

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Jennifer Anne Oakly and Daniel Frederick Power (Applicant)

AND Michael and Kerryann Pomeroy (Respondent)

REPRESENTATIVES Tony Bamford, Counsel for Applicant
Graeme Downing, Advocate for Respondent

MEMBER OF AUTHORITY James Crichton

INVESTIGATION MEETING 1 August 2005

DATE OF DETERMINATION 18 October 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicants (Ms Oakly and Mr Power) are husband and wife. They allege that they were both constructively dismissed by the respondents (Mr and Mrs Pomeroy or the Pomeroyes). The Pomeroyes deny that allegation and contend the Ms Oakly and Mr Power abandoned their employment.

[2] The parties attended mediation but were not successful in resolving their differences.

[3] Both Mr Power and Ms Oakly were employed by the Pomeroyes between the 1st June 2004 and the 14th October 2004. The terms and conditions of their employment are different and it will be necessary to analyse each employment relationship separately.

[4] At this point it is sufficient to say that Mr Power was employed as a herd manager on the Pomeroyes' farm in Golden Bay and Ms Oakly was also engaged in work for the Pomeroyes on the same farm property.

[5] Ms Oakly and Mr Power say that their employment relationship with the Pomeroyes gradually deteriorated to the point where they allege that the Pomeroyes unilaterally altered the employment bargain, undermined them, countermanded instructions that Mr Power gave to staff, abused and swore at them and at other staff and criticised and belittled them in front of others without reason or excuse.

[6] For their part, the Pomeroyes absolutely deny each and every one of those allegations and they gave evidence before me that none of the claims made by Mr Power or Ms Oakly had any substance. They said that they were mild mannered and gentle by nature, and that they needed the employment relationship to continue because there was no one else to do the work that Mr Power and Ms Oakly were doing. The only negative aspects to the relationship, the Pomeroyes said, were

that from time to time they did have to offer Mr Power or Ms Oakly advice in respect to the way in which they were conducting their responsibilities.

[7] It is appropriate for me to remark at this point that it would be difficult to imagine a more stark contrast between two versions of the same employment relationship. In determining this matter, I am forced to rely to a very large extent on judgements about the credibility of the parties themselves and their supporting witnesses.

Mr Power's Employment

[8] As I mentioned in paragraph [4] above, Mr Power was employed as the herd manager on the Pomeroy's farm. He said in evidence that a significant proportion of that role was in people management particularly as this was a large property with a large herd and there were a number of staff.

[9] Mr Power said that the period of his employment at the Pomeroy's was his third season in the dairying industry and that he had chosen to make his career in this industry.

The Employment Agreement

[10] He accepted that he was employed generally pursuant to the standard Federated Farmers Individual Employment Agreement but he denied the contention of the Pomeroy's that they provided him with a copy of the Individual Employment Agreement at interview.

[11] Mr Power says that he eventually got a copy of the Employment Agreement although he never signed it. It is unclear whether some terms, such as the notice provision of 12 weeks, were ever agreed between the parties.

The Job Description

[12] There was also dispute about the job description. The Pomeroy's allege that a job description was also provided at interview but again Mr Power's evidence differs from that. He says the first time he saw the job description was immediately before he left and he thinks this would have been in the final meeting that he had with the Pomeroy's on the 27th September 2004.

[13] In his role as herd manager, Mr Power accepted that he reported to Mr Pomeroy who as the owner had overall control of the farm operation.

[14] The job description (which Mr Power does not remember receiving) simply lists the responsibilities of the role without really making clear what the structure of the employment was. In particular, the job description regularly confused jobs to be performed by the herd manager and those that are to be performed by other staff. It is not clear from the job description in particular whether the other staff reported to Mr Power as herd manager or to someone else.

[15] Be that as it may, as a matter of practice, it seems that the staff on the farm all took their instructions in a de-facto sense from Mr Power rather than from Mr Pomeroy and it also seems that, with one exception, the staff got on well with Mr Power.

