

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 560  
5410545

BETWEEN                      AMARJIT SINGH  
   Applicant

A N D                              INGHAMS ENTERPRISES  
   (NZ) PTY LIMITED  
   Respondent

Member of Authority:        K J Anderson

Representatives:              A Hope, Counsel for Applicant  
   J Jones, Advocate for Respondent

Investigation Meeting:        3 September 2013 at Hamilton

Date of Determination:        9 December 2013

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**DETERMINATION OF THE AUTHORITY**

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**Introduction**

[1]     The applicant, Mr Amarjit Singh, was dismissed on 28 February 2012. Mr Singh claims that the dismissal was unjustifiable. He asks the Authority to find that he has a personal grievance and award him various remedies.

[2]     The respondent, Inghams Enterprises (NZ) Pty Limited (Inghams), acknowledges that Mr Singh was dismissed but the company says that the termination of his employment was justified on the grounds of incapacity because he could not carry out the duties associated with his position.

**Background**

[3]     From March 2002 until 28 February 2012, Mr Singh was employed on a full time basis as an egg collector at an Inghams poultry farm.

[4] On 21 October 2011, Mr Singh incurred a back injury at work. Inghams disputed Mr Singh's version of how he injured his back and there is evidence of a dispute relevant to his subsequent claim for accident compensation. The dispute was subsequently determined via the Accident Compensation Act 2001 review process; with Mr Singh's entitlements being confirmed. But this was some months after the termination of his employment.

[5] The matter before the Authority relates to the circumstances whereby, because of the back injury that incurred on 21 October 2011, Mr Singh was unfit to carry out the duties associated with his position.

### **Sequence of events**

#### ***Meeting 28 October 2011***

[6] After incurring an injury on 21 October, Mr Singh was invited to attend a meeting on 28 October 2011 with Ms Sheree Mansell, the Case Manager for Inghams. The evidence of Ms Mansell is that her principal role is work-related ACC injury claim management<sup>1</sup>. In this capacity, Ms Mansell was responsible for the injury claim pertaining to Mr Singh's circumstances.

[7] It is the common evidence of Mr Singh and Ms Mansell that the outcome of the meeting was that Mr Singh was informed that Inghams declined his accident compensation claim, apparently on the basis that his accident circumstances could not be corroborated by other staff that were present at the time. Because Mr Singh was unhappy with this outcome, he requested another meeting to be held with the Farm Manager, Mr Muhannad Juma, in attendance.

#### ***Meeting 14 November 2011***

[8] The evidence is that, among other things, access to light duties for Mr Singh was discussed. This discussion was (apparently) related to a medical certificate provided by Mr Singh that indicated he was considered to be fit for light duties providing there was "no bending" and he needed to be "sitting or able to sit often".

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<sup>1</sup> Inghams is an accredited employer participating in the Accident Compensation Corporation (ACC) Accredited Employer Programme.

[9] Mr Singh says that he was accused of “lying” about his back injury. Mrs Baldeep Singh also attended the meeting and she corroborates her husband’s evidence. Both Mr and Mrs Singh say that Mr Singh was told that he could be dismissed for lying if, as a result of an investigation by Inghams, it was concluded that he had not been injured at work. On the other hand, Mr Juma and Ms Mansell deny that this was said to Mr Singh. I find the evidence on this particular matter to be inconclusive but it seems there was certainly some doubt being expressed by Inghams about the cause of Mr Singh’s injury.

[10] In any event, Inghams made it clear that it was not possible to provide Mr Singh with light duties because of the nature of the physical work requirements and the medical restrictions placed on him.

[11] It appears that Mr Singh’s back condition fluctuated. A medical certificate for the period 25 October to 29 October 2011 informed that Mr Singh was “totally unfit” to work. But the medical certificate for the period 30 October to 26 December 2011 conveyed that Mr Singh was again able to carry out light duties, albeit Inghams considered this was not a reasonable option for Mr Singh given his medical record and the general physicality of the work.

[12] Mr Singh’s medical certificate for the period 22 December 2011 to 2 February 2012 indicated that he was totally unfit for work: “this patient has confirmed disc pathology in his lumbar spin”.

[13] The evidence of Mr Juma is that somewhere around mid to late January 2012, he contacted Mr Singh to arrange another meeting as part of a review of Mr Singh’s continued employment. It transpired that the Singhs were unavailable to attend the meeting as they were about to go to India for a holiday.

