

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2011] NZERA Christchurch 164
5342606

BETWEEN

SAHIZAD MOHAMMED
Applicant

A N D

SOUTH PACIFIC MEATS
LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Peter Churchman, Counsel for Applicant
Graeme Malone, Counsel for Respondent

Investigation Meeting 2 August 2011 at Invercargill

Date of Determination: 25 October 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Mohammed) alleges that he was unjustifiably dismissed by the respondent (South Pacific Meats) and/or that South Pacific Meats has breached the terms of the applicant's employment agreement such as the requirement to keep a job offer open for five days and by failing to appoint him according to his seniority.

[2] South Pacific Meats denies unjustifiably dismissing Mr Mohammed and also denies breaching his employment agreement.

[3] Mr Mohammed is a Halal slaughterman. He has worked in that capacity in various Southland meat works for over 15 years. He has been employed by South Pacific Meats in that capacity since February 2006.

[4] The meat processing industry is, of course, seasonal in nature and Halal slaughtermen are in no different position in that regard from other meatworkers in that they are employed on a season-by-season basis and not in employment with the meat company during the off season.

[5] Because of the particular needs of the industry in respect of Halal slaughtermen, the supply of that class of skilled employee and the recruitment of the Halal slaughtermen themselves is coordinated for the whole industry by the Meat Industry Association of New Zealand (MIA). Of necessity, Halal slaughtermen are required to be practising Muslims and to have an understanding of the faith requirements imposed on the practice of Halal slaughtering.

[6] When, as happened in Mr Mohammed's case, Halal slaughtermen leave New Zealand during the off season to travel overseas, the travel arrangements are organised by MIA. Mr Mohammed returned to his home country (Fiji) in June 2009 at the end of the 2008/2009 meat processing season. This was part of his regular pattern; at the end of the meat processing season he would depart New Zealand for Fiji and he would return at the beginning of the following meat processing season. On 23 June 2009, Mr Mohammed emailed South Pacific Meats to indicate his intention to leave New Zealand and to return to Fiji on 26 June 2009 and MIA made the necessary arrangements for that travel to take place.

[7] The ensuing meat processing season was set to commence on 3 August 2009. Mr Mohammed says that on 28 July 2009, he received a telephone call from his son who had remained living in Invercargill and that his son told him that a letter had been received from South Pacific Meats indicating that Mr Mohammed's start date was 3 August 2009. Mr Mohammed's son gave evidence at the Authority's investigation meeting to confirm those aspects. Mr Mohammed's evidence is that, having received that intelligence from his son, he immediately attempting to contact South Pacific Meats and MIA to get travel arrangements in place so that he could return to start the new season. Mr Mohammed's evidence is that he was unable to make contact with either South Pacific Meats or MIA in any meaningful way.

[8] On 30 July 2009, there was another conversation between Mr Mohammed and his son, this time initiated by Mr Mohammed in Fiji, and in this conversation, Mr Mohammed's son told his father that a man from South Pacific Meats (who was later identified as Paul Shanks, a supervisor with South Pacific Meats) had made contact with him, looking for Mr Mohammed's wife. Mr Mohammed's son told Mr Shanks that both his parents were in Fiji, his mother returning on 15 August and his father returning for 3 August. Mr Mohammed's son, Mohammed Sheraan, gave very clear and persuasive evidence to the Authority that he had told Mr Shanks that

his father was returning from Fiji to start work on 3 August. This testimony is important because it was flatly contradicted by Mr Shanks who said that Mohammed Sheraan had told him that he thought his father would be back on 4 or 5 August “*but he wasn’t sure*”.

[9] Mr Mohammed then contacted MIA on 31 July and asked it to make the necessary travel arrangements. MIA required instructions from South Pacific Meats. Mr Mohammed had difficulty speaking to anybody in authority at South Pacific Meats. He spoke with a receptionist and left an urgent message. No response was received and MIA refused to make the necessary bookings without instructions from South Pacific Meats. After continuing to try to get the appropriate approvals without success, Mr Mohammed was finally able to contact Mr Shanks who confirmed that work was to start on 3 August but declined to instruct MIA to book Mr Mohammed’s return air ticket. Subsequently, Mr Mohammed says that Mr Shanks told him in that same conversation that someone else was to start work on 3 August instead of Mr Mohammed.