Management Practices

[16] Mr Power's evidence, which I accept, was that when he took over the job of herd manager, he was surprised at the inadequacy of the systems that were in place to support his work. His evidence was that the record keeping system in particular was '*hopeless*' and he said that he found much of the records generated by the previous incumbent incomplete in drawers in the farmhouse.

[17] Mr Pomeroy was critical of Mr Power in relation to the adequacy of Mr Power's record keeping and in particular his monitoring of the dairy herd but Mr Power says that he was '*stretched*'

partly because of his inexperience, which he readily acknowledged, but also because the previous records were so inadequate.

[18] Mr Power was quick to accept that in his third season of dairying, he did not have the level of experience which would enable him to '*make educated guesses*'.

[19] Mr Power said that he was happy to take advice and instruction from Mr Pomeroy but that his experience was that Mr Pomeroy frequently would not engage with him, a view which Mr Pomeroy disputed.

[20] Mr Power's evidence was that Mr Pomeroy would not deal with him but go directly to the staff and tell them what to do which undermined Mr Power and also did not help him to learn things that he needed to improve on. Despite Mr Pomeroy's different version of these events, I must say that on the evidence presented to me, I prefer Mr Power's recollection of how these things happened.

[21] Mr Power was tested in cross-examination by Mr Pomeroy's able Counsel and his evidence on Mr Pomeroy's behaviour was not shaken. He was asked specific questions about things that Mr Pomeroy allegedly did or said and was quite clear on each occasion about what actually happened.

The Declining Relationship

[22] Although the relationship between Mr Power and the Pomeroy's commenced happily enough, within eight weeks of the commencement on the 1st June 2004, tensions were starting to develop and Mr Power, his wife Jennifer Oakly and co-workers Danielle Hunt, Matthew Russell and Jacob Russell all gave accounts of their experience on the Pomeroy's farm. The evidence was direct and graphic that Mr Power was treated with disrespect, that he was sworn at, that he was undermined by being bypassed by Mr Pomeroy, to the extent that a picture develops of an employment relationship which has soured to the point of toxicity.

[23] There was evidence given of a '*rule book*' which the Pomeroy's promulgated on a regular basis, or more accurately, reviewed and updated on a regular basis. A number of the applicants' witnesses referred negatively to this device. Mr Power in particular gave evidence, which I accept that the '*rule book*' was an irritant and that the rule book determined how he and his family lived rather than how he and his wife worked. Mr Matthew Russell described how he would not be challenged by the Pomeroy's if they thought he had done something wrong; what would happen was "*...I would find a new rule in my letter box. During the four months I was employed there I received four or five new rules in this way*".

[24] For their part, Mr and Mrs Pomeroy deny these allegations, as I have already mentioned. During the investigation meeting, I went through with Mr Pomeroy and put to him the allegations made by the five witnesses for the applicants and he denied each one.

[25] Mrs Pomeroy was slightly more forthcoming than Mr Pomeroy in that she at least acknowledged that she had on occasion made a sharp comment. But her comments were mostly directed at Ms Oakly rather than at Mr Power and I will refer to them separately in that regard.

[26] However, one exchange between Mr Power and Mrs Pomeroy is particularly relevant. At a meeting on 7 September 2004 (which I refer to in more detail shortly) Mrs Pomeroy agrees that she accused Mr Power of trying to '*blackmail*' her and her husband.

[27] Later on in the same meeting she did not dispute the thrust of Mr Power's evidence when he quoted her as saying: '*Do you know what you are doing? Do you plan your day? Every morning I get up and write down what I'm going to do with my day, so I get things done.*' When I put this evidence to her, she said she was trying to help Mr Power plan his day.

The Unilateral Variation

[28] Mr Power gave evidence that the Pomeroy's had unilaterally varied the employment agreement. He said that at a meeting between himself and Mr and Mrs Pomeroy on 7 September 2004, Mr Pomeroy had claimed that the staff were not getting enough direction from him and that '*... he had decided some time ago that he was going to take over and make sure things got done properly.*' Mr Power said that Mr Pomeroy had then said to him, that the job was too big for him and that he could not handle it.