[14] On or about 22 February 2012, Mr Juma contacted Mr Singh to arrange a meeting to discuss the ongoing absence. At this point, Mr Singh’s current medical certificate (21 February 2012) informed that he had “persistent Mechanical back pain”, but he was able to do “light duty” for a period of three weeks from 21 February 2012.

[15] The evidence of Mr Juma is that Mr Singh required that he speak to Mrs Singh<sup>2</sup>. Mr Juma attests that he recalls telling Mr Singh that there was a need to meet to discuss the employment situation and “where we were going to from here”.

***Meeting 28 February 2012***

[16] Mr and Mrs Singh attended this meeting along with a support person. In attendance for Inghams was Mr Mansell, Mr Juma and Mr Haden Shaw, the Plant Manager of Inghams’ Te Aroha processing plant. Mr Shaw attests that he was requested by Mr Juma to assist him in regard to reviewing the employment of Mr Singh, given that he had now been absent for some months because of his injury.

[17] The evidence is reasonably consistent in regard to what was discussed at the meeting. Some questions were asked of Mr Singh as to his back condition at that time. The evidence of Mr Juma is that it was ascertained that Mr Singh had continued to receive medical treatment including an MRI, epidural and he was seeing a specialist.

[18] The matter of light duties was raised. The evidence of Mr Juma is that, based on the medical certificate available at that time for Mr Singh, it was understood that he was physically restricted, given the nature of the work associated with Inghams’ egg gathering operations. Mr Juma attests that he was aware of the company’s responsibilities to ensure that employees are safe at work. Mr Juma says that Inghams could not have Mr Singh back at work until he was fit for the normal egg collecting duties that he had been employed for.

[19] While it appears that Mrs Singh advocated that Inghams should assign Mr Singh to carry out light duties in recognition of the current medical certificate, there was resistance to that proposition by the Inghams people because it was not considered appropriate to have Mr Singh back at work until he was fully fit to be there.

[20] The meeting was adjourned for a short period and upon reconvening, Mr Singh was informed that a decision had been taken to terminate his employment. This was confirmed in writing the next day:

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<sup>2</sup> While there is some conflict in the evidence about Mr Singh’s ability to understand certain matters due to language difficulties, it is commonly accepted that Mrs Singh was required to assist him in this regard.

**Subject: Termination of Employment**

Meeting was held on Tuesday the 28 February 2012 with you in order to review your ability to work in full capacity.

You have been unable to work in full capacity for the last four months as per your doctor's certificate advice. Therefore, your employment will be ceased as from 28/2/2012 as per Farming Terms of Employment issued 1/10/2011, page 9.

Yours faithfully,  
Muhannad Juma  
Farming Manager

[21] The above reference to "Farming Terms of Employment" is to Mr Singh's employment agreement. The agreement has, at p.9, an "Incapacity" clause:<sup>3</sup>

Your employment may be terminated by the Company by giving such notice as is appropriate in the circumstances, if, in the view of the Company, you are incapable of the proper performance of your duties as a result of your medical condition. Before the Company takes any termination action relating to your incapacity, you will undergo a medical examination by a registered medical practitioner (determined after consultation with you) nominated by the Company and at the expense of the Company. The Company will take account of any resulting report or advice from its own and/or your medical practitioner before making a termination decision.

[22] The dismissal of Mr Singh by Inghams, on the ground of incapacity, is challenged for several reasons. Mr Singh says that he was not warned, before the meeting on 28 February 2012, that his continued employment was in jeopardy. And he was not provided with any indication that the continuation of his employment was being considered. Mr Singh also says that he was not provided with an opportunity to respond to the issues regarding his future employment. Finally, Mr Singh says that the ACC review process upheld his contention that his injury was work-related. However, the position of Inghams on this latter issue was that the matter of Mr Singh's entitlement to accident compensation payments was separate to the company's consideration of whether he had the physical capacity to carry out his duties.

**Analysis and conclusions**

[23] As with any dismissal, when determining on an objective basis whether a dismissal was justifiable, the Authority must apply this test:

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<sup>3</sup> The individual clauses in the employment agreement are not numbered.

... whether the employer's actions and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.<sup>4</sup>

[24] In applying the test, the Authority must consider the various criteria set out in s.103A(3) of the Employment Relations Act 2000.

