

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2015] NZERA Christchurch 97
5544710

BETWEEN
AND

ANTON LEE MATTHEWS
and WILLIAM BOYD
Applicants

CAMPBELL SPRAYING
LIMITED
Respondent

Member of Authority: Christine Hickey

Representatives: The Applicants represent themselves
David Luttig, Advocate for the Respondent

Investigation Meeting: On the papers after two telephone conferences and
submissions received from the Respondent on 8 July
2015

Determination: 16 July 2015

DETERMINATION OF THE AUTHORITY

- A. Campbell Spraying Limited is to pay Anton Lee Matthews \$1,200 gross wages within 28 days of this determination.**
- B. Campbell Spraying Limited is to pay William Boyd \$1,200 gross wages within 28 days of this determination.**
- C. Within 28 days of this determination Campbell Spraying Limited is to reimburse:
William Boyd \$35.78, and
Anton Lee Matthews \$35.78
being 50% of the cost of the filing fee for lodging this application.**

Employment relationship problem

[1] Mr Matthews and Mr Boyd were employed by Campbell Spraying Limited (Campbell) on 18 August 2014. They each have an Individual Employment Agreement (IEA) in identical terms. They were given written notice of redundancy of their positions on 19 December 2014 which was their final day of work. They were paid two weeks' notice and their holiday pay and statutory holiday entitlements.

[2] The parties were directed to mediation but that did not take place due to Mr Luttig's unavailability for dates offered by the mediation service and Mr Boyd and Mr Matthews requested the matter be sent back to the Authority for a determination.

[3] Mr Boyd and Mr Matthews have elected not to make any submissions in this matter and both parties agreed to the matter being decided on the papers without the need for an investigation meeting in Oamaru.

[4] Campbell lost a significant contract at short notice and no longer needed the services of Mr Boyd and Mr Matthews. Mr Matthews and Mr Boyd understand that and have not suggested the redundancy was not genuine. However, they claim they are owed a further two weeks' pay for half of the four week notice period that was included in their IEAs in the event of redundancy. They have not claimed a specific amount.

[5] Mr Luttig for Campbell says that two weeks of the four week notice period was during a two-week compulsory closedown of the business over Christmas and New Year. He submits that neither Mr Matthews nor Mr Boyd had been employed by Campbell for long enough to accrue paid annual leave for the closedown period and therefore they are not entitled to be paid a further two weeks' pay.

Contractual provisions

[6] Mr Boyd and Mr Matthews were paid \$25 per hour and worked at a minimum from Monday to Friday from 8 am to 5 pm, with an hour for an unpaid lunch break. Their final pay slips show that they were paid a different number of hours for the final week of their work.

[7] Clause 25 of the IEA is entitled Termination of Employment and provides:

*... the Employer will provide a period of notice in writing as specified in the Statement of Personal Terms in Schedule 1 of this agreement ...
... the Employer may elect to pay wages or salary in lieu of the Employee having to work out the notice period.*

[8] Schedule 1 of the IEAs provides that there will be a notice period of four weeks in the event of redundancy.

[9] Clause 12 is entitled Annual Holidays and clause 12.5 provides:

The Employer may operate a closedown as specified in the Statement of Personal Terms in Schedule 1 of this agreement during which the Employees are required to discontinue work, and are required to take all or some of their annual holidays. If the Employer decides to operate a closedown at this time, the Employer will provide at least 14 days of notice in writing before the closedown begins.

Campbell's position

[10] Mr Luttig submits that a notice period does not equate to pay. He gives as an example an employee who is on unpaid parental leave and who is made redundant while she is on leave. He submits that although the employer would have to give that employee notice of termination of service it would not have to pay her for that period of notice as she was on unpaid leave. I understand he asks me to equate Mr Boyd's and Mr Matthews' situations to that hypothetical situation.

[11] Mr Luttig also submits that Campbell notified Mr Boyd and Mr Matthews of the proposed 2014/2015 close down on 1 December 2014. The closedown was from 22 December 2014 until 5 January 2015.

[12] Mr Luttig submits that Mr Boyd and Mr Matthews were paid a notice period from 5 January until 16 January 2015, paid for the days worked prior to Christmas 2014 and also paid for the four statutory holidays that fell in the closedown period, even though strictly they were not entitled to be paid for them.

[13] Mr Luttig submits that since the closedown period would last for two weeks and those two weeks would not have been paid¹, apart from the 8% holiday pay paid to Mr Boyd and Mr Matthews on 19 December 2014, they are not entitled to be paid

¹ Because as relatively new employees Mr Boyd and Mr Matthews did not have enough accrued annual leave.

for those two weeks. Instead, Campbell has paid them for two weeks only out of the four weeks' notice of redundancy, plus the statutory days, and does not owe them any more money.

