

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 147/08  
5082073

BETWEEN                      PHILLIP MARDELL  
   Applicant  
  
AND                                EDWARDS DUNLOP (NZ)  
   LIMITED  
   Respondent

Member of Authority:        Dzintra King  
  
Representatives:              Applicant in Person  
   John Murdoch, Advocate for Respondent  
  
Investigation Meeting:        14 November 2007  
  
Determination:                22 April 2008

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant, Mr Phillip Mardell, was employed as a storeman by the respondent, Edwards Dunlop (NZ) Limited trading as BJ Ball Papers. Mr Mardell, who was 18 at the time, reported to the Warehouse Manager.

[2]     Mr Mardell said he was dismissed on 27 November.

[3]     The respondent denies that there was a dismissal and says that Mr Mardell resigned.

[4]     On Thursday 23 November 2006 Mr Mardell was playing rugby after work, someone landed on his back and injured it, aggravating a previous injury. He telephoned his employer and said that he would not be coming in to work on Friday 24 November.

[5] Mr Mardell said that on Monday 27 November he went to work and was told by his Foreman to go and see the Floor Manager, Mr Elder Thomas Ben. Mr Ben had worked for the company for three years as a Management Cadet and had been transferred to a variety of positions so as to gain a broad range of experience.

[6] In October 2006 he moved from a role in the IT department to a role in Operations. At that time he assumed some responsibility for the store operation and had direct contact with Mr Mardell.

[7] Mr Ben said he knew Mr Mardell had a medical condition, but was not aware of what it was. He said it did not seem to affect Mr Mardell's performance of his duties. He found Mr Mardell to be always polite and willing and that he appeared to get on with everyone. Mr Ben felt they had a good relationship for the brief time that they worked together. Mr Ben said Mr Mardell was not the first young man to be injured playing sport. Mr Mardell had called in, had been honest about the injury and was back at work on Monday.

[8] Mr Ben said he had no real issue with Mr Mardell's absence that day, although it was a little inconvenient as November/December was a busy time in the stores operation. However, Mr Mardell was only working as an assistant and the work was still finished as required.

### **Monday Meeting**

[9] Mr Mardell and Mr Ben differ about what happened at this meeting.

[10] Mr Mardell said that on Monday morning he was told to see Mr Ben by his foreman. Mr Ben said that on the Monday he did catch up with Mr Mardell and asked to talk to him. However, he said he approached Mr Mardell and he did not get anyone to send Mr Mardell to him as Mr Mardell claimed.

[11] Mr Mardell said that Mr Ben told him that he would have to let him go due to serious misconduct. Mr Ben then told Mr Mardell he would give him some time to think about the situation and left him alone for a little while. At this point Mr Mardell was shocked, upset and angry. He had not received any warning and at no point had it been explained to him that playing sport in his leisure time was a sackable offence.

[12] When Mr Ben came back he told Mr Mardell that he could do one of two things. He told Mr Mardell that he was in his rights to fire him and could do so with immediate effective and without pay. The second option was that he would pay him out to the end of the month, write him a personal reference and Mr Mardell could put on his CV that he left for whatever reason he felt like putting down. All he had to do to receive the second option was to write a letter of resignation.

[13] Mr Mardell said that never having been fired before, he felt that this was his only option. Mr Ben coached him in the wording of the letter. Mr Mardell said he felt as though he was encouraged to formulate and sign a letter of resignation under duress by his superior.

[14] Mr Ben's version is quite different. He says when he met with Mr Mardell he did discuss the need to prioritise his responsibilities and questioned whether playing rugby on a Thursday night, when his back was already sore, was a bright idea. He did say something about responsibility to the company and letting his workmates down. Mr Ben denies saying that it was serious misconduct or a sackable offence. He also denies saying he could fire him on the spot without pay and he did not offer him two alternatives. Mr Ben said that as a management cadet he had received considerable training and instruction and was well aware of what he could and could not do. He was not entitled to formally discipline staff. He was not even authorised to issue warnings and certainly not to summarily dismiss an employee. Everybody in the company knew that disciplinary action had to be channelled through the Regional Manager and the General Manager. Mr Ben had never given a warning or disciplined anybody.