[29] Mr Pomeroy denied telling Mr Power that he was going to '*take over*' and he denied saying the job was too big for Mr Power because that comment was a '*put down*' and '*he would never do that.*' Given the wealth of evidence that Mr Pomeroy regularly spoke harshly and in a belittling way to staff members (including the applicants), I do not accept Mr Pomeroy's evidence on this point.

[30] In my opinion, whatever he might have intended to say, the message that Mr Pomeroy conveyed to Mr Power was that the latter was out of his depth and that Mr Pomeroy intended to retake control. That constitutes a unilateral variation to the terms of the agreement between them.

The Respondent's Supporting Evidence

[31] Mr and Mrs Pomeroy advance as evidence of their position a statement from Wendy Adams and Brendon Stachurski who were employed by the Pomeroy's previously. Their written testimony was that the Pomeroy's were good employers and that the Pomeroy's had helped them to '*grow their business*' as sharemilkers. The evidence of this couple was not given in person and it is difficult to give much weight to their evidence given that they were not personally involved with the events touching on the employment relationship between Mr Power and the Pomeroy's.

[32] Then there is a curious letter from a farm advisor Jeremy Savage dated 21 January 2005 which is relied upon by the Pomeroy's as evidence for their view about Mr Power's ability and competence. The letter of course, judging by its date, was written in contemplation of the Authority's investigation meeting and certainly was not written contemporaneously with the events in question.

[33] The letter alleges that Mr Power was appointed to the position notwithstanding his lack of experience and that Mr Pomeroy would '*have to put in extra effort*' to support Mr Power. The letter goes on to comment adversely about the farm during the period that Mr Power was herd manager.

[34] Given that Mr Savage was not called by the Pomeroy's to give evidence and that his letter seems inconsistent in a number of respects with other evidence given by witnesses who were present, I completely discount it.

[35] For instance, Mr Power's evidence was that the intelligence in the letter was '*news to him*'. He said that he had never seen the letter until the Statement in Reply was filed with the letter attached and was completely unaware of the views contained in the letter and regarded them as inconsistent with other evidence.

[36] In particular, Mr Power indicates, reasonably enough, that if the farm had been as poorly managed as Mr Savage's letter implies then he would have expected to hear about that either from Mr Savage (who did visit the farm from time to time) or from Mr Pomeroy. Further, the suggestion that Mr Savage makes that Mr Power applied for a position that Mr Savage was recruiting for another farmer is simply (according to Mr Power) untrue. I accept his evidence on these points.

[37] Further and perhaps most importantly, Mr Power says that Mr Savage's letter of the 21st January 2005 is inconsistent with Mr Savage's previous report which Mr Power says that he has seen.

Conclusion

[38] The Pomeroy's sought to attack the evidence of the applicants' witnesses on the basis that co-workers Danielle Hunt, Matthew Russell and Jacob Russell were all friends of the applicants. That may well be so but each gave their evidence clearly and was not shaken by questioning by me or Counsel for the respondents.

[39] For instance, Jacob Russell said: "*Danny [Power] would give me instruction to do something and then Michael [Pomeroy] would tell me to do something different. I would tell Michael [Pomeroy] what I'd been told to do and he would reply that Danny [Power] was useless or that he was an idiot or that he did not know what he was doing.*" His evidence was that this kind of situation would happen "*four or five times a week*" in respect to moving the cows. I accept this evidence as I believe it is truthful.

