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Mathieson v Kaituna Pastoral Farms Limited (Auckland) [2007] NZERA 122 (23 April 2007)

Determination Number: AA 116/07 File Number: 5039376

Under the [Employment Relations Act 2000](#)

BETWEEN Ian Mathieson

AND Kaituna Pastoral Farms Limited

REPRESENTATIVES John Peebles, advocate for Ian Mathieson

Kim Stretton, advocate for Kaituna Pastoral Farms Limited

MEMBER OF AUTHORITY R A Monaghan

INVESTIGATION MEETING 13 November 2006 and 9 March 2007

SUBMISSIONS RECEIVED 27 March and 13 April 2007

DATE OF DETERMINATION 23 April 2007

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Kaituna Pastoral Farms Limited ("KPFL") employed Ian Mathieson as a farm manager on one of its farms, Hauone.

[2] Mr Mathieson says he has a personal grievance on the ground that KPFL unjustifiably and constructively dismissed him, as well as personal grievances to the effect that his employment was affected to his disadvantage by unjustifiable actions of KPFL's. He says further that KPFL failed to provide him with a number of benefits agreed as part of the employment agreement, and seeks payments in respect of those benefits. Finally, he says he is owed wages and holiday pay.

[3] The disadvantage grievances concern:

- (a) the failure to implement a promotion and salary increase that had been promised in July 2004;
- (b) an unjustified warning given on 3 December 2004;
- (c) a demotion from the position of farm manager in 2005;
- (d) 'harassment' regarding the signing of a new employment agreement; and
- (e) unjustified withdrawal of approval for a period of annual leave.

[4] The claim for payment in respect of benefits not provided includes:

- (a) reimbursement of costs of dog registration and food for dogs;
- (b) reimbursement of the cost of a farm bike purchased for use on the farm;
- (c) telephone rental;
- (d) a grade free bonus; and
- (e) the salary increase associated with the promised promotion.

[5] The grievance on the ground of unjustified constructive dismissal relies on the cumulative effect of all of the above. Mr Mathieson confirmed his resignation in May 2005.

The terms and conditions of employment

[6] Hauone is a 600 hectare property which is used partly for dairying, and partly for drystock. In or about June 2004 Doug Roberts was appointed as farm supervisor to assist the KPFL operation, although he spent all of his time at Hauone. The farm had been performing poorly and required the attention. Mr Roberts' appointment was for a fixed term, ending in December 2004.

[7] At about the time of Mr Roberts' appointment a farm manager and a dairy herd manager were based at Hauone. The farm manager left his employment, and subsequently so did the dairy herd manager. The position for which Mr Mathieson applied was concerned with pastoral management, running the drystock unit and having supervision of the dairy herd, with Mr Roberts having overall supervision of the farm's operation. Mr Roberts conducted the initial interview and KPFL's owner, Allan Titchmarsh, conducted a further interview on or about 17 July 2004.

[8] Mr Titchmarsh planned to improve the farm's performance by farming more intensively. He wanted a manager with the pastoral skills to support increased dairying on the property. Mr Mathieson's background was in larger extensively-farmed properties and not in dairying. It was common ground that he indicated

an interest in moving to more involvement in dairying, and that Mr Roberts' departure was discussed. Mr Titchmarsh said at the investigation meeting he told Mr Mathieson that Mr Mathieson could take over from Mr Roberts when Mr Roberts left, and there would be an increase in remuneration of \$5,000 pa.

[9] The following additional matters were addressed at about the time of entry into the employment relationship and are now the subject of Mr Mathieson's claims for benefits agreed but not paid:

- (a) landline and cell phone business-related calls would be paid for by KPFL, although Mr Mathieson said the landline rental was also to be paid for;
- (b) Mr Mathieson said he was to be reimbursed for the cost of registering his dogs and that dog food would be provided, which Mr Titchmarsh denied;
- (c) Mr Mathieson said he was to supply a farm bike and receive an allowance of 35% of the purchase price, as well as a 'salary' of \$55,000 pa incorporating an allowance of \$5,000 pa, which Mr Titchmarsh denied.

