



New Zealand Employment Relations Authority Decisions

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Semmens v Tama Rakau Logging Limited (Auckland) [2018] NZERA 315; [2018] NZERA Auckland 315 (12 October 2018)

Last Updated: 18 October 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 315
3020403

BETWEEN CHARLIE SEMMENS Applicant

AND TAMA RAKAU LOGGING LIMITED

Respondent

Member of Authority: Vicki Campbell

Representatives: No appearance for Applicant

Andrew Wood for Respondent

Investigation Meeting: 11 October 2018

Oral Determination 11 October 2018

Record of Oral

Determination: 12 October 2018

RECORD OF ORAL DETERMINATION OF THE AUTHORITY

- A. Mr Semmens' application is dismissed.**

- B. Costs will lie where they fall.**

Employment relationship problem

[1] Mr Semmens was employed by Tama Rakau Logging Limited as a Forestry

Worker for about one year. His employment ended by way of dismissal on 6 April

2017. On 20 September 2017 an application on Mr Semmens' behalf was lodged against Tama Rakau claiming he had been unjustifiably dismissed. Tama Rakau denied the claims.

The Authority's process

[2] The statement of problem was served on Tama Rakau on 2 October 2017. On

17 October the Authority received an application from Tama Rakau for an extension to 25 October to lodge its statement in reply. This application was granted. No statement in reply was received.

[3] On 1 November, in the absence of any response from Tama Rakau a proposal was made to progress the matter to an investigation meeting. This elicited a further response from Tama Rakau on 8 November requesting the scheduled investigation meeting be postponed until January 2018.

[4] On 12 November Tama Rakau applied for leave to respond to Mr Semmens' application and for the statement in reply to be lodged after the parties had attended mediation. As the parties had not attempted mediation, on 4 December 2017 the parties were directed to mediation. Mediation did not take place and a further direction to mediation was made on 26 March 2018.

[5] Mr Semmens' advocate advised the Authority on 18 July that mediation had not yet been attempted. In order to progress the matter I directed the respondent to lodge and serve its statement in reply on or before 10 August and it was.

[6] On 16 August I convened a case management call. This call was attended by Mr Semmens' advocate and Mr Andrew Wood representing Tama Rakau. A timetable to progress this matter to an investigation meeting was agreed. A Notice of Direction setting out the timetabled directions was served on the representatives together with a Notice of Investigation Meeting.

[7] On 19 September the advocate notified the Authority that he no longer had instructions to act on Mr Semmens' behalf. Mr Semmens' advocate advised the Authority he had provided Mr Semmens with a copy of the documents lodged in the Authority and the Notices of Direction and Investigation Meeting. The advocate provided two contact details for Mr Semmens which included an email address and cell phone number. The Authority was advised of a third email address which could also be used to make contact with Mr Semmens.

[8] Unsuccessful attempts by the Authority to make direct contact with Mr Semmens by both email and telephone regarding his attendance at the investigation meeting were made on 19 September and 2, 4 10 and 11 October.

[9] Mr Woods attended the investigation meeting but Mr Semmens did not. I delayed the start of the investigation meeting for 25 minutes to allow time for Mr Semmens to make an appearance.

[10] The Notice of Investigation Meeting states that if the applicant does not attend the investigation meeting, the matter may be dismissed and costs may be awarded against him.

[11] I am satisfied Mr Semmens was aware of the investigation meeting. The Authority has taken steps to ensure Mr Semmens attended the investigation meeting and was aware of the possible consequences of not attending. He has failed to attend the investigation meeting without reasonable excuse. His claim is dismissed.

Costs

[12] At the investigation meeting Mr Woods confirmed Tama Rakau has not incurred any legal costs associated with this matter. In those circumstances it is appropriate that costs lie where they fall.

Vicki Campbell

Member of the Employment Relations Authority