[10] Mr Mohammed indicated that he would be at the workplace on the start day and would sort the matter out then. He then made his own travel arrangements which he paid for himself and was at the workplace late in the morning of the start day of 3 August 2009. Mr Mohammed was told that he had lost his position on the day chain and that South Pacific Meats had obtained a replacement. Mr Mohammed says that he was offered work by South Pacific Meats which he was unable legally to take because his work permit allowed him to work exclusively as a Halal slaughterman. Still later in November 2009, Mr Mohammed was offered work on the night shift which he accepted, albeit reluctantly. A consequence of the night shift engagement was that he finished the season much earlier, namely on 27 May 2010. It is that date which Mr Mohammed identifies as the date of his unjustified dismissal.

[11] The matter proceeded to mediation after a personal grievance was raised but it was not able to be resolved by the parties and the Authority became involved.

Issues

[12] The first issue for the Authority to determine is whether the purported grievance was raised within time. Next, the Authority needs to consider the

circumstances around Mr Mohammed's return to New Zealand in August 2009 and lastly the events after that leading up to the purported dismissal on 27 May 2010.

Was the purported grievance raised within time?

[13] Mr Mohammed raised his unjustified dismissal grievance on 29 July 2010, identifying the putative date of the grievance having occurred as 27 May 2010. If in truth, the grievance did in fact arise on 27 May 2010, then there can be no question of the grievance having been raised within the statutory 90 day period.

[14] However, South Pacific Meats says that the actual date on which the grievance arose was not 27 May 2010 at all but 3 August 2009 because it was on that earlier date that Mr Mohammed alleges that he was supposed to have started work on the day shift for the new season and for various reasons, for which he (Mr Mohammed) blames South Pacific Meats, work did not commence for him until much later on.

[15] In its submissions, South Pacific Meats makes clear that it does not consent to the raising of the grievance out of time.

[16] Mr Mohammed deals with this allegation in part by alleging, in addition to personal grievance, that South Pacific Meats has breached his employment agreement in a number of significant respects, namely a breach of clause 3.6 of the operative collective agreement (the agreement) together with breaches of clause 3.7 and 3.2 of the agreement. Accordingly, it is submitted that, whether or not a personal grievance lies, the breaches identified as having been made by the applicant employee are still available to be investigated by the Authority and responded to by way of remedies as appropriate, if found proved.

[17] Even if a personal grievance cannot be made out in respect of the events complained of in 2009, Mr Mohammed contends that by pleading breach of his employment agreement, both express and implied, he can seek redress from the Authority. By the Employment Relations Act 2000 (the Act), s.161(1)(b), the Authority has "*exclusive jurisdiction*" over "*matters related to a breach of an employment agreement*". By s.162 of the Act, the Authority is able to make orders that the civil Courts are entitled to make concerning contracts, and any matter related to an employment agreement. In particular, that means that the Authority has the discretion to award damages for any breach found.

[18] I conclude then that, insofar as Mr Mohammed complains about the events surrounding the beginning of the 2009/2010 meat processing season, he is out of time in respect of a personal grievance and that the personal grievance raised on his behalf can only properly deal with the alleged unjustified dismissal effected by the respondent employer, South Pacific Meats, on 27 May 2010 (the end of that same meat processing season). However, Mr Mohammed's complaints about South Pacific Meats' behaviour in relation to the events at the beginning of that meat processing season can be considered by the Authority and investigated consistent with the statutory power granted to the Authority by the Act in ss.161 and 162.

The events around 3 August 2009

[19] The relevant contractual provision is clause 3.6 of the agreement which sets out:

After being notified of a return to work you have five working days to return, failure to do so within that time, will result in employment no longer being offered.