[10] A written employment agreement was sent by facsimile to Mr Mathieson on or about 18 July 2004. Mr Mathieson did not sign or return it. He said that was because it did not refer to the agreed arrangements in respect of the dogs and the farm bike. Otherwise Mr and Mrs Mathieson moved into their farm accommodation a day or two later and began work.

[11] The relationship was relatively uneventful for the next few months. Regarding the written employment agreement, Mr Mathieson took up with Mr Roberts his concerns about the lack of provision for the dogs and for the bike. Mr Titchmarsh was made aware of the concerns but told Mr Roberts the document he had provided to Mr Mathieson was the agreement being offered. At the same time Mr Mathieson asked Mr Roberts to draft a new agreement, and pursued him to address the outstanding matters.

The failure to promote and the December 2004 warning

1. Background

[12] By November 2004 Mr Titchmarsh had concerns about Mr Mathieson's pastoral management. He had observed that gates had not been closed, animals had been let into the silage, fat cows were in well grassed paddocks and thin cows were in thinly grassed paddocks, stock was being mixed up and calves were not being moved. He had what he described as an informal meeting with Mr Mathieson in order to address these concerns.

[13] Mr Titchmarsh said further that the discussion included the implications of Mr Roberts' impending departure. He said Mr Mathieson agreed he did not have the skills to carry out some of Mr Roberts' duties. Mr Titchmarsh said there was an agreement that Mr Mathieson would remain as manager of drystock, and a production manager would be hired to manage the dairy herd and oversee the dairy operation. Indeed KPFL listed a vacancy for a dairy production manager on the industry's 'fencepost' website on 8 November 2004. An appointment was made, but it was relatively short-lived.

[14] Mr Mathieson said the 'informal meeting' was an argument on 8 November, which occurred while he and Messrs Titchmarsh and Roberts were standing around a ute. He said Mr Titchmarsh raised concerns about 'things not done' but told me he 'did not really worry about that'. He did, however, worry about what he said was the statement that he would not be getting Mr Roberts' job. He said he threatened to 'dong' Mr Titchmarsh and Mr Roberts had to restrain him.

[15] Mr Titchmarsh believed the problems with Mr Mathieson's performance continued after that discussion. He issued Mr Mathieson with a letter dated 3 December 2004, to which he attached a document entitled 'report drystock manager's performance review - Hauone Farm'. The document listed the performance concerns, and the letter itself was a 'formal written warning concerning your employment performance'. The letter confirmed that Mr Mathieson would not be taking over Mr Roberts' role, and required daily reporting of the day's activities as well as a weekly review of performance for a 6 week period.

[16] Mr Mathieson sought to make a disadvantage grievance out of an alleged failure on KPFL's part to respond to his 'challenge' to the letter. He prepared a written reply to the concerns, which he said he handed in to the office staff 'almost immediately'. The document is undated and is not addressed to anyone. Even the author is not identified and the document is unsigned. Mr Titchmarsh

said he had not seen the document until it was produced for the investigation meeting. In those circumstances I accept at least that the letter did not come to Mr Titchmarsh's attention at a time when it could have been addressed. Thus the evidence does not support a disadvantage of the kind alleged, and in any event I would have treated Mr Mathieson's concern as part of the grievance arising out of the warning itself rather than a separate grievance in its own right.

[17] Mr Mathieson also alleged that the warning was issued because he had taken exception to the news that he would not be taking over Mr Roberts' role. That allegation has no reasonable foundation and I do not accept it.

