

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Darryl MacDonald and Adam Barron (Applicants)
AND Ian Hayward t/a Hayward Crosscutters (Respondent)
IN ATTENDANCE Darryl MacDonald, Adam Barron and Ian Hayward
MEMBER OF AUTHORITY P R Stapp
INVESTIGATION MEETING New Plymouth, 20 April 2005
FURTHER INFORMATION Darryl MacDonald 22 April, Ian Hayward 27 April 2005
Terence Waiariki letter attached to the Statement in Reply sworn on 2
May 2005.
DATE OF DETERMINATION 17 May 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

1. Darryl MacDonald and Adam Barron were employed as forestry workers for Ian Hayward trading as Hayward Crosscutters on 21 April 2004.
2. They were paid an hourly rate of \$18 per hour each. Their hours of work varied each week. There was an arrangement for the applicants to be picked up from their homes and taken to work and returned. Employment agreements existed that included the following: the applicants' duties and obligations, termination of employment, suspension from employment, and a one month trial provision. There was no term to reduce wages for any reason.
3. In early July Mr. Hayward employed a new foreman, Terence Waiariki. Mr. Waiariki says he told Mr. MacDonald on 15 July and Mr. Barron on 16 July that their hourly rate would drop by half. This is the essence of the applicants' complaint in filing their employment relationship problem. There is another issue: Mr. MacDonald says they are owed extra hours that were not paid for.

4. Mr MacDonald says that he did not agree to any reduction to his hourly rate when he was told on 15 July 2004. Instead he says that subsequently Mr. Hayward offered him \$14 per hour and that they met to discuss it being reduced on 17 or 18 July. Mr. Hayward says Mr. MacDonald said he would work for \$16 per hour but Mr. MacDonald could not recall the context of the discussion.
5. Mr Barron says that he did not agree to accept his rate being dropped in half when he was told by Mr. Waiariki on 16 July. Mr. Barron says that subsequently he “*sort of accepted*” Mr. Hayward’s offer of \$14 per hour but then changed his mind because it was not enough money for the job.
6. The employer’s decision seems to have eventuated over a disputed matter about the applicants’ performance, and that the only way Mr. Hayward could fix a problem involving the other workers was to pay them more because their performance was better, but he could not afford to.
7. Mr Barron says after the announcement he turned up to the work to discuss further the reduction and amount of pay but did not continue working.
8. Mr Waiariki says that he endeavoured to pick up Mr. MacDonald and Mr. Barron for work on 19 July, but Mr MacDonald told him he was sick and not going to work and Mr. Barron was not at the pick-up location. They deny it. Mr. Waiariki says neither of them turned up on 20 and 21 July and they were not seen or heard from again for work.
9. They say they were told that if they did not accept \$14 per hour they would not have a job.
10. The applicants did not return to work.

The issues

11. I summarise the issues as follows:
 - Whether or not the employer could reduce the hourly rate of pay?
 - Did the applicants agree to any reduction in their hourly rate of pay?
 - Are there any wages due to the applicants?
 - Were the applicants dismissed or did they abandon their employment by not returning to work? If there is a personal grievance what type of personal grievance applies?

Could the employer reduce the hourly rate of pay?

12. The employment agreements made provision for a one month probation period. There is no term or any circumstances in which the hourly rate could be reduced. Any reduction needed the agreement of the parties and an attempt to negotiate appears to have followed the decision by Mr Waiariki and Mr. Hayward to reduce the applicants' hourly rate of pay.
13. My conclusion is that the employer could only reduce the hourly rate by agreement. The attempt to get an agreement was after the event of the decision being taken to reduce the applicants' rates of pay. Mr. Hayward decided to reduce the hourly rate because he could not afford to pay other workers more for any better performance by them. The decision to unilaterally reduce the applicant's hourly rate of pay was an unjustified action.

Are there any wages due to the applicants?

14. Mr. MacDonald has also claimed he was not properly paid for his hours. There was a claim in the Statement of Problem but no details in his written statement of evidence. He told me he had the details written in a diary that he did not reasonably produce at the investigation meeting. Subsequently a one page diary for 2 January 2003 was sent in. It recorded hours of work for various dates in June and July 2004. I have given this little weight because I was not able to question Mr. MacDonald about it at the investigation meeting. Also it does raise questions about how and when the entries were made. The applicants signed the wage and time records for the receipt of the wages actually paid. Mr. MacDonald says he orally raised a dispute on the amount paid but Mr. Hayward disputes any problem existed because he says he kept the hours in a diary as did another worker. He says the hours for all the workers are consistent in the wage record without anyone else complaining. Mr. Barron kept no records of his own and could not give clear evidence of his understanding of what he considered was outstanding.
15. It is my conclusion that no wages are due on the balance of probabilities.

Were Mr MacDonald and Mr Barron dismissed?

16. The employment ended considering:
 - The payslips for the period ending 18 July 2004 included holiday pay, and
 - The applicants did not turn up for work after 18 July.

17. Therefore, Mr MacDonald had no option when no agreement on a rate occurred, other than to take a reduced rate. In the circumstances it was reasonable for him to conclude that his employment had ended. Mr. Barron decided to accept the \$14 but changed his mind that it was not enough for the job. He then decided not to return to work.
18. My conclusion is that the applicants' employment was affected to their disadvantage because their employment ended due to the unjustified action of the employer in deciding to reduce their hourly rate. After the event there were attempts to negotiate but nothing turns on this because a unilateral decision to reduce wages and require employees to negotiate new and lesser rates is unreasonable.

The resolution of the employment relationship problem

19. The applicants have a personal grievance. In resolving the applicants' employment relationship problem I am able to apply remedies for a personal grievance and do so as follows:
20. A loss of wages can be attributed to the unjustifiable action and the loss has been assessed on the basis of the time and wage records produced for the period the weeks ending 18 July 2004 through to 8 August 2004, when it appears work for all the employees ended. The total hours that continued to be worked by the other workers, after the applicant's left, was 92.5 hours according to the wage and time records produced.
21. There was a paucity of evidence from the applicant's about the affects of the employer's actions on them. Their evidence did not satisfy me any further compensation would be warranted. I observed them as being robust and worldly and their main issue was about getting paid their wages entitlement. I conclude in my discretion and in equity and good conscience that the applicants' employment relationship problem is adequately resolved with payment of wages lost due to the employer's action.

Ian Hayward trading as Haywood Crosscutters is to pay Darryl MacDonald and Adam Barron the sum of \$1,665 (gross) each

22. To resolve the employment relationship problem Ian Hayward trading as Haywood Crosscutters is to pay to Darryl MacDonald the sum of \$1,665 (gross) and is to pay to Adam Barron the sum of \$1,665 (gross).

23. There is no issue on costs.

P R Stapp
Member of Employment Relations Authority