

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 125/09  
5126523

BETWEEN	JAMES SCOLTOCK Applicant	WILLIAM
AND	RYMAN HEALTHCARE LTD Respondent	

Member of Authority: Paul Montgomery

Representatives: Anjela Sharma, Advocate for Applicant  
Matt Fogarty, Counsel for Respondent

Investigation Meeting: 5 May 2009 at Nelson

Submissions received: 18 June and 25 June 2009 for Applicant  
18 and 25 June 2009 for Respondent

Determination: 6 August 2009

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**DETERMINATION OF THE AUTHORITY**

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[1] The applicant alleges he was unjustifiably dismissed from his position as a carpenter. He was employed on a fixed term agreement which was to expire on the completion of the carpentry work on Stages One and Two of the building project. James seeks remedies of lost remuneration, compensation for hurt and humiliation in the sum of \$12,000, unspecified compensation for the loss of a chance of ongoing employment and costs.

[2] The respondent denies the applicant was unjustifiably dismissed and says the employment relationship came to an end upon the completion of the carpentry work on those stages on 8 February 2008. The respondent says this was consistent with the employment agreement which set out the way in which Mr Scoltock's employment would end. It denies having any further obligation to the applicant.

**Essential facts**

[3] Mr Scoltock approach the then site manager, Mr Nigel Smith, after seeing a notice on site offering “long term work”. After meeting with Mr Smith the applicant handed in his notice with his then employer and started with the respondent soon after. Matters progressed smoothly until Mr Scoltock was given notice by the respondent.

[4] Essentially, the applicant says there was further work to be done on Stage One and Two of the project and therefore the termination was premature and unjustified. There was no dissatisfaction with the applicant’s performance and this was confirmed by the respondent’s witnesses.

[5] The company says there was minor finishing work to be undertaken on the relevant stages but this predominantly related to other trades. Ryman also says it develops its complexes around the core facilities as sales are made and each development stage is a separately managed project and is staffed accordingly. It also says it pays its construction workers above the going rate in consideration of the fixed term employment it offers.

**The issues**

[6] To resolve this matter the Authority needs to make findings on the following issues:

- Was the applicant sent away before the completion of carpentry work on Stages One and Two; and
- If so, was the dismissal unjustified.

**Test**

[7] The test of justification is set out in s.103A of the Employment Relations Act and its amendments. The test requires the Authority or Court to consider, on an objective basis, what the employer did and how it acted and whether those actions were what a fair and reasonable employer would have done in all the circumstances at the time.

**The investigation meeting**

[8] The applicant presented evidence on his own behalf and was supported by evidence from Mr Bene Ritchney and by an affidavit from Mr Nathan Hackett, both former co-workers at the project and also from Mr Duncan Patchett.

[9] For the respondent the Authority heard evidence from Mr Simon Challies, Chief Executive of the respondent and Mr James Johnstone the respondent's Construction Manager and who acted as the interim Project Manager, replacing Mr Smith in January 2008. Mr Smith was questioned and gave his evidence by teleconference call.

[10] The Authority accepts all were open and honest in their presentation of evidence and thanks them for their assistance. I also appreciate the assistance of Ms Sharma and Mr Fogarty at the investigation and for their respective submissions which I have considered to the extent needed to resolve the issues.

**Analysis and discussion**

[11] Both Mr Scoltock and Mr Ritchney told the Authority there was *heaps of work* to be done when they were laid off. The applicant specifically indicated architrave and skirting fixing. Ryman says those tasks were part of the joinery contract and hence carpenters involved in construction work were not required in these finishing aspects of the project.

[12] The Authority has no reason to doubt the honesty of Mr Scoltock's evidence nor of the resource consent research he undertook. I have considered it closely given the detailed explanation of the project's progress and the relevance of compliance required of Ryman with the issuing of certificates, which was provided by Mr Johnstone. Having considered this aspect of the dispute, I find the evidence of Mr Johnstone more persuasive.

[13] The individual employment agreement accords with s.66 of the Act. The dispute lies in when the Stages One and Two carpentry work was completed and whether Mr Smith held out the promise of further work to the applicant.

[14] Again, the Authority has relied on the Project Manager's evidence of the project's progress and the work contracted to other suppliers, as offering a thoroughly reliable history and knowledge of key elements.

[15] In regard to the allegation Mr Smith held out to Mr Scoltock that Stages One and Two had a projected completion date of 27 March 2008, I have considered Mr Smith's evidence that he cannot explain how the applicant came to cite that date as the original projection was completion of the two stages by early February 2008. There were no significant delays and these were largely covered by overtime enabling completion on the scheduled date.

[16] Whether Mr Smith held out the possibility of work for Mr Scoltock beyond the completion of Stages One and Two is difficult to assess. Mr Smith says he did not and Mr Scoltock says he did. The Authority is not in a position to make an absolute call on this matter. However, I take the considered view that such a prospect would have been noted by a Project Manager of Mr Smith's extensive experience, perhaps even noted on the agreement or in a diary note. In the absence of either, I take the view Mr Scoltock was hopeful that such an opportunity would eventuate but was not guaranteed that hope would be fulfilled.

[17] The Authority makes it plain that it places little weight on Ryman's national development strategies or on the Annual Report to its shareholders. This matter is project specific and has been addressed in that context.

### **Determination**

[18] Returning to the issues set out above, I find:

- Mr Scoltock was not sent away by the respondent prior to the completion of the carpentry component of Stages One and Two;
- The fixed term agreement is in accord with the requirements of s.66 of the Act;
- It follows Mr Scoltock was not unjustifiably dismissed.

[19] Having determined that the applicant does not have a personal grievance, although I accept he is aggrieved, the Authority is not required to address remedies.

Regardless, I wish Mr Scoltock well in his rehabilitation following his accident on 2 March 2008 and in his future career.

**Costs**

[20] Costs are reserved.

Paul Montgomery  
Member of the Employment Relations Authority