[40] Jacob Russell's brother Matthew gave evidence that Mr Pomeroy "*was always saying that Danny [Mr Power] did not know what he was doing*" and "*Michael [Pomeroy] often undermined instructions I had been given by Danny [Mr Power] ... When we questioned him, Michael [Mr Pomeroy] would tell us that Danny [Mr Power] was a fuckin' idiot or that he did not know what he was doing.*"

[41] In the end, I am faced with a succession of witnesses for the applicant each telling a similar story about Mr Pomeroy belittling, undermining and publicly criticising Mr Power and that evidence is met (to some extent) by Mr and Mrs Pomeroy's denial that any such thing took place and by the other evidence I have just referred to, none of which was given orally.

[42] I prefer the evidence of the applicant and his witnesses to that of the Pomeroy's.

[43] The question of whether this conduct which I have just found to have taken place is sufficient to constitute the factual matrix of a constructive dismissal is a separate question and one that I will deal with later in this determination.

Ms Oakly's Employment

[44] The nature of Ms Oakly's employment is in contention. All that is agreed between the parties is that she was employed by the Pomeroy's but the basis of that employment is in dispute.

[45] Ms Oakly's evidence is that she was employed as a permanent part-time employee working regular hours.

[46] The Pomeroy's say that she was employed pursuant to a casual employment agreement and a copy of the Federated Farmer standard form Casual Employment Agreement was produced at the investigation meeting to evidence this fact.

[47] However, that agreement is not signed either by the Pomeroy's or by Ms Oakly and it is expressed to start on the 1st August 2004 by which time it is fair to say that the difficulties in the relationship between the parties were already becoming apparent.

[48] Ms Oakly told me she worked at least 10 hours per week in the winter and 30-40 hours a week once calving started, and that her hours were similar each day in each season.

[49] In my opinion, the evidence supports Ms Oakly's contention that she was in fact a permanent part-time worker rather than a casual employee. She seems to have worked regular days and regular

hours but not a full span of hours as if in full time employment. Certainly there was no evidence before me that the nature of the employment relationship required the employer to call her in for particular duties nor was her employment treated as anything other than continuous for the purposes of the payment of wages.

[50] In those circumstances, I am satisfied that Ms Oakly was in fact a permanent part-time employee working hours to fit around her commitments with her young family.

Artificial Insemination

[51] The next imponderable I must consider is the question of whether Ms Oakly was in fact offered particular employment by the Pomeroy's artificially inseminating the farm's cows, as she claims was the position.

[52] The claim is certainly puzzling because there is no doubt that the Pomeroy's had an outside person provided by Livestock Improvement who had been doing that job on the farm for 15 years. Even Ms Oakly appeared surprised when she gave her evidence that this offer should be made by the Pomeroy's but she was adamant that such an offer was in fact made.

[53] The question is significant because Ms Oakly says that it was one of the reasons that influenced her and Mr Power to take the two positions. The artificial insemination work was, according to her unchallenged evidence, worth about four and half thousand dollars in income and that obviously was valuable to this young couple.

[54] However, the Pomeroy's are as adamant that they did not make Ms Oakly an offer to do the artificial insemination as Ms Oakly is that such an offer was made. The Pomeroy's produced at my investigation meeting a signed agreement between them and Livestock Improvement for that organisation to do their artificial insemination. That of course is not conclusive because Ms Oakly, if she were doing the artificial insemination on the Pomeroy's farm, would have been doing it under the aegis of Livestock Improvement.

[55] What is more persuasive evidence thought is the Pomeroy's evidence that in one of the pre-employment discussions they had with Mr Power and Ms Oakly, they had said to Ms Oakly in response to her enquiry about artificial insemination that she should talk to Livestock Improvement and they thought she was going to follow that up with them.

[56] The Pomeroy's say that while they encouraged Ms Oakly's interest in artificial insemination work around the district in which their farm was situated, they did not offer to employ Ms Oakly to do that work on their farm.

[57] There were a variety of confusing documents produced at the investigation meeting relating to this artificial insemination issue but I find that none of them is conclusive or indeed determinative of the existence or otherwise of an offer by the Pomeroy's for Ms Oakly to work on their farm as an artificial inseminator. I accept without reservation that Ms Oakly has skills in this area and in fact subsequent to this employment worked as an artificial inseminator in Southland.