[14] Both parties agree that notice of the closedown period was not given in writing. That is in contravention of clause 12.5 of the IEAs. However, Mr Luttig submits that although the clause requires notice to be *confirmed* in writing since Mr Boyd and Mr Matthews did not rely on this term in their statements of problem the Authority should not consider this *in any way in dealing with this matter*.

[15] Mr Luttig says that I should consider s.103A(5) of the Employment Relations Act 2000 and decide that the fact notice of closedown was not given in writing is a justifiable defect because it is minor and did not result in Mr Boyd or Mr Matthews being treated unfairly.

[16] Alternatively, if the Authority considers that Mr Boyd and Mr Matthews were entitled to be paid 4 weeks' notice of redundancy then they are each only owed six days of further pay.

Determination

[17] I do not find comparison to the hypothetical example of an employee on unpaid parental leave assists me to determine this matter. The actual situation relating to her being made redundant depends on her terms and conditions of employment which may or may not require paid notice of redundancy.

[18] I cannot apply s.103A(5) of the Act to these claims because s.103A refers solely to personal grievances. These claims are not personal grievances.

[19] The IEAs are the written contracts that bound Campbell as the employer and Mr Boyd and Mr Matthews as Campbell's employees. The IEAs were presented to Mr Boyd and Mr Matthews by Campbell. If Campbell intended that verbal notice of a closedown period was sufficient it need not have specified that notice of a closedown had to be in writing. However, it chose to specify that the closedown period should be in writing.

[20] The fact that Mr Boyd and Mr Matthews did not rely on the fact that the closedown period had to have been notified in writing in their statement of problem does not preclude me from taking it into account. The Authority:

... is an investigative body that has the role of resolving employment relationship problems by establishing the facts and making a determination according to the substantial merits of the case, without regard to technicalities.

(2) The Authority must, in carrying out its role, -

(a) comply with the principles of natural justice; and

(b) aim to promote good faith behaviour; and

(c) support successful employment relationships; and

(d) generally further the object of this Act.²

[21] Campbell, as the employer, relied on the closedown period for part of its justification for not having to pay four weeks' notice. During my investigation I noted that under the IEAs the closedown period had to be notified in writing. I informed both parties that I was considering whether or not it had been notified in writing. In line with natural justice principles I gave Mr Luttig two opportunities to consult with his client and provide evidence and submissions on whether or not the closedown was notified in writing, and if not what that might mean for these claims. I have taken both parties views into account before determining this matter.

[22] Compliance by both parties with employment agreements is important and I need to support good faith behaviour in my determination. I consider that requiring compliance with employment agreements supports good faith behaviour.

[23] If Mr Boyd and Mr Matthews had remained employed they may have accepted that they had to take some unpaid leave during the close down.

[24] It may have been the intention in drafting clause 12.5 that if an employee did not have sufficient annual leave to take over the closedown then they would be unpaid. However, that is not clearly stated in the IEA. At best it is able to be inferred from clause 12.3 which states that Campbell could refuse an employee's request for a period of annual leave in a number of circumstances, including *to ensure that holidays are available to cover close down periods.*

² Section 157 of the Act.

[25] Because Campbell did not notify its employees in writing of a closedown period beginning on 22 December 2014 I do not consider it can rely on the argument that during the closedown Mr Boyd and Mr Matthews would not have been paid and so two weeks of their redundancy notice could be an unpaid notice period.

[26] I consider that the merits of the case require that Mr Boyd and Mr Matthews are each paid for a further six days at their usual daily rate of pay at \$25 per hour. That is because they have already been paid for four days of that period. The amounts paid should be gross. Mr Boyd and Mr Matthews will have the responsibility to pay income tax on the amounts paid.

[27] The hours of work are set out in Schedule 1 of the IEA. Mr Boyd and Mr Matthews should be paid for 8 hours per day (8 am to 5 pm with an unpaid hour for lunch) for the remainder of the notice period which is six days. Therefore, Mr Boyd and Mr Matthews are each due \$200 per day; a total of \$1,200 gross each.

Costs

[28] Mr Boyd and Mr Matthews represented themselves and are unlikely to have any legal costs to claim. However, Campbell must reimburse the \$71.56 filing fee they paid to lodge the application with the Authority by paying them \$35.78 each.

Christine Hickey
Member of the Employment Relations Authority