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Lacy v Ruanui Station Partnership [2011] NZERA 262; [2011] NZERA Wellington 76 (10 May 2011)

Last Updated: 19 May 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2011] NZERA Wellington 76 File Number: 5313234

BETWEEN

Waylon Lacy Applicant

AND

Ruanui Station Partnership Respondent

Member of Authority: Denis Asher

Representatives:

No appearance by or for the applicant Stephanie Burlace for the respondent

Investigation Meeting Palmerston North, 10 May 2011

Submissions Received No submissions were made by the parties

Determination:

10 May 2011

DETERMINATION OF THE AUTHORITY

The Problem

[1] Was Mr Lacy unjustifiably dismissed by the respondent (the Partnership)? Is he owed unpaid holiday pay? Were his wages unilaterally reduced? Or, as the Partnership claims, was his grievance filed outside of the statutory 90-day period?

[2] The parties have not undertaken mediation in respect of this employment relationship problem

The Investigation

[3] In a telephone conference on 10 December 2010 the parties agreed to undertake mediation and, should it prove unsuccessful. A one-day investigation in Palmerston North on Tuesday 10 May 2011.

[4] The parties also agreed to a timetable for providing witness statements and any additional documentary evidence.

[5] Mediation was set down for 28 February 2011.

[6] In a letter faxed to the Authority on 14 February 2011 the Partnership's then counsel, Mr David Robertson, expressed the view that, "*We consider that this matter is now concluded ...*" (Authority record) as a result of the claim Mr Lacy left employment with the respondent on 25 June 2010, that there was no contact between the applicant and the Partnership until 9 November 2010 when the statement of problem was received, and the grievance therefore had not been raised within the statutory timeframe. The view was expressed that, "*... in the present circumstances there is no reason why the former Employer should be attending mediation*" (above).

[7] As a result of the respondent's stance mediation did not proceed.

[8] Following an unsuccessful attempt to reconvene a second telephone conference with the parties (Mr Lacy did not answer his phone despite written advice of the date and time of the call), I directed support staff to advise the parties that the investigation set down by agreement for 10 May would now only address the preliminary question of whether the personal grievance was raised within 90-days. A letter to that effect dated 23 February was sent to Mr Lacy's given address but was returned with the advice, "*Gone, No Address*" (Authority record).

[9] All efforts to contact Mr Lacy by telephone and letter to the number and address provided by him since 23 February 2011 have proven unsuccessful: all communications to the applicant by the Authority have gone unanswered.

[10] In the meantime Mr Lacy has not complied with the agreed timetable for providing witness statements, etc.

[11] Mr Lacy did not attend today's agreed investigation. No explanation or communication of any sort has been received from the applicant in respect of his failures to communicate with the Authority or his failure to attend today's investigation.

Background

[12] It appears likely that Mr Lacy was employed by the Partnership from October 2008 until June 2010 as a shepherd on its central North Island farm.

[13] No evidence or detail has been provided by Mr Lacy in support of the claims set out in his statement of problem that there has been an "*Unfair dismissal*" (par 1), and "*No holiday pay, decrease in wages, told to leave my job given no reasons or warnings*" (par 2). The resolution sought by the applicant was, "*Through some sort of mediation*" (par 3). The only documents attached by Mr Lacy were bank statements, that have the comments "*pay rise*" and "*decrease for no reason?*" handwritten on them, but by whom and in respect of what is not clear.

[14] A Mr Andrew Carpenter drafted the statement in reply on behalf of the Partnership. In it, Mr Carpenter says, "*After three verbal warnings and then a written warning, it was jointly agreed by myself and Mr Lacy that Mr Lacy would no longer be employed by Ruanui Station (30/5/2010*" (par 1)).

[15] Other details are set out in the statement in reply including allegations of poor performance, cruelty to animals, lack of regard to others and farm machinery. Attachments include a summary of verbal warning dates and reasons, some details of pay deductions for damage to farm equipment and the applicant's accommodation and a claim that Mr Lacy was allowed to work out his employment to the end of June

2010.

[16] Also provided are dates of leave taken by the applicant.

Discussion and Findings

[17] Mr Lacy's allegation he was unjustifiably dismissed, that matter the parties were on notice that today's investigation would address, must fail because of his failure to raise his grievance within the statutory 90-day timeframe: [s. 114](#) of the [Employment Relations Act 2000](#) applied.

[18] I make this finding on the basis of the lack of evidence to support a contrary finding and for credibility reasons outlined below.

[19] Mr Lacy's other allegations, that he is owed holiday pay and his wages were unilaterally reduced, are also unlikely to succeed. That is because of the same lack of supporting evidence and the fact that the credibility of Mr Lacy's allegations is undermined by his failure to communicate with the Authority, to adhere to agreed time lines for the provision of evidence in support of his claims and, in particular, to attend today's investigation.

[20] However, as he and the respondent were on notice that today's investigation would address only the 90-day matter, leave is reserved for Mr Lacy to continue to pursue these matters.

[21] But, because of Mr Lacy's lack of responsiveness, he may face costs implications in pursuing these matters further.

Determination

[22] Mr Lacy's grievance he was unjustifiably dismissed fails because it was filed outside of the statutory 90-day period.

[23] Costs are reserved.

Denis Asher

Member of the Employment Relations Authority