2. Justification for the failure to promote

[18] Although Mr Titchmarsh said in a written statement provided for the investigation meeting that Mr Mathieson's promotion was contingent on his proving suitable for Mr Roberts' job, that was not his oral evidence. He told me the arrangement was a 'done deal'. If the contingency was in his mind in July 2004, I consider it unlikely he said so to Mr Mathieson at the time. Not only that, Mr Titchmarsh acted in reliance on Mr Mathieson's indication that he would be able and willing to expand his role, and now feels Mr Mathieson misled him.

[19] Mr Mathieson subsequently indicated he had no interest in expanding his role in dairying. In effect he expressed himself to be unwilling to take up the full range of duties attached to Mr Roberts' position and I accept he said so to Mr Titchmarsh. Mr Mathieson is not entitled to take such a stance and expect appointment to the position anyway.

[20] At the same time it was apparent that Mr Titchmarsh's action was affected by the view he had by then formed of Mr Mathieson's performance.

[21] Accordingly I address the grievance based on failure to promote by saying there was a promise of promotion, but the failure to go ahead with it was justified to the extent that it took account of Mr Mathieson's unwillingness to carry out the full range of Mr Roberts' duties. If I am wrong in this I would not in any event award any remedy in respect of that aspect, because of the attempts KPFL subsequently made to resolve the matter and to which I turn later in this determination. As for the extent to which the decision not to promote relies on the same matters as those raised in support of the warning, then it is closely

related to the justification for the warning. The rest of my findings about it are subsumed in my consideration of the justification for the warning.

3. Justification for warning

[22] The standard of Mr Mathieson's performance was hotly contested by the parties, and the differences between them were extensive. Their dispute did not centre on whether the numerous incidents of concern to Mr Titchmarsh had occurred, but rather on why they had occurred and the extent of Mr Mathieson's culpability. For his [part Mr](#) Mathieson pointed out that not only did some of the incidents occur because he had other pressing priorities and could not be in two places at once, but the farm was in poor condition when his employment commenced and it was not possible to remedy that in the brief period of his employment. Finally he pointed to the effect of staffing shortages, which the evidence about staff turnover indicates was a valid concern.

[23] Mr Titchmarsh neither sought nor obtained Mr Mathieson's response to his concerns before issuing the warning, although Mr Mathieson should not have been as dismissive as he was of Mr Titchmarsh's earlier informal approach. However Mr Titchmarsh made his observations, and made up his mind about what they meant and what he was going to do about them in a disciplinary sense, without seeking any further input from Mr Mathieson.

[24] That is a seriously flawed procedure. It is sufficiently flawed to amount to an unjustifiable action of KPFL's part, and it affected Mr Mathieson's employment to his disadvantage.

[25] Since Mr Mathieson's remuneration did not drop, the remedies to which he is entitled are those set out in [s 123\(1\)\(c\)](#) of the [Employment Relations Act 2000](#).

[26] Regarding any injury to Mr Mathieson's feelings flowing from the grievance, the feelings expressed to me amounted to anger, frustration and aggression. I assess the remedy for that injury as \$3,000 and order accordingly.

[27] The financial consequence of the failure to appoint Mr Mathieson to Mr Roberts' position, to the extent the failure was linked to the reasons for the warning, is capable of being remedied under [s 123\(1\)\(c\)\(ii\)](#) and I approach the matter on that basis. However the question of whether an award is warranted is

a different one. I am not persuaded, in all of the circumstances, that the promotion would have gone ahead as originally planned but for the warning and the concerns surrounding it. Therefore I make no further award.

[28] Finally, despite Mr Titchmarsh's valid concerns about what he observed on the farm, I am not persuaded of Mr Mathieson's culpability in respect of the matters underlying the warning. Accordingly there is no reason to reduce the remedy I have awarded.

The demotion

[29] Although it was not clear from the applicant's papers, it appears there are two 'demotions' of concern to Mr Mathieson.

[30] The first 'demotion' was referred to in a letter from Mr Peebles dated 1 March 2005, in the following context:

"the provision of a position description as discussed was not carried out as it was viewed as pointless in view of the meeting and especially as your client had departed overseas and Mr Mathieson was unilaterally demoted ..."

