Mr King said he had an unfair reintroduction to work after his injury. He sought reimbursement from the Respondent of the cost of medical certificates he had obtained due to the injury/accident. He also said the Respondent failed to give him his final pay advice.

[3] The Respondent denied all of these claims. It said Mr King's employment ended because he resigned, he was not dismissed. The Respondent said Mr King had been actively looking for alternative jobs during the 12 months leading up to his resignation.

Authority's investigation

[4] The Authority held an in-person investigation meeting in Auckland on 17 June 2022. Mr King did not attend the investigation meeting despite having notice of it. The Authority had asked Mr King to provide readable copies of documents he had attached to his witness statement. On 15 June 2022 Mr King asked for a one month adjournment to do that.

[5] The Authority replied to Mr King declining his request for an adjournment on the basis it was made too late and there was no time available for an alternative investigation meeting to be rescheduled within a reasonable timeframe.

[6] The Authority told Mr King it would question him during the investigation meeting so he could verbally address the evidence he had wanted to produce. Mr King was also informed that he needed to attend the investigation meeting in person on 17 June 2022.

[7] When Mr King did not attend the investigation meeting the Authority's attempts to contact him by phone were unsuccessful. The Authority Officer's phone call went to answerphone. The Authority therefore conducted its investigation into Mr King's claims based on the information it had available at that time.

[8] Keith Blind who is one of two directors of the Respondent attended the investigation meeting in person along with a Project Manager who was Mr King's manager. They both gave evidence in person to the Authority.

[9] Both parties had filed written witness statements in advance of the investigation meeting and had filed relevant documents with the Authority. Mr King had filed two witness statements, so the Authority's investigation focused on that information.

[10] On 26 June 2022 Mr King emailed the Authority asking for a "*new date for the proceedings*". Mr King was informed the investigation meeting had proceeded as scheduled, so the Authority had investigated his claims in his absence.

Issues

[11] The following issues were determined;

- (a) Was Mr King dismissed or did he resign?
- (b) If he was dismissed, was it justified?

- (c) If not, what if any remedies should he be awarded?
- (d) Was Mr King owed wage arrears?
- (e) Did the Respondent have to reimburse Mr King for his medical certificates?
- (f) Did the Respondent have to reimburse Mr King for the personal tools he claimed had been stolen from its storage?
- (g) Was Mr King given his final pay advice?

Background

[12] Mr King said he suffered an accident and injury occurred at work on 10 November 2020 that required him to have three weeks off work to recover. Mr King's duties, responsibilities and job description remained unchanged on his return to work after his injury.

[13] When Mr King returned to work he did so in accordance with an agreed return to work plan. He also had another health and safety induction.

[14] The Respondent arranged for Mr King to undertake work on worksites alongside his colleagues, so that he was not working alone. Mr King started attending work extremely early (outside normal hours) and then leaving unexpectedly early, without letting his colleagues know he had left work for the day.

[15] To address that, the Respondent instructed Mr King to work normal hours, so he would start and finish work at the same time as his colleagues who were on the same worksite. The Authority considered that was reasonable and appropriate. It was not an example of bullying, harassment or hostility.

Was Mr King dismissed or did he resign?

[16] The Authority was satisfied from the available evidence it was more likely than not that Mr King resigned.

[17] There was no evidence to support the claims he had made in the Statement of Problem about harassment, bullying or hostility. Although Mr King had been specifically told to include evidence about such claims in his witness statement, he did not do so.

[18] The Authority pointed that omission out to Mr King and invited him to file a supplementary statement that specifically included his evidence about that. However, failed to provide any such information in his second witness statement.

[19] The Authority questioned the respondent's witnesses about the circumstances of Mr King's accident and injury and how his return to work was dealt with. The information in the Statement of Problem and Mr King's witness statements was also put to the Respondent's witnesses to respond to.

[20] The Authority did not identify any fundamental breach of duty that would have made Mr King's resignation reasonably foreseeable. Nor did the Authority identify a course of conduct that was designed to coerce Mr King's resignation.