[58] However the only issue here is whether she was offered work in that capacity on the Pomeroy's farm and in this respect, I prefer the evidence of the Pomeroy's that no such offer was ever made. It follows that the submission of Ms Oakly's Counsel, that the Pomeroy's had been guilty of misleading and deceiving conduct pursuant to Section 12 the Fair Trading Act 1996 is not made out.

The Deteriorating Relationship

[59] Ms Oakly's evidence of the deteriorating relationship between her and the Pomeroy's is, if anything, even more graphic than that of her husband. She describes in date order a succession of

events, principally around so called staff meetings, which taken together constitute the essence of the allegation that the Pomeroy's swore at Ms Oakly, treated her with disrespect, and generally belittled and abused her.

The Pomeroy's Sons

[60] There were particular issues for Ms Oakly in terms of the protection of her young children. The Pomeroy's had two sons both of whom had worked at the property and both of whom were, according to Ms Oakly's evidence, lacking in judgement when it came to operating mobile plant near Ms Oakly and Mr Power's children.

[61] Ms Oakly and Mr Power endeavoured to deal with this matter by addressing the issue directly with the Pomeroy's sons but that proved unsuccessful and ultimately a complaint was raised with Mr Pomeroy about the behaviour of one of the sons, Hayden. There is disagreement about what happened next with Mr Pomeroy saying that he told Mr Power and Ms Oakly to make a formal complaint to him so that he could deal with it formally and Mr Power and Ms Oakly saying that he had undertaken to deal with it and didn't.

[62] Whatever the truth of the issue, it is clear from the evidence that the problem caused by the Pomeroy's sons in proximity to Ms Oakly's children continued, and on her evidence, which I accept, provided yet another stressor for what was becoming an increasingly fractured and unhappy employment relationship.

The Opposing Evidence

[63] Just as with Mr Power's employment, I heard evidence from a succession of witnesses for Ms Oakly each telling me a similar story about Mr and Mrs Pomeroy belittling, undermining and publicly criticising Mr Power and/or Ms Oakly. In addition, Ms Oakly gave extensive evidence about the difficulties that she and her husband experienced in dealing with the Pomeroy's sons and the consequences of the thoroughly inappropriate behaviour of Hayden Pomeroy in particular both in relation to Ms Oakly and Mr Power themselves, and particularly to their children.

[64] Countering that evidence, Mr Pomeroy denied the specific allegations as he did in relation to the specific allegations concerning Mr Power. Mrs Pomeroy would only agree that she had spoken sharply to Ms Oakly on a couple of occasions. For instance, there was an attempt at mediation between the parties on the 6th September. Ms Oakly remembered Mrs Pomeroy making a disparaging comment to her which I put to Mrs Pomeroy during the investigation meeting. Mrs Pomeroy denied making that disparaging comment but did admit to saying to Ms Oakly: '*Jenny, just get on with your job*' and this in the context of Mrs Pomeroy acknowledging that Ms Oakly was crying.

[65] In relation to the mediation, Mrs Pomeroy said that she knew that Jenny was getting upset about the way things were going but that '*she was just one of those people who got upset*'. Mrs Pomeroy wondered out loud in her evidence whether it was Ms Oakly's personality or whether she could just not take a lot.

Conclusion

[66] As was the case in respect to considering the evidence effecting Mr Power's employment, I determine that I prefer the evidence of the applicant and her witnesses to that of the Pomeroy's. Again, it is important to note that the fact that I have found that Ms Oakly was belittled and harassed in her employment does not necessarily mean that a constructive dismissal is made out and I will consider that issue shortly.

The Allegation of Constructive Dismissal

[67] Both applicants claim that they were constructively dismissed by the Pomeroyes when the latter breached implied terms of fair and reasonable treatment such as to cause the applicants to resign.