[31] I understood the reference to a 'unilateral demotion' to be a reference to the appointment of another employee, Ray Verster, as overseer of the farm during Mr Titchmarsh's absence. In a letter dated 3 February 2005 Mr Titchmarsh had advised of his decision to appoint Mr Verster as his representative while he was overseas. Mr Verster was to be in charge of all aspects of running the farm, encompassing the dairy and drystock units. That was a similar role to Mr Roberts' role.

[32] It is doubtful whether the bare reference in the letter to a unilateral demotion is sufficient to amount to the raising of a personal grievance. I was not asked to find it was. However I did not understand that 'demotion' to be the demotion in respect of which a disadvantage grievance has been raised, since the matter was not addressed in any clear way in the papers filed. If I am wrong in this, I would not in any event find that Mr Mathieson was demoted in February, that Mr Verster's appointment affected Mr Mathieson's employment to his disadvantage, or that the appointment was an unjustifiable act of KPFL's. I would not find the circumstances amounted to a personal grievance in terms of the definition in [s 103\(1\)\(b\)](#) of the Act.

[33] There was a demotion in April 2005, and it occurred in the course of the parties' efforts to resolve their differences. A grievance was raised in response to that demotion. I return to the circumstances and my findings about the April demotion later in this determination.

Harassment regarding signing the new employment agreement

[34] In a letter dated 26 January 2005 Mr Peebles raised personal grievances in respect of the warning and the lack of follow up action, and the failure to appoint Mr Mathieson to Mr Roberts' position. The letter also purported to raise a grievance in respect of aspects of the reimbursement of the cost of toll calls, but I did not understand that matter to have been pursued. I would not, in any event, have found the matter amounted to a personal grievance in terms of the statutory definition.

[35] The letter went on to allege that Mr Mathieson had been told he was no longer wanted as an employee, and complain that Mr Mathieson was being 'harassed' to sign a new employment agreement. Finally, it raised the prospect

of a constructive dismissal.

[36] There was no basis for the allegation that Mr Mathieson was 'harassed' to sign a new employment agreement, and I would not be likely to find, without more, that mere repeated attempts to obtain such signature amounted to a disadvantage in terms of the statutory definition. There is no personal grievance in that respect. Indeed the indiscriminate elevating of complaints to personal grievances, when many of the complaints do not meet the statutory definition of a personal grievance, has not assisted the resolution of this problem.

Cancellation of approved annual leave

[37] Mr Mathieson had approached Mr Verster for approval for a period of annual leave from 28 April 2005 to 12 May 2005. Mr Mathieson said the leave was granted, and Mr Titchmarsh said he was told it was not.

[38] Mr Verster did not give evidence. However there was no dispute that there was at least a request for leave, rather the disagreement was over whether the

request was declined - or granted but later withdrawn. In the absence of Mr Verster I accept the request was granted and then withdrawn.

[39] As to the withdrawal, Mr Verster wrote a letter dated 27 April 2005 to Mr Mathieson saying:

"As per Alan's instructions I am advising you that in regard to your request for leave dating 28 April 2005 until 12 May 2005 we are not in the position to grant you this leave.

This is partly due to Mike Lawson's unavailability due to his accident and also due to the fact that certain tasks need to be completed by the middle of May 2005.

We require you to be at work as normal."

[40] Beyond the making of the complaint I was not addressed on how any of that amounted to a disadvantage grievance in terms of the statutory definition, and I am not persuaded it did so. If I am wrong in this, then I refer to my finding in respect of the annual leave entitlement outstanding at the end of Mr Mathieson's employment and consider the matter remedied by the making of the necessary payment.

The termination of employment

1. Background

[41] Messrs Titchmarsh and Mathieson met again informally on 24 January 2005. There was a discussion about the performance issues, and about the completion of a written employment agreement. Mr Titchmarsh wrote to Mr Mathieson on 25 January, seeking a further meeting to discuss these matters more formally.

