

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Lee James Raynel (Applicant)

**AND** A C Blackmore Limited (First Respondent)  
**AND** Fleet Management Personnel Services Limited (Second Respondent)

**REPRESENTATIVES** Mark Nutsford, Advocate for Applicant  
A J H Witten-Hannah, Counsel for First and Second Respondent

**MEMBER OF AUTHORITY** Y S Oldfield

**INVESTIGATION MEETING** 15 April 2005

**DATE OF DETERMINATION** 18 April 2005

**DETERMINATION OF THE AUTHORITY**

Strike out application

- [1] For approximately eighteen months Mr Raynel was a driver with the respondent, Fleet Management Services Ltd. However the trucks he drove bore the signage of AC Blackmore Limited. As a result, when he first instructed Mr Nutsford, he was unclear about the identity of his employer. Now he accepts that the second respondent must have been his employer since his payslips and his contract bear the name Fleet Management Personnel Services Limited. The second respondent also concedes that it was the employer. **On that basis I strike out the first respondent from the proceedings.**

Employment Relationship Problem

- [2] In the week 21-26 June 2004 Mr Raynel did not come in to work at all. The Operations Manager Mr Cornelius told me that by the end of that week he did not expect to hear from him again.
- [3] On Monday 28 June 2004 Mr Raynel reported for work and offered an explanation for his absence the week before. Mr Cornelius did not accept that it was a good enough explanation. He told Mr Raynel that as far as the company was concerned he had abandoned his employment.
- [4] Mr Raynel says he was unjustifiably dismissed. He says he did not abandon his employment and his conduct was not sufficiently serious to justify dismissal. Mr Cornelius and Mr Blackmore (Managing Director of Fleet Services Ltd) disagree. They say absences like this cause huge disruption and uncertainty and it is for this reason that Mr Raynel's employment agreement contains the following provision at clause 5:

*“Should the employee be absent from work for a continuous period of three days without notifying the employer of the reasons for their absence, they will be deemed to have deserted the company.”*

- [5] The first issue for me to determine is whether Mr Raynel deserted the company in the terms set out in his contract. In order to answer this question I need to consider what happened during the week from 21 June to 26 June and whether in all the circumstances Mr Cornelius was justified in concluding that Mr Raynel had abandoned his employment.
- [6] This is not the end of the matter however. Because Mr Raynel reported for work on the Monday Mr Cornelius was obliged to give him an opportunity to explain his absence and to give proper consideration to any explanation Mr Raynel might offer. In order to decide whether this happened I need to establish what was discussed on the morning of 28 June including what explanation Mr Raynel gave Mr Cornelius. Finally I must decide whether it was open to Mr Cornelius to decide that the explanation was not good enough.

### What happened during the week from 21 June to 26 June?

- [7] According to the company’s Transport Manager, Mr Bone, Mr Raynel did not work at all from Monday 21 June 2004 until he reported for work on Monday 28 June 2004. Mr Bone says that on the mornings of the Monday and the Friday the company made calls to Mr Raynel’s mobile to check his whereabouts, but there was no answer.
- [8] Mr Raynel says he thought he worked on the Monday but I saw two pieces of evidence that make me accept on balance that he did not. One was Mr Bone’s diary for the week, where he keeps a list of who has worked each day so that he can check the names against the timesheets. Mr Raynel’s name was missing every day that week. The other was the company’s Telecom account which shows an early morning call to Mr Raynel’s mobile on the Monday, consistent with Mr Bone’s evidence that he called to see where he was. He got no answer and left a message.
- [9] Mr Raynel does not dispute that he did not work the rest of the week. Mr Cornelius told me that on Tuesday 22 and Wednesday 23 Mr Raynel did ring the company seeking instructions as to where he was to work. Although there is some dispute around why Mr Raynel did not find his way to the location where he was needed, I am prepared to give him the benefit of the doubt and accept that this was the result of a miscommunication.
- [10] Thursday however is a different matter. Mr Raynel did not ring in that day. He told me that he waited for the company to ring him. This is at odds with the usual practice which was for staff members who did not know the location at which they were to work to ring an “0800” number especially provided to them for this purpose. When I asked him why he did not ring in he told me that his home does not have a landline and his mobile might have been out of credit.
- [11] That evening Mr Raynel and his partner had a disagreement. He then went drinking and stayed out all night. On Friday morning Mr Bone called and left a second message on Mr Raynel’s mobile. Later that morning Mr Raynel’s partner called the company and told Mr Bone that Mr Raynel would not be coming in to work that day. Mr Bone understood from what she said that Mr Raynel still had not come home. He was annoyed and asked her to get Mr Raynel to ring him as soon as possible.

[12] Whether or not Mr Raynel was already home when he partner was speaking with Mr Bone, he accepts that he did get the message that he was to call Mr Bone. Both he and his partner say that he called the office at around 4.30pm that afternoon but got no answer. Ms Hudson, the respondent's office manager told me that she doubts this evidence as she is in the office until around 5.30 on Fridays and there was no such call.

[13] I accept that a call was made but I conclude that it must have been made later in the day than Ms Scott and Mr Raynel recall. In my view a call at or near the end of the working day amounted to no call at all.

[14] Over the preceding weeks Mr Raynel had been working Saturdays however he did not report for work on Saturday 26 June.

Was Mr Cornelius justified in concluding that Mr Raynel had abandoned his employment?

[15] Mr Raynel was absent from work for a continuous period of three days on the Thursday, Friday and Saturday. He failed to call even when specifically requested to do so. I do not accept that his partner's call amounted to sufficient notification to the employer. Mr Raynel was not incapacitated, did not have a good reason for his absence and could have made a call himself.

[16] In addition, Mr Raynel had also already been absent on the Monday. In all the circumstances, by the end of that week, it was entirely reasonable for Mr Bone and Mr Cornelius to conclude that Mr Raynel had deserted his employment. The situation here is precisely the type of situation set out in clause 5 of the Employment Agreement.

What was discussed on the morning of 28 June and what explanation did Mr Raynel gave Mr Cornelius?

[17] On Monday 28 June, to Mr Cornelius's surprise, Mr Raynel reported for work at the usual time. They spent about 15 minutes discussing the reasons for Mr Raynel's absence. These were much the same as he told me: in the early part of the week he had been confused about where he was supposed to go; then he had a fight with his girlfriend and went out and got drunk, and finally, in respect of the Friday and Saturday, he thought that because his girlfriend had rung in for him, she had done whatever was needed.

[18] After hearing his explanation Mr Cornelius told Mr Raynel that as far as the company was concerned he had abandoned his employment. Out of concern for his financial position the company did however pay him a weeks pay in lieu of notice.

Did Mr Raynel's explanation amount to a good reason for his absence from work?

[19] I am satisfied that Mr Raynel had sufficient opportunity to put forward any explanation he had. As I have already said, he must be given the benefit of the doubt over the mix-up on the Tuesday and Wednesday. However I do not accept that he gave sufficient explanation for his continued absence after that. Even it were accepted that the combination of a hangover and emotional upset was good reason for him taking Friday off, there was still no reason why he did not turn up for work on the Thursday or the Saturday.

[20] I can do nothing more to assist Mr Raynel with his employment relationship problem.

## Costs

[21] I leave it to the parties to discuss this issue between themselves. If they cannot agree they have a period of 28 days in which to request that I determine the matter.

Y S Oldfield  
Member of Employment Relations Authority