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Richmond v Armstrong Alarms Ltd AA 366/07 (Auckland) [2007] NZERA 796 (21 November 2007)

Last Updated: 23 November 2021

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 366/07 5084900

BETWEEN	LANCE RICHMOND Applicant
AND	ARMSTRONG ALARMS LIMITED Respondent

Member of Authority: Marija Urlich Representatives: Max Whitehead, for Applicant

Peter Elder, for Respondent Investigation Meeting: 13 November 2007

Determination: 21 November 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Richmond was employed by Armstrong Alarms from June 2003 until his dismissal on 16 March 2007. He says his dismissal was unjustified.

[2] In the statement in reply filed on behalf of the respondent it says Mr Richmond was not unjustifiably dismissed and that he was absent from work for five and a half months without properly notifying his employer of his absence, that the company understood Mr Richmond had moved onto other employment, that he refused the respondent's offer to discuss his employment situation and that he absented himself from his employment and this amounted to a resignation.

[3] The parties have been to mediation.

The evidence

[4] The undisputed evidence is:

- (i) Mr Richmond posted or faxed medical certificates covering the period for which he was absent from work;
- (ii) On 16 March 2007 Mr Richmond received a medical clearance to return to work;
- (iii) He telephoned Terry McMahon, a director of the respondent, that same day to advise of such;

- (iv) Mr McMahon told Mr Richmond that the respondent was “*managing okay without you*”, that he would need to speak with another director and would get back to him later that day;
- (v) Mr McMahon telephoned Mr Richmond back, told him the respondent did not have the work load to keep him employed and asked him to come in and meet;
- (vi) Mr McMahon had no offer of alternative employment to make to Mr Richmond;
- (vii) Mr Richmond declined the request to come to the office and meet;
- (viii) Mr McMahon agreed to Mr Richmond’s request for the payment of two weeks notice;
- (ix) That payment has not been made.

Determination

[5] Mr Richmond was dismissed from his employment and his dismissal was unjustified. This is clear on the evidence. Mr McMahon’s evidence was that he told Mr Richmond there was insufficient work to keep him employed and made no alternative offer of employment; that is a sending away.

[6] Mr Richmond’s dismissal was unjustified. Mr Richmond was not on notice that his job was in jeopardy, he was not given an opportunity to comment on any concerns his employer may have had about the impact of his absence on the business prior to his dismissal and he was not given an opportunity to provide information at an earlier date as to the prognosis of his recovery or likely return to work date.

[7] There is no authority for the proposition that a long absence from work due to illness ends the employment relationship. If the employment relationship is to end that must be a consequence of a justified decision based on reasonable grounds. This was not the situation here.

Remedies

[8] Mr Richmond is entitled to payment of the notice period agreed to by Mr McMahon. He has no lost wages beyond this period. **Armstrong Alarms Limited is ordered to pay Mr Richmond 2 weeks wages at his usual rate of pay.**

[9] Mr Richmond seeks compensation for hurt, humiliation and injury to feelings consequent to his dismissal. He said he was devastated by his dismissal, that the thought of returning to work had been a motivating factor in his recovery and that he was disillusioned and depressed. He said he has found it difficult not to think about his dismissal, that he worked hard for the respondent and being told he was not needed any more made him feel he had no value. **Armstrong Alarms Limited is ordered to pay Mr Richmond \$7000 pursuant to [section 123\(1\)\(c\)\(i\) of the Employment Relations Act 2000](#).**

[10] The parties will continue their discussions regarding the calculation of holiday pay. If this issue cannot be resolved leave is given for the matter to be referred to the Authority for determination.

Costs

[11] Costs are reserved. The parties are invited to attempt to resolve this issue themselves. If they are unable to then Mr Whitehead should file and serve costs memorandum within 28 days of the date of this determination and Mr Elder should file a reply within a further 14 days.

Marija Urlich

Member of the Employment Relations Authority