[42] As I have recorded, several personal grievances were raised in a letter dated 26 January 2005

[43] A meeting went ahead on 27 January, attended by both parties and their representatives. It lasted for over four hours. Mr Titchmarsh's view of it was that many of the issues were worked through, and he said he was starting to feel encouraged that he and Mr Mathieson could work things out. To assist with concerns such as the one about appointment to Mr Roberts' position, the extent of Mr Mathieson's involvement in dairying work, and obtaining clarity in respect of

the performance issues Mr Titchmarsh offered Mr Mathieson an opportunity to draft his own job description. His evidence was that Mr Mathieson thought that would assist and Mr Peebles agreed to provide a draft by 31 January.

[44] The issues discussed included farming practices, the need for communication, whether Mr Titchmarsh had told anyone he wanted Mr Mathieson 'out' (which Mr Titchmarsh denied), whether Mr Mathieson was planning to leave and was looking for another job (which Mr Mathieson denied), Mr Mathieson's indication that he did not wish to work in the milking shed, and staffing issues.

[45] Nevertheless at the investigation meeting Mr Mathieson said he was not happy with the outcome. Mr Titchmarsh was unaware of that at the time, and it was not communicated to him. Further, at the investigation meeting Mr Mathieson was dismissive of Mr Titchmarsh's offer to allow him to draft his own job description, to the extent that he said in evidence he did not recall the offer. This was astonishing in the face of the subsequent exchanges of correspondence on the matter between the parties' representatives. Mr Mathieson also told me he took the view that, because the representatives had not been successful in negotiating an exit package during the meeting, matters were at a stalemate and his employment

was over anyway.

[46] It is unfortunate that he took such a view. In the light of that view, and Mr Mathieson's generally combative approach, I accept Mr Mathieson became disruptive and unco-operative at work. He felt he was being wronged and reacted accordingly. Not only that, Mr Titchmarsh was concerned that Mr Mathieson was showing an increasing tendency to do only the work he wanted to do, a tendency which had probably begun while Mr Roberts was still employed by KPFL and which Mr Roberts' evidence tended to confirm. While it was apparent, too, that Messrs Titchmarsh and Mathieson had differing priorities and farming philosophies, the unco-operative conduct went beyond that in 2005.

[47] Mr Titchmarsh went overseas in February 2005. In the letter of 3 February 2005 - which had advised of Mr Verster's appointment - he also advised that he had hoped to resolve the employment issues before he went, but had not heard from Mr Peebles regarding a draft job description. The letter ended by saying:

"This is a business trip and I will be contactable to discuss the proposed job description presently being drafted."

[48] By letter also dated 3 February 2005 Ms Stretton summarised the company's view of the 27 January meeting and drew attention to additional performance-related concerns which had arisen since then. She also requested, then and in several subsequent items of correspondence, that a job description be forwarded without delay.

[49] The response came eventually in the latter dated 1 March 2005 from which I have already quoted at [30]. It was inimical to the prospect of resolution to announce to the employer - after a failure to respond to its many queries and being aware of the importance of the matter to the employer - that the applicant has decided it is 'pointless' to pursue a strategy agreed on in the context of attempting to resolve the parties' problems.

[50] In support of the position in the 1 March letter, Mr Peebles purported to rely on the fact that the problem had been referred to mediation. That does not explain satisfactorily the lack of response to KPFL's queries over several weeks, and in the circumstances it is not a good reason for the apparent lack of any effort to address a proposed job description. KPFL had not even been advised of the planned referral to mediation. Moreover mediation service records indicate that attempts to arrange a date for a mediation meeting did not commence until on or about 23 March, so as at 1 March no meeting date was in prospect. I accept that Ms Stretton was unable to confirm early in March that the matter had been referred to mediation at all.