[21] The evidence established that Mr King had been seeking alternative employment in the months leading up to his resignation. He had been supported in that endeavour by his employer, who had given him time off work to attend job interviews. The Authority considered that from the evidence it heard, Mr King's resignation was more likely than not a free and voluntary resignation.

[22] Mr King's constructive dismissal grievance did not succeed.

Is Mr King owed wage arrears?

[23] The Respondent told the Authority it obtained consent from its employees to pay them reduced wages/salary during the COVID lockdowns. However, the Respondent was unable to produce a signed variation agreeing to this change to Mr King's remuneration.

[24] When the Authority investigated this omission further, it appeared that Mr King may not have expressly agreed to the reduction in his wages, but he still had his wages reduced in line with other employees who had agreed to the reduction in their wages.

[25] The Respondent acknowledged that Mr King had not received his full normal wages during the lockdown. Mr King's wage arrears claim therefore succeeded.

[26] The Authority asked the Respondent to provide it with evidence about what Mr King should have been paid if he had received his normal salary during the lockdowns compared to what he actually received over that period. This information was to be filed on the afternoon of the investigation meeting, however, that did not occur.

[27] The Authority has adopted the amount of unpaid wages Mr King sought in his Statement of Problem, as that was the only information that was available about the amount of his wage arrears he was claiming. The Respondent also had not provided the Authority with any evidence to show that the \$1,000 Mr King had claimed in the Statement of Problem was incorrect.

[28] The Respondent is ordered to pay Mr King \$1,000 wage arrears to reimburse him for the reduced wages he received during the Auckland Covid-19 lockdown.

Did the Respondent have to reimburse Mr King for unpaid sick notes?

[29] Mr King's claim that the Respondent should reimburse him for medical certificates he had to pay for due to his work related injury succeeds.

[30] The Respondent is ordered to reimburse Mr King \$115 based on the two medical certificates (one dated 24 November 2020 for \$54 and the other dated 21 October 2020 for \$61) because he should not be out of pocket as a result of a work related injury.

[31] However, Mr King's claim to be reimbursed \$15 for medication did not succeed, because that should have been covered by ACC, so it was not his employer's responsibility.

Did the Respondent have to reimburse Mr King for the personal tools he claimed had been stolen from its storage?

[32] The evidence did not support Mr King's claim that his personal tools were stolen from the respondent's storage. Mr King did not report this to the Respondent while employed. There was no Police report to establish that any of Mr King's personal tools had been stolen or to establish that had occurred from the Respondent's storage.

[33] The Respondent produced a photo of Mr King's personal tools that he brought into the business with him. That did not include the items he now sought reimbursement for. His personal tools also would not have been valued at the amount Mr King has claimed.

[34] Mr Blind told the Authority he made enquiries as a result of Mr King's theft allegations. Mr Blind discovered that Mr King had been leaving his personal tools in the valve room that was an area that could be accessed by others with a generic fire access key. It was not the Respondent's storage area.

[35] Mr Blind and the Project Manager, who was Mr King's line manager, both told the Authority they had never seen Mr King using the tools he claimed had been stolen from the employer's premises, nor had they ever seen those tools in his work van or with him at work.

[36] Mr King's claim for reimbursement of allegedly stolen personal tools did not succeed.

Was Mr King given his final pay advice?

[37] The Respondent filed a copy of Mr King's final pay advice when it filed its witness statements, so Mr King's allegation that he did not receive a final pay statement did not succeed.

Costs

[38] Mr King was a self-represented Applicant, so he did not actually incur any legal costs. However, as the successful party Mr King was entitled to be reimbursed his filing fee of \$71.56.

Outcome

[39] The Authority made the following findings and orders:

- (a) Mr King's unjustified constructive dismissal claim did not succeed;
- (b) Mr King's claim for reimbursement for personal tools he claimed had been stolen from the Respondent's storage did not succeed;
- (c) Within 28 days of the date of this determination, the Respondent is ordered to pay Mr King \$1,186.56 consisting of;
 - (i) \$1,000 to compensate him for the reduction in wages that occurred during the COVID lockdowns;
 - (ii) \$115 to reimburse him for the two medical certificates he personally paid for as a result of his work-related accident/injury;
 - (iii) \$71.56 to reimburse his filing fee.