

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 101/08
5029619

BETWEEN TERRY SHANKS, LANCE
 WALTERS, JOSH SOPER and
 DONALD MATIAHA
 Applicants

AND SOUTH PACIFIC MEATS
 LIMITED
 Respondent

Member of Authority: Paul Montgomery

Representatives: Craig Smith, Counsel for Applicants
 Graham Malone, Counsel for Respondent

Investigation Meeting: 9 October 2007 at Invercargill

Determination: 18 July 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The four applicants claim they were appointed to roles at the respondent's Awarua plant following their responding to advertisements and attending interviews. They say they were told the positions were permanent and further say that following the seasonal closure of the plant in September 2005, they were not re-hired for the following season.

[2] Each claims the respondent's failure to re-hire amounted to an unjustified dismissal and each seeks remedies including lost remuneration, compensation for hurt and humiliation and costs.

[3] The respondent denies the men were unjustifiably dismissed. Simply stated, it says the Awarua plant was a new processing facility and its performance was dependent on a range of factors, not least of which was the availability of stock, and it hired all processing staff on a seasonal basis.

[4] Further, it says the staff, including the four applicants, were advised in late August 2005 that the plant would close for the season on 9 September 2005 and those wanting to return for employment the following season needed to complete re-application forms.

[5] The respondent says it needed fewer process staff for the coming season and the four applicants were not required. The respondent says that as each was employed for the 2005 season and worked until its close, they do not have personal grievances and it declines to grant the remedies they seek.

[6] Extensive efforts were made by the parties to resolve their differences. However, these were unsuccessful.

What caused the problem?

[7] Essentially, the prime bone of contention is whether, as the applicants say, they were told at interview that the plant would operate 11 months each year and as they were entitled to three weeks' annual leave which would coincide with the seasonal break, they would have permanent, ongoing employment.

[8] In a letter of 6 March 2006 from the applicants' solicitors to the personnel manager of the respondent, Mr Smith says:

... they were all told that they would be working for 11 months each year and would have three weeks annual holidays. The men understood that this annual leave would coincide with the proposed one month close down period, meaning they were year round positions and that they were being employed as permanent full time workers.

[9] Consequent to this, when their re-applications for the following season were unsuccessful, each applicant considered he had been dismissed from his employment.

[10] The company denies, through Mr Paterson, the plant manager, and Mr Cox, that the applicants were told that the plant would operate for 11 months each year. In his evidence, Mr Paterson says all prospective employees were told the company hoped eventually to run the plant for 11 months a year dependent on stock availability.

[11] Mr Cox says he fielded at least a hundred calls from prospective employees, many of whom *expressed some surprise or made a comment because they had*

thought that the factory might go all year on the basis that once it ceased processing lamb it would process fish. I therefore made it clear that employment was seasonal and it was a lamb factory only and would not be doing fish or other product.

[12] On the issue of the applicants' not being re-engaged for the following season, Mr Cox's evidence was:

Ultimately the reason that each of the applicants was not employed was because other applicants who were available for employment were considered better. I am aware that the applicants' lawyer records that three of the staff were vocal in Union matters. The inference is that three of the applicants were not employed for that reason. As the names of the three are not detailed, I do not know which of the three are alleged to have been vocal in Union matters. In any event, I record that that would not have been the reason they were not re-employed. The majority of staff employed by the company are Union members. Further Leigh [the plant manager] would have had no idea as to who was or wasn't a Union member as he only commenced employment in mid to late September 2005.

The issues

[13] The issues that the Authority needs to determine in this matter are:

- Was the employment offered to the applicants of a seasonal or permanent nature;
- Were the applicants not re-hired due to their Union membership?

Analysis and discussion

[14] The Awarua plant, it is acknowledged by all witnesses, was a newly commissioned processing facility. It was in direct competition with what was then PPCS and Alliance for livestock. Attempting to break into Southland as a meat processor, the respondent knew was a challenging task. The question which poses itself is, why would an entrant to the region offer the equivalent of full time, permanent positions to process workers in its plant when no other processing company offers this? Further, when competing for lambs for processing, the length of the season becomes a significant variable so why would a company engage processing staff for longer than necessary?

[15] The agreements signed by the applicants are clearly marked *seasonal individual employment agreement*. While it is possible that there may have been

rumours circulating in the community suggesting the respondent, at the completion of the lamb season, would undertake fish processing, that falls well short of the respondent offering that expectation. On the balance of probabilities, I think it highly unlikely that the respondent offered the applicants the equivalent of full time, permanent employment and that view is confirmed by the documentation put before the Authority.

[16] On the matter of the applicants' expectation of being re-hired for the next processing season, there was little substantial evidence to indicate that the four were discriminated against when their applications for re-hiring were unsuccessful. At the investigation meeting, there was some tension between the applicants and Mr Paterson, the former plant manager for the respondent, however at the time that staff were being recruited for the upcoming season, Mr Mathieson had succeeded Mr Paterson and, according to Mr Cox, had the ultimate call on who would be hired. I accept that none of the applicants had any significant disciplinary problems while employed. Each of them was spoken to about compliance issues such as hygiene and competency, or about attendance., but no disciplinary sanctions were applied.

[17] Nothing appears so serious as to indicate a ground for the respondent rejecting their applications for re-hiring. Rather, it appears the respondent, when re-hiring labour, evaluated the suitability of each of the four applicants against those provided by the pool of applicants for the upcoming season.

[18] I think, on the balance of probabilities, that the lack of success of the four applicants has less to do with them having been targeted as active Union members than it was *luck of the draw* and competing against other applicants for similar positions.

The determination

[19] Returning to the issues set out above in this determination, I find:

- The applicants were not offered permanent, full time positions by the respondent but rather they were offered and accepted seasonal employment based on each of their individual employment agreements;
- While no doubt disappointed at not being re-hired for the upcoming season, they were not excluded on the basis of their Union association

but rather because the respondent was of the view that others had a more appropriate experience and skill mix, better suited to the company's requirements.

Costs

[20] Costs are reserved. The parties are to attempt to resolve this issue among themselves. If that is not possible, Mr Malone is to lodge and serve a memorandum within 30 days of the issue of this determination. Mr Smith is to have a further 14 days thereafter within which to lodge and file his memorandum in response.

Paul Montgomery
Member of the Employment Relations Authority