[51] Thus the 1 March letter prompted a further repeat from KPFL of the request for a job description, and the advice that, although Mr Titchmarsh had returned, Mr Verster would continue as supervisor on the farm until the parties' issues were resolved. In the circumstances, that was appropriate.

[52] After another period without a response, by letter dated 18 March Ms Stretton forwarded a job description on behalf of KPFL, and sought a meeting on 21 March.

[53] Both Mr Peebles and Mr Titchmarsh were unavailable on 21 March, but by arrangement a meeting between Mr Mathieson and Ms Stretton went ahead. It appears the discussion was cordial, and covered the job description, the issues with Mr Mathieson's dogs and the farm bike, and the problems on the farm. The outcome was recorded in a brief letter to Mr Peebles dated 22 March 2005, which

noted among other things that Mr Mathieson indicated he preferred to present his own job description and would forward one.

[54] Again there was no response and no job description was forthcoming. Ms Stretton wrote a letter dated 1 April 2005 setting out KPFL's concerns. By then there were more problems on the farm, this time centring on concerns that Mr Mathieson was working shortened hours, refusing to undertake milking duties, inciting other staff members to bring grievances, and leaving the farm without informing anyone. There was also a concern about the unauthorised removal of calves, although after an investigation someone else was implicated. The letter requested a meeting for 6 April 2005, and included a warning that the outcome could result in the termination of employment.

[55] That prompted a response dated 5 April 2005. The letter advised that Mr Mathieson and Mr Peebles were unavailable on 6 April, accused KPFL of attempting to circumvent a mediation scheduled for two weeks' time, and suggested that the parties address the issues in mediation. The accusation regarding mediation, made without any reasonable foundation, did not assist the attempts at resolution. Nor did it give appropriate recognition to the attempts KPFL had been making to address the matter since late January. Moreover, according to mediation service records, Mr Peebles did not confirm his availability for a mediation meeting until 6 April and a letter from the mediation service to the parties dated 6 April advised that mediation would go ahead on 4 May 2005. I would accept that, in the circumstances, a month was too long to wait before the issues were addressed again.

[56] The parties had a further meeting on 11 April. The meeting was heated. None of the issues were resolved and tempers flared. Mr Titchmarsh decided he had lost trust and confidence in Mr Mathieson, that Mr Mathieson had been failing to carry out the duties for which he had been employed, and that Mr Mathieson was to be demoted from farm manager to farm hand. Mr Mathieson was to report on a daily basis to Mr Verster and work as directed by Mr Verster. Mr Mathieson would not be required to undertake milking duties, and his salary would be reconsidered.

[57] By letter dated 15 April 2005 a personal grievance was raised in respect of the demotion. The letter made it clear that Mr Mathieson did not accept the demotion, and said the demotion was repudiatory of the employment agreement

or amounted to a constructive dismissal. Mr Mathieson remained on the farm, but further correspondence on his behalf repeated that he did not agree to employment as a farm hand and wished to retain his position as farm manager.

[58] Unfortunately the mediation meeting scheduled for 4 May was adjourned because Ms Stretton was required to give evidence in the Employment Court. A letter from the mediation service dated 19 April 2005 advised of a new date of 25 May 2005. There were further adjournments but there is no need to address them here as the present focus is on attempts to resolve the parties' problems while their relationship continued.

[59] A final, formal, end to the relationship came when, by letter dated 29 April 2005 Mr Mathieson said:

"I ... give you seven more days to reinstate me into my contractual position of employment and to address all of the outstanding issues as raised in previous correspondence. If matters are not rectified during that time I will have no option than to resign."

[60] KPFL's response was to refer to further performance concerns that had been communicated on 28 April and request a response to those, as well as to raise the need to negotiate a new salary for Mr Mathieson in his position of farm hand.

[61] Mr Mathieson took the view that he had not been reinstated, and other issues had not been addressed, in the timeframe he had required so by letter dated 7 May 2005 he said he resigned with immediate effect.