[68] The test for a constructive dismissal is set out in *Auckland Electric Power Board v. Auckland District Local Authorities Officers IUW* [1994] 1ERNZ168. There are three elements to that test vis:

- a. has there been a breach of duty by the employer,
- b. if there has, is there a cause or nexus between that breach (or breaches) and the resignation,
- c. was the breach or breaches of such seriousness as to make the resignation reasonably foreseeable.

[69] To use Counsel for the respondents' phrase, '*the applicants' resignations can only be converted in to a personal grievance if the applicants can prove a constructive dismissal*'. All of the elements I have referred to in the preceding paragraph must be proved by the applicants in order for them to succeed.

[70] I have already dealt with the factual matrix on which the applicants rely to prove a breach of duty. I am satisfied that the applicants were subjected to treatment by the employer which went much further than inconsiderate or discourteous conduct. Indeed, I am satisfied that the Pomeroyes, to borrow a phrase from the decision of Judge Williamson in *Wellington Clerical Workers IUW v. Greenwich* [1983] ACJ965 '*crossed the borderline*' from inconsiderate and discourteous conduct to repudiatory behaviour.

[71] In the English decision of *Woods v. W M Car Services (Peterborough) Limited* [1982] ICR693 cited with approval in the leading case of *Auckland Shop Employees IUW v. Woolworths (NZ) Ltd* [1985] 2NZLR372, the Court had this to say about so called '*breach of duty*' cases: '*... it is clearly established that there is implied in a contract of employment a term that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. ...to constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract; the Tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it. ...*'.

[72] Put simply it is my judgement that Mr Power and Ms Oakly could not be expected to '*put up*' with the conduct of the Pomeroyes.

[73] It is clear that the degree of breach by the employer that is necessary to justify a termination by an employee is a question of making a '*value judgement*' after considering the relevant legal principles: *New Zealand Woollen Workers IUW v. Distinctive Knitwear New Zealand Limited* [1990] 2NZILR438.

[74] Having reflected carefully on the facts in the present case, I am satisfied that the resignations of Mr Power and Ms Oakly were caused directly by the repudiatory behaviour of the Pomeroyes. I accept the evidence advanced by the applicants that the Pomeroyes sought to change the nature of the employment bargain with Mr Power unilaterally and that they did this in a public way such that the applicants were quite unable to defend or protect themselves, that the Pomeroyes undermined the applicants, countermanded instructions by Mr Power and abused, belittled and criticised the applicants in front of others.

[75] The final issue that I need to consider is whether the Pomeroy's would have had it in their contemplation that it was '*reasonably foreseeable*' that there was a substantial risk of the resignation of Mr Power and Ms Oakly when they embarked upon their inappropriate behaviours.

[76] I have reached the conclusion that the untenable environment, to use the Lexus Nexus phrase, has in fact created a situation where the resignations of the applicants was reasonably foreseeable. In my opinion, the Pomeroy's ought to have known that their conduct was substantially likely to have the effect of causing resignations from both Ms Oakly and Mr Power. It ought to have been self-evident to the Pomeroy's that both of the applicants were in emotional difficulty as a consequence of the turmoil in the workplace. As I noted earlier in this Determination, Mrs Pomeroy admitted in her evidence that she knew that Ms Oakly was tearful on occasion but she was dismissive of that and indicated in so many words that it might be that Ms Oakly was simply '*that sort of person*'.

[77] Mr Power was known to the Pomeroy's to leave meetings when they were abusive to him and they can hardly have been left in any doubt that their behaviour made the risk of resignations significant.

[78] It is clear from the decided cases that it is not enough that the Pomeroy's wanted the employment relationship to continue. I accept that evidence as truthful but it does not seem to me to get us very far because, even in circumstances where the Pomeroy's say that they wanted the relationship to continue, their behaviour in unilaterally changing the employment understandings with Mr Power and their uncharitable behaviour towards both applicants all entitle me to reach the conclusion that resignations from the applicants were reasonably foreseeable.

Contributory Fault

[79] Section 124 of the Act requires me to consider contributory fault in circumstances where I find that there has been an unjustifiable dismissal.