**Was the dismissal of Mr Singh something that a fair and reasonable employer could do in the circumstances?**

[25] I find that there was a precipitative action by Inghams in dismissing Mr Singh in the manner that occurred and hence the dismissal was unjustified. This is because the key requirements of the incapacity clause at p.9 of the employment agreement were not observed. The clause is well drafted and unambiguous. It provides that the employment of Mr Singh may be terminated by Inghams "by giving such notice as is appropriate in the circumstances ...". Consistent with the notice provisions of the employment agreement, Mr Singh was entitled to one week's notice. He did not receive this. He was simply informed on 28 February 2012 that his employment was instantly terminated.

[26] The incapacity clause also requires that before taking any termination action, and subject to consultation with Mr Singh, he would undergo a medical examination by a nominated registered medical practitioner; at the expense of the company. Then finally:

The Company will take account of any resulting report or advice from its own and/or your medical practitioner before making a termination decision.

[27] Clearly, none of the above steps were observed by Inghams and I find that the dismissal of Mr Singh fundamentally breached the incapacity provisions of his employment agreement.

[28] The circumstances relating to the dismissal of Mr Singh also offend common law principles in regard to matters that must be taken into consideration when termination of employment on the grounds of incapacity is being contemplated.

[29] The Employment Court has highlighted in a number of decisions<sup>5</sup> an employer's obligations to seek appropriate medical information and to properly

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<sup>4</sup> Section 103A(2) of the Employment Relations Act 2000

<sup>5</sup> For example: *Motor Machinists v. Craig* [1996] 2 ERNZ 585 and *Wilson v. Johnathon's Catering Co Ltd* [2000] 1 ERNZ 660

communicate to the employee the fact that their ongoing employment is in jeopardy before making a decision to end employment. This did not happen in this case. At best, at the time that Mr Singh had his employment terminated, Inghams was only aware that Mr Singh was medically able to assume light duties and the company did not consider that there were any such duties available to Mr Singh, because of the generally physical nature of the egg gathering operation. While it is true that Mr Singh had been absent from work for about four months, Inghams did not have a prognosis regarding his future fitness for work; as required by the relevant term of Mr Singh's employment agreement, before making a decision to terminate his employment.

[30] Because the dismissal of Mr Singh involved a fundamental breach of his employment agreement and there was a failure by his employer to observe well established common law principles, it follows that I must find that Mr Singh was unjustifiably dismissed. He has a personal grievance.

### **Remedies**

[31] As Mr Singh has been found to have a personal grievance, pursuant to s.123(1) of the Act, the Authority may provide various remedies.

[32] For reasons of completeness only, I record that Mr Singh was seeking the remedy of reinstatement but at the investigation meeting, he informed that he was no longer asking for this.

### ***Reimbursement of wages***

[33] Mr Singh claims for reimbursement of lost wages from 28 February 2012 until he commenced new employment on 15 July 2013. However, notwithstanding that there was a dispute with Inghams in regard to appropriate accident compensation entitlements, which was subsequently resolved via the compensation review process, it is established that Mr Singh was unfit to return to work until 14 May 2013, as evidenced by a medical certificate of this date. And Mr Singh has now received his accident compensation entitlements; hence I conclude that he has no further entitlement to any reimbursement of wages.

***Compensation***

[34] Mr Singh seeks distress compensation in the sum of \$15,000 but evidence to support awarding such a sum is not present. Mr Singh's evidence is that he was upset and humiliated by his dismissal; as he had worked for Inghams for nine years and he did not expect to be dismissed so suddenly. However, the evidence points to Mr Singh being, most probably, aware that Inghams was reviewing his incapacity and his ability to continue in employment. Nonetheless, I accept that the suddenness of the decision to terminate his employment had some detrimental effect and hence an award of compensation in the sum of \$4,000 is appropriate.

**Determination**

[35] For the reasons set out above, I find that the dismissal of Mr Singh was unjustified. Pursuant to s.123(1)(c)(i) of the Employment Relations Act, Inghams Enterprises (NZ) Pty Limited is ordered to pay to Mr Amarjit Singh the sum of \$4,000.

**Costs**

[36] Costs are reserved. The parties are invited to resolve this matter if they can. In the event that a resolution is not possible, the applicant has 28 days from the date of this determination to file submissions. The respondent has a further 14 days to respond.

**K J Anderson**  
**Member of the Employment Relations Authority**