[20] South Pacific Meats certainly forwarded to Mr Mohammed's Invercargill address a start up notice. The Authority is satisfied that that notice was received at the Invercargill home of Mr Mohammed on 28 July 2009. If Mr Mohammed had been in Invercargill, the receipt of that notice would have given him ample opportunity to present himself at the appropriate time for duty on 3 August 2009. But of course, as we know (and as the Authority is satisfied South Pacific Meats knew or ought to know), Mr Mohammed in fact had gone home to Fiji. The Authority is satisfied that South Pacific Meats knew or ought to have known that Mr Mohammed was not in the country because it was involved (as it would always have to be) in the process of getting his tickets booked to leave the country and return to his home in Fiji. The evidence that South Pacific Meats was involved on this occasion, as on previous occasions, is plain on the face of the evidence. That being the case, a notice to recommence work sent to an address in the wrong country would seem an unusual way of communicating with an employee.

[21] But even if that point is not pursued, it is evident from what happened next that South Pacific Meats was less than cooperative about getting Mr Mohammed back into the country in time to start his employment. I have already made clear that I found Mr Mohammed's son a credible and persuasive witness, and I have no reason to

doubt the testimony that he gave me that, on receipt of the start up notice on 28 July 2009, he rang his father in Fiji, told him his start up date was 3 August and his father told him that he would be ready to commence duty on that day.

[22] So on and from Mr Mohammed's receipt of that telephone call from his son, he was seized of the information that he was to be ready, willing and able to perform his duties from 3 August 2009 and he then set about trying to get the appropriate authorisation from South Pacific Meats to enable the airfares to be booked by MIA. As I have already recited in the earlier section of this determination, those efforts were ultimately fruitless and Mr Mohammed was forced to make his own way back to New Zealand, and at his own cost. As a consequence, South Pacific Meats rests on the proposition that Mr Mohammed was late for duty on 3 August (which he undoubtedly was), and that by the time he turned up, it (South Pacific Meats) had employed another Halal slaughterman in the position which Mr Mohammed would otherwise have been employed in.

[23] It is plain from the facts that South Pacific Meats sought to offer Mr Mohammed work; the start up notice sent to his Invercargill home would tend to indicate that. However, it appears to have completely overlooked the fact that Mr Mohammed was overseas and thus the process of getting the advice of the start up date to him was at best going to be more laborious than would have been the case if the notification had gone directly to him. Evidence from South Pacific Meats' witnesses (especially the plant manager, Mr Hamilton) suggested that Mr Mohammed was being difficult by not booking return tickets when he left New Zealand in the off season. It was apparently the practice of the other Halal slaughtermen to do that. But if that were a stipulation of the employment (as seems sensible in all the circumstances), then it ought to have been reduced to writing and recorded as such. It was not. And in the context of giving the evidence that the other Halal slaughtermen who left the country arranged return air travel, it is apparent that South Pacific Meats was aware that Halal slaughtermen habitually left the country in the off season and so it seems rather implausible that it was so puzzled by Mr Mohammed's absence from New Zealand.

[24] In any event, the next significant event was the arrival of Mr Paul Shanks, a supervisor at South Pacific Meats at Mr Mohammed's home on 30 July 2009. As I have already noted, there is significant dispute between the parties about what

happened when Mr Shanks arrived and had a discussion with Mohammed Sheraan, the applicant's son. There are two clear versions of events, and in a real sense, the nub of this part of the argument anyway turns on what happened in that discussion.

[25] Mohammed Sheraan, a seventh former at Southland Boys' High School, came to the Authority in his school uniform and gave clear and unequivocal testimony which was not shaken by questioning during the investigative process. His oral evidence was consistent with his previously filed brief of evidence. The essence of his testimony was that, when he discussed matters with Mr Shanks, who was there looking for Mohammed Sheraan's mother, he told Mr Shanks that his father was going to be back to start work on 3 August. Mohammed Sheraan was quite clear that that was what he said to Mr Shanks because, first he had seen the start up letter when it first arrived (he had opened it and communicated its details to his father), and second, when he spoke to his father to tell him what the start up date was, his father had confirmed that he would be back in time for start up. It follows, according to this witness, that there was no sensible basis on which he would have told Mr Shanks something different.

[26] But Mr Shanks remembers the matter quite differently. He says that he sought information from the son about the whereabouts of the father and his evidence was that Mohammed Sheraan said that:

He thought his dad was due back around the 4th or 5th but wasn't sure. At no stage did he say his father was coming back to start on the 3rd. He said he thought his father would be back on 4th or 5th of August but wasn't sure.