2. The 11 April demotion

[62] The demotion to the position of farm hand was repudiatory conduct on KPFL's part. Mr Mathieson treated it as such, and remained on Hauone farm for as long as it took to become clear that KPFL would not retain him in his farm manager's position. When that became clear, he confirmed that KPFL's action was unacceptable to him and 'resigned'.

[63] I find the circumstances amounted to a dismissal.

3. Whether there was an unjustified dismissal

[64] I have detailed the decline in the parties' relationship in 2005 because the 11 April demotion must be viewed in that context. It put the full stop on what was becoming increasingly obvious, namely that the parties' inability to resolve their differences was becoming so intractable that the employment relationship could not continue.

[65] I consider the following to be the key features of the decline.

[66] First, despite his view of Mr Mathieson's performance, in January 2005 Mr Titchmarsh embarked on a genuine effort to address the issues between the parties. Without intending to suggest that Mr Mathieson's drafting of a job description would have resolved all of these matters, I find it was a reasonable starting point in addressing what was to happen in respect of the appointment to Mr Roberts' position, and focussing in a constructive way on what the parties expected from each other when it came to Mr Mathieson's performance of his duties. Not only that, it was in effect the agreed starting point. Mr Mathieson should have recognised and acted on that.

[67] Then in February there was no response to KPFL's efforts to advance the matter. As I have indicated it was not enough to approach the mediation service without further reference to KPFL, and to decide it was 'pointless' to do as the parties had agreed. Moreover, I do not accept there were reasonable grounds for saying the exercise was pointless.

[68] There was at least an attempt to meet and address the issues in March, and it seemed the strategy of preparing a job description was revived by agreement. Unfortunately Mr Mathieson did not act on the agreement and there were more failures to respond to KPFL's requests that someone do so. Meanwhile Mr Mathieson became increasingly resentful and disruptive at work. KPFL's concerns about Mr Mathieson's performance also escalated.

[69] By April nothing had been resolved, and the dissatisfaction on the part of both parties was continuing. KPFL was entitled to seek the formal disciplinary meeting for 6 April which eventually went ahead on 11 April.

[70] Mr Titchmarsh said Mr Mathieson's conduct led him to doubt whether Mr Mathieson was trying genuinely to fix the problems. The background to the matter, together with Mr Mathieson's combative approach and failure to do

anything to meet the employer's reasonable attempts at resolution, mean there were grounds for such doubt but I did not understand Mr Titchmarsh to be going as far as to assert a deliberate intent on Mr Mathieson's part to ensure no resolution was reached.

[71] For these reasons I conclude that KPFL had gone as far as it could in attempting to resolve the issues between the parties, and had reasonable grounds for concluding that Mr Mathieson could not continue as farm manager. The dismissal was justified.

Payment for wages, holiday pay and benefits not provided

1. Unpaid wages and holiday pay

[72] Following discussion during the investigation meeting, and the provision by both parties of the necessary documents, the parties agreed that Mr Mathieson was owed payment for 5.5 days' unpaid salary and 8 days' annual leave. If payment has not already been made it is ordered accordingly.

2. Costs associated with the dogs

[73] I am not persuaded there was an agreement between the parties of the kind Mr Mathieson asserts. There will be no order in that respect.

3. The farm bike

[74] There was a lack of clarity about how Mr Mathieson's purchase of the farm bike would be recognised. As I have indicated Mr Mathieson said he and Mr Titchmarsh agreed he would receive 35% of the value of the bike he purchased as an allowance for the bike, plus a 'salary' of \$55,000 pa of which \$5,000 was a non-taxable allowance for other farm tools he provided. Instead Mr Mathieson has received a salary of \$57,000 pa incorporating a \$5,000 allowance to cover farm tools and the farm bike.