[15] The conversation with Mr Mardell on Monday morning was not a disciplinary meeting because it was not a disciplinary matter. Shortly into the discussion Mr Mardell announced that he did not really like the job and that he wanted to leave. Mr Ben was stunned. He asked Mr Mardell why but Mr Mardell did not really reply. He asked him if something else had happened at work on Thursday, but Mr Mardell just said that he did not like the job very much.

[16] Mr Ben said something like "*don't do anything stupid or that you will regret*" and asked whether he wanted to talk with anyone else such as Mr Gillingham or Mr O'Grady. Mr Mardell did not and said he just wanted to leave. Mr Ben told him to think about what he was doing and suggested that maybe he telephone his mother. He

told Mr Mardell that he would leave him alone to think about his decision and there was a telephone available in the room. He left Mr Mardell and returned about half an hour later.

[17] Mr Mardell told Mr Ben he had been thinking about it all weekend and he was sure he wanted to quit. Mr Ben then told Mr Mardell if he was serious he needed to give a resignation in writing and hoped that would make Mr Mardell stop and think about what he was doing.

[18] He then left him alone in the room for another 20 minutes or half an hour hoping Mr Mardell would rethink his decision. When he returned, Mr Mardell handed him a piece of paper with his one line resignation. Mr Ben denies coaching Mr Mardell in the wording of the one line statement. He also says he did not place Mr Mardell under any duress or encourage him in any way to make this decision. The decision was Mr Mardell's and Mr Mardell's alone. He said that at the end Mr Mardell was friendly and amicable, did not appear hostile or upset towards Mr Ben. He shook Mr Ben's hand and thanked him on behalf of the company for the opportunity.

[19] Mr Ben said he had revisited that day over and over and could not explain why Mr Mardell decided to leave. He could not think what else he could have done on the day to change Mr Mardell's mind.

[20] I note that the resignation is just one sentence. It is difficult to see how any coaching could have been required.

### **Personal Grievance Allegation**

[21] A letter dated 4 December was written subsequently by Mr Mardell but not received by the company until 11 December, alleging that the company had dismissed him. There was a subsequent meeting between the parties but matters were not resolved.

[22] There is a stark contrast of evidence in this case.

[23] The Authority did attempt to contact two witnesses who may possibly have shed some light on this matter, but was unsuccessful in doing so.

[24] Mr Mardell's previous employment had been in areas such as being a bartender and a barista. He said this was different work from what he had done before. Mr Mardell was employed by the respondent through a recruitment company and it was Mr Mardell's mother who approached the recruitment company asking that a job be found for her son. She then approached Mr Bull and asked him about a job for her son. I think it more likely than not that Mr Mardell did not like the type of employment his mother had found for him. It would have been quite different from the work that he had done previously.

[25] It may be that Mr Ben's talking to him about the inadvisability of playing rugby prompted a decision to resign. I accept Mr Ben's evidence about being surprised at Mr Mardell's decision to leave his employment and about the efforts he made to dissuade Mr Mardell from doing so. There is no rationale whatsoever for Mr Ben threatening to dismiss Mr Mardell and making threats about an instant dismissal. I do not believe that Mr Mardell was persuaded to write the resignation letter by Mr Ben. Mr Mardell wrote the letter of his own volition and later regretted it when he realised that he might well have problems with his parents. I did put this to Mr Mardell and he denied it, but on balance I think is the most likely explanation for what happened.

[26] Mr Mardell had been placed with B J Ball through a recruitment agency, Leanne Bell Recruitment Limited, at a placement cost of \$3,500 plus GST. It is difficult to believe that the company would summarily dismiss Mr Mardell for a single day's absence through sickness. There had been no previous warnings. There was no offence that could substantively justify a dismissal and the person alleged to have effected the dismissal had no authority to dismiss. There was no history of hostility between Mr Ben and Mr Mardell and no reason for Mr Ben to behave in a vindictive manner towards Mr Mardell.

[27] The logical explanation is that Mr Mardell, for reasons best known to himself, decided to terminate his employment and then regretted his decision.

[28] Mr Mardell does not have a personal grievance.

**Costs**

[29] If the parties are unable to resolve the issue of costs, leave is reserved for the respondent to file a memorandum within 28 days of the date of this decision. The applicant should then file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King  
Member of the Employment Relations Authority