[80] However, it will be an unusual constructive dismissal, where found, which has an element of contributory fault in it. This is because as Chief Judge Goddard said in *New Zealand Woollen Workers IUW v. Distinctive Knitwear NZ Limited* [1990] 2NZILR438 where there had been repudiatory conduct from the employer, the employee had a choice. The employee could either refuse to accept the repudiation and insist on performance of the contract or accept the repudiation and cease to perform the contract further. In either case the employee had the right to pursue his remedies for the repudiatory breach.

[81] In this case I have reached the view that:

- a. it cannot be said that the applicants' actions were causative of the grievance given that I am not persuaded that the respondents' repudiatory behaviour was in any way triggered by anything of a blameworthy nature done by the applicants; and
- b. it cannot be said that any relevant actions of the applicants were, in any sense, blameworthy and thus there exists no sense of culpability.

[82] It follows that I do not find evidence of any contribution by the applicants to the grievances.

Compensation

[83] There is ample evidence of the emotional trauma caused by the Pomeroy's' action. I award the applicants compensation under Section 123 (1) (c) (i) of the Act as follows:

- a. to Mr Power the sum of \$6,000.00; and
- b. to Ms Oakly the sum of \$3,000.00.

Other Remedies

[84] The applicants also seek relocation costs, loss of anticipated benefits, health costs, and loss of earnings.

[85] The respondents for their part seek to have me deduct the un-worked notice period of 12 weeks from any entitlement that Mr Power might have. Given that I have found that the Pomeroy's have repudiated the contract by their conduct they can not in my view rely upon the notice period in the employment agreement particularly as the evidence is that there is dispute as to whether notice of 12 weeks was ever agreed.

[86] There is no agreement between the parties about the intended length of the employment relationship. Nonetheless, it is not unreasonable for Mr Power's employment relationship anyway to be predicated on the basis of a minimum of one year. It follows that the loss of that employment cost Mr Power one year's income less the amount paid to him from various sources including the Pomeroy's.

[87] I accept the submission of Mr Powers' Counsel that the predicted earnings for the year were to be \$57,740.00, the actual earnings (from various sources) were \$28,072.57 so the amount lost as a consequence of the employment relationship coming to an end was \$29,667.43 gross. That amount is payable by the Pomeroy's to Mr Power.

[88] Ms Oakly is in a different position. Her employment, while not casual, was part time and seasonal. Notwithstanding that, her evidence is that she saw the employment as long term.

[89] I think it appropriate to award her three months wages at \$13.00 per hour, half that period being calculated on her '*winter hours*' and half on her '*spring hours*'. That sum amounts to \$4,875.00 gross.

[90] The applicants claim that relocation costs, medical costs and loss of the benefit of housing are all direct consequences of the termination. The total claim under those heads is \$6,040.00. I discount immediately the relocation costs of \$1,874.00 as those costs would have had to be met at some point and ought not to be borne by the employer.

[91] I accept that the applicants have suffered the other costs as a consequence of losing their employment with the Pomeroy's and therefore, that a contribution to those costs by the Pomeroy's is warranted. I direct that the Pomeroy's should pay the applicants the sum of \$1,000.00 net as a contribution to those costs.

Determination

[92] I make the following orders:

- a. compensation to Mr Power pursuant to Section 123 (1) (c) (i) of the Employment Relations Act 2000 in the sum of \$6,000.00,
- b. compensation to Ms Oakly pursuant to Section 123 (1) (c) (i) of the Employment Relations Act 2000 in the sum of \$3,000.00,
- c. a contribution to the '*other*' costs of the loss of the employment in the sum of \$1,000.00 net,
- d. a payment of lost wages to Mr Power in the sum of \$29,667.43 gross.
- e. a payment of lost wages to Ms Oakly in the sum of \$4,875.00 gross.

Costs

[93] Costs are reserved.

James Crichton
Member of Employment Relations Authority