[27] This is a factual matter where it is important for the Authority to make a judgment. If Mr Shanks was told (as the applicant's case goes) that Mr Mohammed would be back in time to commence his duties on 3 August, then that clearly was not information on which Mr Shanks and his employer, South Pacific Meats, operated. Indeed, what they did suggested that they believed that Mr Mohammed was not going to be back until after the season had started and, as a consequence, they employed somebody else in his position. Conversely, it is difficult to see why Mohammed Sheraan would be confused about the position. Irrespective of the natural love and affection between a parent and a son, Mohammed Sheraan had seen the start up letter and had read its contents to his father. It is absolutely inconsistent with his father's evidence about his subsequent behaviour (in trying to obtain air travel back to New

Zealand in time for 3 August) that Mr Mohammed was not intending to start work again on 3 August and thus might have told Mohammed Sheraan, his son, that he would not be back until 4 or 5 August.

[28] If Mr Mohammed had said to his son that he would not be back until 4 or 5 August, then it makes no sense for Mr Mohammed to go to the lengths that he did (and lengths which were unchallenged in evidence before the Authority) to endeavour to get back to New Zealand in time to start his employment on due date.

[29] Accordingly, I conclude that Mr Shanks was mistaken in what he understood Mohammed Sheraan to be telling him about the applicant's intentions.

[30] The next significant part of the puzzle is Mr Mohammed's evident failure to get return air travel from Fiji provided through the normal mechanism via the MIA. As I have already recited, Mr Mohammed seems to have used his best endeavours to get that arrangement in place, but was unsuccessful. MIA refused to make arrangements without authority from South Pacific Meats and South Pacific Meats would not talk to Mr Mohammed or indeed respond to his various messages, at least until Mr Mohammed says he got to talk to Mr Shanks on 31 July when Mr Shanks told Mr Mohammed (eventually) that someone else had been appointed in his stead.

[31] Of course, South Pacific Meats maintains that it did not know that Mr Mohammed was overseas. But that is inconsistent with its own evidence that Halal slaughtermen regularly left New Zealand for the off season. Furthermore, South Pacific Meats had made Mr Mohammed an offer of work pursuant to the start up notice so it was contemplating a continuing engagement, albeit that it had notified Mr Mohammed at his New Zealand address when it knew or ought to have known that he was not actually there. Given that apparent commitment to continue the employment relationship, it is difficult to understand why nobody at South Pacific Meats seemed to want to talk to Mr Mohammed when he tried to contact them. His unchallenged evidence is that he left messages both for Mr Hamilton and Mr Shanks and spoke on a number of occasions with the receptionist (so much so that she got to know his voice), and yet nobody took the time to contact him and find out what he wanted. South Pacific Meats' evidence is simply that it was busy; this was start up time and there was a lot going on. The Authority can accept that evidence at face value, but given what turns on whether this man was given a reasonable opportunity to pick up "his" job within the terms offered by the employer and pursuant to the

relevant provision in the agreement, the obligation on the employer, to behave in good faith and to treat employees responsibly and equitably, must be established on the balance of probabilities.

[32] The agreement provides, at clause 3.5, that workers are responsible for *“keeping the company advised of your current address and phone number for contact purposes for advice of the commencement of the next season”*. South Pacific Meats says it did not know that Mr Mohammed was in Fiji (para.24 of Mr Hamilton’s evidence). But as I have already noted, South Pacific Meats had arranged through MIA for Mr Mohammed to leave the country, knew that he only arranged one way tickets (despite that being inconvenient to the employer) and had failed to make any proper arrangements to assist Mr Mohammed to return to New Zealand, as I have just detailed. Mr Mohammed says that he had an email address (which the company did not use), and that the Union knew where he was and had no difficulty in maintaining contact with him. South Pacific Meats says simply that it has never used email addresses in the past; nor has it maintained contact with the Union to find its members.

