

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2011] NZERA Auckland 279  
5328781

BETWEEN                      DAMIAN O'BRIEN  
   Applicant  
  
AND                                ONE STOP AUTO REPAIRS  
   AND SERVICES LIMITED  
   Respondent

Member of Authority:      Dzintra King

Representatives:            Keshwant Kaur, Advocate for Applicant  
   No appearance for Respondent

Investigation Meeting:    21 June 2011

Determination:              28 June 2011

---

**DETERMINATION OF THE AUTHORITY**

---

[1]     The applicant, Mr Damian O'Brien, claims that he was unjustifiably dismissed by the respondent, One Stop Auto Repairs and Services Limited.

[2]     Mr O'Brien was employed in November 2008 as a car painter.

[3]     Mr O'Brien accepts that about two weeks prior to the termination of his employment on 6 July 2010 there was a conversation between him and Mr Zongli Cai, the Managing Director of the respondent. This was about his performance

[4]     On 6 July Mr O'Brien approached Mr Cai about a poor primer job carried out by another employee. Mr Cai told him not to worry about it. Mr O'Brien said he had to worry about it as he was the one working on the car. He told Mr Cai he had to do better than that. Mr Cai told him not to use that tone and told him to leave the garage. Mr O'Brien accepted that voices were raised. Mr Cai told him to leave or he would call the police. Mr O'Brien left.

[5] Neither Mr Cai, who was in China, nor anyone from the respondent appeared. In the absence of contrary sworn evidence I accept Mr O'Brien's account of events.

[6] Mr O'Brien was unjustifiably dismissed.

[7] Mr O'Brien seeks compensation of \$10,000, three months' lost remuneration and legal costs of \$1,500.

[8] Mr O'Brien said the dismissal was pretty sudden and he should have been given two weeks' notice. He said he thought he had been friends with Mr Cai who had helped him out when he lost his licence, occasionally picked him up from home and loaned him money to pay bills and helped sort out his fines.

[9] Mr O'Brien tried to find work but only had a few interviews.

[10] The respondent is to pay Mr O'Brien the sum of \$2,000 pursuant to s123 (1) (c) (i).

[11] I am not satisfied that Mr O'Brien attempted to mitigate his loss and decline to make an award of lost remuneration.

[12] The respondent is to pay costs of \$1,000.

Dzintra King

Member of the Employment Relations Authority