

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2019] NZERA 221  
3051392

BETWEEN                      BRADLEY MADDEN  
Applicant

A N D                              NIGEL PAWSEY  
Respondent

Member of Authority:              Peter van Keulen

Representatives:                      Applicant in person  
No appearance for the Respondent

Investigation Meeting:              12 April 2019

Oral Determination:                12 April 2019

Written record issued:              15 April 2019

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**ORAL DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     Bradley Madden was employed by Nigel Pawsey to work as a calf rearer and farm labourer. Mr Madden only worked a short period with Mr Pawsey before an incident arose over Mr Madden requesting two days leave. This culminated in Mr Pawsey terminating Mr Madden's employment.

[2] Mr Madden claims Mr Pawsey unjustifiably dismissed him for which he seeks remedies and he seeks payment for wages owed for the work he did.

### **Progress of this matter**

[3] Mr Pawsey did not participate in the conduct of Mr Madden's claim by lodging a statement in reply or participating in the case management conference.

[4] I am satisfied that the statement of problem was served on Mr Pawsey on 29 January 2019. Mr Pawsey did not lodge a statement in reply within the requisite time frame so I set this matter down for a case management conference. A notice advising Mr Pawsey of the case management conference was served on him on 6 March 2019. Despite this, Mr Pawsey was not available to participate in the case management conference and no explanation was given for his non-attendance.

[5] I then set this matter down for an investigation meeting and a notice of investigation meeting was served on Mr Pawsey on 19 March 2019. This notice advised Mr Pawsey of the details of my investigation meeting and advised Mr Pawsey that he could still attend and participate. Despite this, Mr Pawsey did not make himself available to participate in my investigation meeting.

[6] The notice of investigation meeting advised Mr Pawsey "*If the Respondent does not attend the investigation meeting, the Authority may, without hearing evidence from the Respondent, issue a determination in favour of the Applicant.*" So, Mr Pawsey was aware that I could proceed if he did not attend the investigation meeting.

[7] Considering all of the above, there was no apparent reason why the investigation meeting could not continue in Mr Pawsey's absence. I therefore proceeded with the investigation meeting pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act).

### **Discussion**

[8] Mr Madden and Mr Pawsey met on 9 August 2018 to discuss potential employment for Mr Madden on the farm that Mr Pawsey managed. They agreed that Mr Madden would be employed on an “ongoing casual” basis in a role described as a calf rearer and farm labourer. Mr Madden would be paid \$25.00, and holiday pay on what was described as a “pay as you go” basis.

[9] Mr Madden started work on 10 August 2018. Mr Madden’s employment work operated almost immediately as a full time role with regular hours. Mr Madden assisted with milking from 6:00 am, then attended to calf feeding and finished early afternoon by completing labouring work assisting with farm jobs.

[10] On 17 August 2018, there was an incident at the farm involving a sick calf that resulted in the calf being put down the following day. The treatment of this calf was the first sign of concern for Mr Madden. He was distressed by the way in which it was treated and ultimately put down and he spoke to Mr Pawsey about this.

[11] On 19 August 2018, Mr Madden asked Mr Pawsey for two days leave as he wished to support a friend with a family bereavement by attending the funeral with her in Dunedin. This time off also coincided with pre-arranged dog breeding commitments that Mr Madden had, involving travel to Christchurch.

[12] It was obvious to Mr Madden that Mr Pawsey was not happy about this and it started a chain of events, which resulted in Mr Pawsey dismissing him. Essentially, throughout the morning’s work Mr Pawsey was critical of Mr Madden’s work and disparaging about him. This culminated in Mr Pawsey telling Mr Madden that at the end of the day’s work he could “fuck off”.

[13] When the work had finished for the day Mr Madden requested he be paid for the hours he had worked up until that point. Mr Pawsey agreed that Mr Madden was owed wages for 47 hours work. When Mr Madden asked when he would be paid Mr Pawsey became angry

and aggressive, pushing Mr Madden, swearing at him, threatening him and yelling at him to leave immediately.

[14] Mr Madden never returned to work, taking the events of the day to be a dismissal.

[15] Subsequently in September 2018 Mr Madden sent a text message to Mr Pawsey asking him to pay him for the 47 hours worked and requesting two weeks' pay for notice.

[16] Mr Pawsey's response was that he would only pay Mr Madden for the 47 hours worked and that the payment would be made at minimum wage.

[17] Mr Madden then put Mr Pawsey on notice that he would issue a claim for payment and personal grievances for the manner in which he had been treated including his dismissal.

[18] Mr Pawsey's response was that if he did this Mr Madden would not see anything, which was presumably a reference to Mr Pawsey not paying him at all.

[19] Since the text message exchange, Mr Madden has not received any payment from Mr Pawsey. He raised a personal grievance in October 2018 and then lodged his statement of problem in the Authority in January 2019.

[20] I have heard evidence from Mr Madden about what occurred at the farm. I have reviewed the text message exchange in September 2018 and I have read Mr Madden's letter raising his personal grievance. I have also listened to a recording of the incident on 19 August 2018 when Mr Madden asked to be paid for the work he completed.

[21] Based on all of this evidence I am satisfied that the events set out above occurred and I make the following conclusions:

- (a) Whilst the employment relationship was only discussed orally, the evidence shows there were agreed terms, including the work to be undertaken and the wage rate of \$25.00 per hour.

(b) Given what occurred with the amount of work undertaken, Mr Pawsey's clear expectation of the employment being ongoing and Mr Madden's acceptance of the regular work pattern, the employment was permanent and full time despite being labelled as casual.

(c) Mr Madden did work 47 hours for Mr Pawsey and has not been paid for this work.

(d) Mr Pawsey dismissed Mr Madden on 19 August 2018.

[22] Therefore, Mr Pawsey:

(a) Owes Mr Madden wage arrears for 47 hours work and \$25.00 per hour

(b) Owes Mr Madden holiday pay at 8% of the wages payable for the 47 hours worked.

(c) Unjustifiably dismissed Mr Madden.

[23] The unjustified dismissal arises because Mr Pawsey dismissed Mr Madden without a substantive basis for doing so and without following any process. The complete failure to act appropriately in how he terminated Mr Madden's employment means that Mr Pawsey failed comprehensively to meet the requirements of ss 4, 4A and 103A of the Act, which set out the standards of good faith dealing and justified actions between an employer and an employee.

[24] As Mr Madden has been successful with his grievance claim he is entitled to remedies pursuant to s 123 of the Act. In this regard he seeks \$2,000.00 for compensation and two weeks lost remuneration based on 40 hours per week.

[25] I am satisfied that Mr Madden has suffered humiliation and injury to feelings from his unjustified dismissal, which warrants an award of \$2,000.00 compensation. I am also satisfied that Mr Madden's lost remuneration arising from the unjustified dismissal is \$2,160.00 (gross) being two weeks wages including holiday pay.

## **Orders**

[26] Within 14 days of this determination, Mr Pawsey must pay Mr Madden:

- (a) \$1,269.00 (gross) for wage arrears being the 47 hours worked plus holiday pay.
- (b) \$2,000.00 as compensation for the humiliation and injury to feelings caused by the unjustified dismissal.
- (c) \$2,160.00 (gross) as reimbursement for lost remuneration from the unjustified dismissal.

## **Costs**

[27] As Mr Madden has been successful with his claim he is entitled to the cost he incurred in pursuing this matter in the Authority and this is the filing fee of \$71.56. Mr Pawsey must therefore also pay Mr Madden, within 14 days of this determination, \$71.56.

Peter van Keulen  
Member of the Employment Relations Authority