[75] Mr Mathieson says the former yields an allowance of \$3,360 nett of tax. The latter gives a payment in respect of the bike (assuming the extra \$2,000 salary payment is allocated to the provision of the bike) of \$1,159.05 nett of tax. He seeks the difference.

[76] KPFL's response was to say the agreement asserted by Mr Mathieson could not have been as he described because its policy was to contribute no more than 25%, to a maximum of \$1,000, to the purchase of items such as the bike. I would be prepared to accept that Mr Titchmarsh indicated any contribution would be 25%, not 35%, but doubt whether he told Mr Mathieson there was a cap of \$1,000.

[77] In any event there is more to the matter than that. From the accounts of the early discussions about the bike I find Mr Titchmarsh's original proposition was that Mr Mathieson use a bike KPFL already had available. If the farm's bike was used, there would be an allowance for fuel and oil. For a very brief period, that allowance was paid. However Mr Mathieson found the available bike unacceptable and wanted to purchase his own. He went ahead and did so, then produced proof of the purchase to the KPFL office and made a request for a 35% contribution. The request was refused.

[78] Otherwise there was a considerable lack of detail and accuracy in the evidence about relevant events at the time. Precisely how and when Mr Mathieson's remuneration came to be increased to \$57,000 pa, or why Mr Mathieson did not receive remuneration at the rate of \$55,000 pa plus the 25% contribution which apparently was otherwise company policy, was far from clear. There was a suggestion that a proposed arrangement was set out in an email message sent to Mr Mathieson, but which Mr Mathieson was unable to open. Inevitably, there was no reply and the message was not produced.

[79] At best I consider it likely that the increase in remuneration to \$57,000 pa recognised Mr Mathieson's purchase of the farm bike. Mr Mathieson did not dispute that much. The difficulty now is that I am unable to resolve the questions set out in the last paragraph, and although Mr Mathieson repeatedly expressed his dissatisfaction with the way the matter of the bike was addressed (or not) in the original employment agreement I do not have that document for reference. Finally, and although he said he did not receive 'what was agreed', Mr Mathieson has not said he declined to accept remuneration at

\$57,000 pa. Rather he seems to have focussed on the amount of an allowance. He should at some point have made clear the basis on which he was accepting remuneration at \$57,000 pa, but there is no suggestion that he did that.

[80] For those reasons I am not persuaded Mr Mathieson has an entitlement to the payment he now seeks. There will be no order in that respect.

4. The telephone rental

[81] Further to the claim in respect of the telephone rental, I am not persuaded there was an agreement between the parties of the kind Mr Mathieson asserts. There will be no order in that respect.

5. The grade free bonus

[82] Mr Mathieson claimed a 'grade free bonus' of \$2,500. However it was clear there was no basis in the parties' employment agreement for a claim of that kind. It transpired that Mr Mathieson was purporting to claim the payment on behalf of the staff in the milking shed, which he was not authorised to do. There will be no order in respect of it.

6. Salary increase associated with promotion

[83] I have addressed this matter when addressing the personal grievances. I make no order in respect of it.

Summary of orders

[84] KPFL is ordered to pay to Mr Mathieson \$3,000 under [s 123\(1\)\(c\)\(i\)](#) of the [Employment Relations Act](#) in respect of the unjustified warning.

[85] If it has not already done so KPFL is ordered to pay to Mr Mathieson 5.5 days' salary and 8 days' annual leave. Since Mr Mathieson's failure to provide the necessary timesheets at the time his employment ended led to the uncertainty over what he was owed, I make no further order in respect of those payments save that interest shall be payable on them at the rate of 7.9% per annum from the date on which the timesheets were produced and his entitlement was confirmed (being 9 March 2007) to the date of payment whatever that may be.

Costs

[86] Costs are reserved.

[87] The parties are invited to agree on the matter. If they are unable to do so and seek a determination from the Authority, they shall have 28 days from the date of this determination to file and serve memoranda on the matter.

R A Monaghan

Member of Employment Relations Authority