[33] South Pacific Meats says the obligation rests on the worker to ensure that the company knows how to get hold of the worker to notify the start of the new season. I do not think that either party has fulfilled its obligations to the other in respect of clause 3.5. Mr Mohammed ought to have been explicit with the company and, on the evidence before the Authority, he was not. Similarly, South Pacific Meats ought to have been capable of establishing that Mr Mohammed was still overseas because it had confirmed the arrangements for him to leave the country, knew that he only booked one way tickets, and knew or ought to have known that Mr Mohammed had been endeavouring to get in touch with it to authorise his return to New Zealand.

[34] If the honours are even-handed in respect of the good faith obligations that each party has to the other in respect of the operation of clause 3.5 of the agreement, the position is much more one-sided when we consider the effect of clause 3.6 of the agreement. As I noted earlier, clause 3.6 gives a worker five working days to return after being notified of a return to work. Failure to return within that time resulted in the employment no longer being available. This is the clause that South Pacific Meats relies upon to justify its contention that it has fulfilled its obligations under the agreement. It points out that Mr Mohammed was in fact late for start up on 3 August

2009 (that is conceded), and therefore he has failed to return to duty within five working days of the notification of a start up date. Mr Mohammed would have had until Sunday, 2 August 2009 to pick up his employment entitlement (on the assumption that Saturday and Sunday are treated as working days for the purposes of the agreement within this industry). That he did not quite make that deadline and was late for start up meant, according to South Pacific Meats, that he had failed in his obligations and therefore was not entitled to pick up the employment. That interpretation is consistent with s.35 of the Interpretation Act 1999 as well.

[35] But that cannot be the end of the story. It is clear from the evidence before the Authority that South Pacific Meats had already appointed another Halal slaughterman, Humdi, before the five working day period had expired. Clearly, South Pacific Meats had made the decision to appoint Humdi within the five working day period and so its reliance on Mr Mohammed's alleged default is misplaced.

[36] What is more, as I have already recited, South Pacific Meats took no steps to facilitate Mr Mohammed's return to New Zealand and indeed its actions suggest it was indifferent to whether he returned or not. It follows that the Authority must conclude that South Pacific Meats has breached the express terms of clause 3.6 of the agreement.

[37] I turn now to the subsidiary question of whether there have also been breaches of the agreement by South Pacific Meats in respect of what might loosely be referred to as the seniority provisions. It is common ground that the South Pacific Meats agreement does not contain the strict seniority provisions that are to be found in the employment agreements for older meat companies.

[38] Despite that, two provisions in particular, clauses 3.2 and 3.7, refer either implicitly or explicitly to the seniority system. It is a fact that seniority in one form or another is a feature of the meat industry and even in a modern facility such as the one operated by South Pacific Meats, the special requirements of the industry require this unique form of manning.

[39] The difference between the parties is that, while both accept that strict seniority does not apply, South Pacific Meats argues that the effect of clause 3.2 is to, in effect, "invert" the usual seniority rule. What clause 3.2 says, in essence, is that if all things are equal, the company will observe the principle of first-on-last-off. South

Pacific Meats maintains that the introduction of the phrase “all things being equal”, creates the antithesis of a strict seniority system because it imports an ability to consider factors other than strict seniority. Conversely, Mr Mohammed contends that simply by virtue of a reference to the “first-on-last-off” principle, the agreement was committing itself to a form of seniority. This is because the first issue to determine when workers are being terminated is the start date that those workers commenced employment. There is dispute between the parties as to whether or not there is a “seniority list” with evidence from Union officials given to the Authority suggesting that there is, and evidence from South Pacific Meats firmly contradicting that view.

[40] It is appropriate to set out in full the two provisions that are most relevant to a consideration of this issue:

3.2 *Where demand drops off before the close down for the season such that not all employees are required the employer may terminate employment of staff on a progressive basis. In selecting employees to be terminated, the employer shall take into consideration the skills required to operate a balanced workforce. All things being equal the company will observe the principle of first on last off.*

3.7 *It is agreed that the SPM Invercargill plant operates in a seasonal industry. As a result staffing levels needs to change during the season to match the required production level. In selecting employees to be seasonally laid off or re-engaged the following criteria will be considered:*

- (1) *The original starting date of the employee provided they have been continuously employed during the season.*
- (2) *Competency to perform the work required, including skill levels, physical ability, reliability and adaptability in being able to work in a variety of positions.*

Selection on this basis shall be made by the plant manager in consultation with the departmental supervisor and plant representatives.

