

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 119
5323083

BETWEEN CORY JOHN LEGGOTT

AND CAR STYLES PANEL AND
 PAINT LIMITED

Member of Authority: Yvonne Oldfield

Representatives: Mr Leggot in person
 Mr Bijay Hullia, Director, for respondent

Investigation Meeting: 22 March 2011

Determination: 29 March 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The issues in this employment relationship problem are relatively narrow. Mr Leggott says that when he finished his employment at the end of September, 2010, his final pay was incorrect. He says Mr Hullia refused to pay him for his final day of work and his holiday pay was short by \$1,560.00. Mr Leggott therefore claims:

- i. One day's pay (at an hourly rate of \$19.50) \$156.00 gross, and
- ii. Holiday pay of \$1,560.00 gross.

[2] Mr Hullia acknowledges that he withheld payment for Mr Hullia's final day at work. He says he did so because Mr Hullia did not work a full day and because he was aggressive and abusive while he was there. As for the deduction from the holiday pay, he said that this was in lieu of notice because Mr Leggott gave only one week's notice rather than the three weeks provided for in his employment agreement.

Issues

[3] On Thursday 23 September 2010 Mr Leggott handed Mr Hullia a letter giving notice that he planned to leave his job as a panel beater on 30 September. He told the Authority that he had not seen a copy of his employment agreement since he signed it when he was first employed more than two years earlier. He could not recall what it said about notice and simply assumed (being paid weekly) that one week's notice would be enough. He said other staff had resigned during the time he had worked for the respondent and he did not think they had given three weeks notice. Mr Hullia agreed in his evidence that others had left in shorter timeframes but said that this had been by agreement.

[4] Either that afternoon or the next day, Mr Hullia showed Mr Leggott a copy of his employment agreement (which does indeed provide for three weeks notice) and told him he needed to stay while a replacement was recruited. Mr Leggott was concerned to hear this as he had committed to starting his new job within that time. He told the Authority that he promptly spoke to his new employer, telling him that he might not be able to start for up to three weeks, depending how long it took Mr Hullia to find someone to fill his role.

[5] Mr Hullia however says that Mr Leggott never acknowledged any obligation to work on for three more weeks. He said from the time he told Mr Leggott that this was what was expected Mr Leggott was rude and angry to him. Mr Leggott disputes that he behaved inappropriately although he agrees that he was anxious that he might jeopardise his new job if he was unavailable when the other employer needed him.

[6] Mr Hullia says that the result was he decided to look for someone to replace Mr Leggott as soon as possible. There is no dispute that the following week (by Wednesday at the latest) Mr Hullia came to Mr Leggott and told him that he had found a panel beater to come and work for him on a temporary basis. Mr Leggott told me he was very relieved to hear this. He responded that in that case, he would finish the following day. Mr Hullia agreed.

[7] By the end of the next day, one thing is certain: whatever was left of the working relationship between the parties broke down completely. Mr Hullia said that Mr Leggott began the day half an hour late and then returned late from lunch. He said that when confronted about this, Mr Leggott became threatening and aggressive. He says Mr Leggott also changed his mind and asked to be allowed to work on after all. When this request was denied, Mr Hullia said, Mr Leggott became even more angry causing Mr Hullia to call the police and have Mr Leggott “trespassed.”

[8] Mr Leggott disputes all of this, including the suggestion that he changed his mind about leaving early. He says he had no reason to become aggressive since things had all turned out the way he wanted. He says he wanted to maintain an amicable relationship in order to preserve the possibility of further work in the future and in order to be sure that his holiday pay was paid out when he left. Mr Leggott also says he was asked to leave before he had a chance to collect his tools, which he says have never been returned.

[9] Mr Leggott was on an hourly rate of \$19.50. He worked 5-6 hours on his final day. His final payslip shows that \$1,560.00 gross was deducted from his outstanding holiday pay and no payment was made for the final day worked (30 September.) Mr Hullia said the deduction from the holiday pay was in lieu of notice while payment for the final day was withheld because of Mr Leggott’s abusive behaviour. The issue for determination in this matter is therefore whether Mr Hullia was entitled to withhold part of Mr Leggott’s holiday pay and wages in the manner described.

Determination

[10] Clause 14 of the employment agreement, on which Mr Hullia relies, provides:

“Termination

The employment which is subject to this agreement may be terminated by either party by giving written notice not less than 3 weeks prior to the intended date of termination, or by paying or forgoing remuneration in lieu of the specified notice period.”

[11] However, Mr Hullia's own evidence was that on Wednesday 29 September he approached Mr Leggott and told him that he could leave the next day because a replacement had been found for him. In other words, he agreed to Mr Leggott leaving within the prescribed notice period just as he had done in the case of other staff on previous occasions.

[12] In circumstances where agreement was reached about the leaving date there can be no question of forfeiture. Mr Hullia was not entitled to make any deductions from Mr Leggott's holiday pay.

[13] As for the failure to pay the final day's pay, Mr Hullia justified this simply by saying that he should not have had to pay for that day when Mr Leggott had been abusive and aggressive. If this was indeed the way Mr Leggott behaved then Mr Hullia would have been justified in asking him to leave the premises. He would not however have been justified in refusing to pay him for the hours he did work. As it is, Mr Hullia's assertions about the extent of Mr Leggott's behaviour were not credible. For this reason I am unable to accept that there was any basis for sending him away early. Mr Leggott is entitled to a full day's pay for 30 September.

[14] It follows that Mr Leggott has made out his case for payment of holiday pay and arrears of wages. I therefore make the following orders:

[15] **The respondent, Ryan Place Panel and Paint Limited, is ordered to pay to Mr Leggott the following sums:**

i. One day's pay being \$156.00 gross, and

ii. Holiday pay of \$1,560.00 gross.

[16] Since neither party was represented no question of costs arises.

Yvonne Oldfield

Member of the Employment Relations Authority