[41] The unchallenged evidence for Mr Mohammed was that he had been employed on the day shift for a number of prior seasons, was relatively well placed in the seniority list and thus could be expected to be employed in the day shift on and from 3 August 2009. South Pacific Meats went so far as to give him a call up notice on 28 July 2009, albeit directed to his Invercargill address when he was in Fiji. On the face of it then, the application of clause 3.7 to Mr Mohammed’s re-engagement

ought to have led to Mr Mohammed being appointed. The first proviso to clause 3.7 clearly is in Mr Mohammed's favour because of his long service and the continuous nature of it, but the second proviso needs to be commented on further. During the course of the evidence before the Authority, Mr Hamilton alleged that Mr Mohammed was unreliable and caused trouble with other workers. The difficulty with that evidence is that South Pacific Meats had to concede that there were no disciplinary warnings, formal or otherwise, issued against Mr Mohammed and there was no suggestion that his competence as a Halal slaughterman was in any question.

[42] It follows then that in failing to appoint Mr Mohammed to the day shift from the start of the 2009 season, the Authority must conclude that South Pacific Meats breached the terms of the agreement at clause 3.7.

What happened in May 2010?

[43] Mr Mohammed has an arguable personal grievance in relation to this period in time, having raised the grievance on 29 July 2010. His argument simply is that because he was dismissed early at the end of the 2010 processing season, he lost money and other entitlements which would have accrued to him if he had been correctly employed in the first place at the beginning of that season on day shift. I have already concluded that South Pacific Meats breached its obligations in failing to appoint Mr Mohammed to day shift at the beginning of the 2009 meat processing season and so the question that arises here is whether South Pacific Meats has also caused Mr Mohammed to suffer a personal grievance as a consequence of an unjustified dismissal on and from 27 May 2010.

[44] The answer to that question must turn, to some extent anyway, on whether by breaching the terms of the agreement between the parties (which I have already found), South Pacific Meats has, as a consequence, created an unjustified dismissal. The only basis on which a personal grievance can be demonstrated in these circumstances is if it can be shown that, by breaching the terms of the agreement between the parties in July and August 2009, South Pacific Meats caused Mr Mohammed to suffer an unjustified dismissal on 27 May 2010. I am satisfied that nothing in the circumstances around that latter date (or indeed within 90 days before it), can be identified as evidence to support the conclusion that the dismissal was, on its face, unjustified. After all, Mr Mohammed was by this time employed in the night

shift, had no tenure beyond the immediate season, and accordingly was let go in terms of the employment agreement.

[45] But Mr Mohammed argues that had he been treated correctly in July and August 2009, he would not have been in the unhappy position he was in May 2010 because he would have been employed on the day shift, would have retained his seniority and his tenure, and so would be let go much later in 2010 than in fact happened.

[46] But there is yet a further element to this factual matrix that requires consideration. It is the submission of South Pacific Meats that, by force of the agreement between the parties, there is no entitlement to employment in a particular job. That submission must be accurate as far as it goes; there is indeed nothing in the agreement covering the employment which requires, as a matter of principle, that a particular worker be employed in a particular role in the plant. What is more, the case law is clear that nothing precludes a meat industry employer from employing meat processing workers on different terms and conditions from that which applied in a previous season or indeed in different departments from that which had applied in previous seasons: see for instance *New Zealand Meat Workers' Union Inc v. Richmond* [1992] 3 ERNZ 643 at 703 per Palmer J for the majority.

[47] But what if the position of Halal slaughtermen carries with it a unique status which makes the general rules inapplicable? That is the evidence from Mr Mohammed who says in the clearest terms that his work permit is specific to the job he does as a Halal slaughterman. Mr Mohammed is a Fijian national and he works in this country under a work permit visa. The terms of the work permit and work visa provide relevantly as follows:

The holder may work as Halal slaughterman for South Pacific Meats in Invercargill.

[48] The question for the Authority, of course, is whether that provision limits the holder to work only as a Halal slaughterman, or not.

[49] If, as Mr Mohammed contends, he is only allowed to work in this country as a Halal slaughterman, then the subsequent attempts by South Pacific Meats to get him to accept employment in different roles after his late arrival on 3 August 2009, cannot and should not be taken into account by the Authority because they are not Halal

roles. Conversely, the subsequent offer by South Pacific Meats to have Mr Mohammed work as a Halal slaughterman on the night shift can be taken into account (setting aside the issue of timeliness), because it is within the permitted occupation class.

[50] I am satisfied that the work permit and work visa were granted to Mr Mohammed for the purpose of allowing him to enter New Zealand to perform a particular skill and not for other purposes. It follows that I accept Mr Mohammed's evidence that he is not entitled to work in New Zealand at other than Halal slaughterman roles for South Pacific Meats. In reaching this conclusion, the Authority has had the assistance of the Immigration Division of the Department of Labour whose interpretation of the relevant law concurs with that of the Authority. That being the Authority's conclusion, the various offers made to Mr Mohammed in the period from August down to November 2009 were of no force or effect and had no impact at all on the obligation that South Pacific Meats had to engage Mr Mohammed as a Halal slaughterman. However, the position is otherwise in respect of the offer of employment on and from November 2009 as a Halal slaughterman on the night shift. Quite clearly, that offer, which was accepted by Mr Mohammed, fall squarely within the terms of his work visa. A further consequence of the Authority's conclusion is that Mr Mohammed cannot have reinstatement to his position as a Halal slaughterman on the day shift. There is nothing in the agreement between the parties or in any other law or statutory enactment which requires South Pacific Meats to employ Mr Mohammed on a particular shift; the requirement is only that he be employed within his calling as a Halal slaughterman.

[51] What then of Mr Mohammed's personal grievance for the alleged unjustified dismissal on 27 May 2010? If, as the Authority has concluded, his appointment to the night shift as a Halal slaughterman in November 2009 was itself appropriate and consistent with legal principle, then save for one aspect which I turn to directly, Mr Mohammed's purported personal grievance must fail. That one aspect is the question whether, by virtue of the breaches of the agreement proved to the Authority's satisfaction, South Pacific Meats has created an inevitable causal link which, by virtue of its earlier breaches, has led inexorably to the unsatisfactory conclusion for Mr Mohammed.

[52] After all, if Mr Mohammed had been properly received back into the workforce at the beginning of the 2009 season on 3 August of that year, he would have been placed in his normal role as a Halal slaughterman on day shift and none of the events he complains about after that date would have occurred. It follows that, because of my finding that there were significant breaches of the employer's obligations and I am satisfied that the causal link cannot be broken by any supervening event, Mr Mohammed must succeed, save for the gloss that he cannot be entitled to reinstatement for reasons earlier identified.

Determination

[53] I think the proper course of action is for the Authority to award damages to Mr Mohammed for the breaches of agreement, specifically the breach of clause 3.6 and the subsidiary breach of clause 3.7 and that the total amount of damages that Mr Mohammed ought to receive is in the amount of \$31000 being a rounded down contribution to the loss that Mr Mohammed suffered by the breaches of South Pacific Meats. The damages awarded is struck by reference to the extra earnings achieved by Mr Mohammed's replacement, as that figure has been reported to the Authority, rounded down to reflect a net payment to Mr Mohammed.

[54] Having concluded that Mr Mohammed has a personal grievance for which in principle he is entitled to remedies, it is necessary for the Authority to reflect on whether Mr Mohammed has done anything to contribute to the personal grievance: s. 124 of the Act. I am satisfied he has not.

[55] Although concluding that Mr Mohammed has a personal grievance for unjustified dismissal on 27 May 2010, the real breach happened at the beginning of that meat season and not at the end, and it is the Authority's view that the proper approach is to compensate the applicant for the earlier event by way of damages for breach of agreement, rather than by way of remedies for the personal grievance. Despite that conclusion, a personal grievance has been found and the law requires the Authority to consider whether any wages have been lost as a consequence of the personal grievance: s. 128 of the Act. For reasons enunciated in this determination, I am satisfied that no wages have been lost as a consequence of the personal grievance, the personal grievance being really a function of the breaches of the agreement by the respondent rather than a discrete event on its own.

Costs

[56] Costs are reserved.

James Crichton
Member of the Employment Relations Authority