

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2011] NZERA Auckland 367  
5330238

BETWEEN SMILEY FARMS LIMITED  
Applicant

AND WAYNE MAYNARD  
Respondent

Member of Authority: K J Anderson

Representatives: C Kelly, Advocate for Applicant  
G Steele, Counsel for the Respondent

Investigation Meeting: 29 July 2011 at Hamilton

Determination: 22 August 2011

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant, Smiley Farms Limited, claims repayment of the sum of \$5,250 from the respondent, Mr Wayne Maynard. The sum involved relates to the fees that were paid by Smiley Farms Limited for Mr Maynard to attend a dairy industry training course that he began, but did not complete. For completeness, I record that SFL initially also sought the return of the manuals associated with the course but this claim has been withdrawn as the manuals have been returned by Mr Maynard.

**Background**

[2] Smiley Farms Limited (SFL) operates a dairy farm. The owner/directors are Mr Colin Kelly and Mrs Irene Kelly. On or about 1<sup>st</sup> June 2008, Mr Maynard, and his wife, Mrs Kristie Maynard, commenced their joint employment with SFL as farm workers.

[3] The evidence of Mr Kelly is that when Mr Maynard was originally interviewed for the job in December 2007, there was some discussion around the unique nature of the farming techniques adopted on the farm, and if Mr Maynard felt he was happy to be employed there and wished to stay for some time, then SFL would pay for him to attend a Dairy Production Systems course (the course). Mr Kelly says that Mr Maynard gave an oral undertaking that if SFL paid the fees for him to attend the course and he left their employment within a period of two years of completing it, he would refund the fees involved. Mr Maynard accepts that there was some discussion in December 2007, but he says that he never gave any undertaking in regard to repaying the fees that are now at issue.

[4] Mr and Mrs Maynard duly commenced their employment with SFL and subsequently there was some informal discussion about Mr Maynard attending the course. An email dated 5<sup>th</sup> March 2009, from Mrs Kelly to Mr Maynard, confirmed that he would be registered for the course, which was to be held over a period of 12 months, beginning on 16<sup>th</sup> April 2009. The fees for the course were paid by SFL by four instalments; the first being made on 24<sup>th</sup> April 2009 and the forth being made on 22<sup>nd</sup> January 2010. Mr Maynard commenced the course on 16<sup>th</sup> April 2009 and attended a total of seven days with the last day of attendance being 15<sup>th</sup> October 2009.

[5] Mr Maynard did not complete the course. This is because due to a dispute between Mrs Maynard and Mrs Kelly, Mrs Maynard resigned on or about 21<sup>st</sup> August 2009. While the relationship between Mr Maynard and Mr Kelly appears to have remained reasonably amicable and Mr Maynard attempted to maintain his employment with SFL, it became too difficult; largely, it appears, because of the residue of ill feeling related to the departure of Mrs Maynard. Mr Maynard resigned from his employment with SFL on 31<sup>st</sup> October 2009, giving four weeks' notice.

[6] The effect of Mr Maynard ceasing his employment with SFL is that he did not complete the course that had been paid for by SFL, hence SFL have come to the Authority seeking an order for reimbursement from Mr Maynard of the sum of \$5,250 for the course fees.

**The Issue**

[7] The primary issue for determination is: Is there a legal or a contractual obligation for Mr Maynard to repay the course fees?

[8] It is the view of SFL that Mr Maynard gave an oral undertaking back in December 2007 that if SFL paid the fees for him to attend the course, he would remain in the employment for at least a further two years following the completion of the course. And in the event that he did not fulfil this undertaking, then Mr Maynard would refund the course fees.

[9] But Mr Maynard refutes that he ever gave any undertaking to repay the course fees as claimed by SFL. Mr Maynard accepts that there was some informal discussion back in 2007 and he confirms that it was his intention to remain in the employment of SFL for a longer term than eventuated. However, due to the circumstances relating to the dispute between his wife and Mrs Kelly, it became impossible for him to continue with his employment.

**Determination**

[10] It seems to me that while both parties acted with the best of intentions, there was never any formal or contractual arrangement entered into and that is an insurmountable barrier for SFL in regard to its claim against Mr Maynard. I also note that following the resignation of Mrs Maynard, Mr Maynard indicated that he wished to continue in an employment relationship with SFL. As a consequence, discussions took place regarding a new employment agreement that recognised that there was no longer a joint employment relationship, following the departure of Mrs Maynard. These discussions continued up to at least 27<sup>th</sup> October 2009 but were not completed, due to the resignation of Mr Maynard on 31<sup>st</sup> October 2009. But it is relevant that there appears to have been no discussion about the course fees. And there is no mention in the new proposed employment agreement for Mr Maynard about such, even though the discussions were taking place as early as 26<sup>th</sup> August 2009<sup>1</sup> while Mr Maynard continued to attend the course. Furthermore, due to SFL requiring two people to work on the farm, Mr Maynard was only offered continuing employment

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<sup>1</sup> As evidenced by the transcript of the recorded meeting of this date.

until 31<sup>st</sup> May 2010. Therefore, even if there was an oral agreement about the repayment of the course fees, Mr Maynard would not have been able to complete the two years of employment condition in any event, albeit there was some possibility that a local person may have been employed, hence allowing Mr Maynard to remain as one of a team of two employees to meet the requirements of SFL.

[11] I find that the claim being pursued by SFL cannot succeed. This is because there is no evidence of a formal or contractual agreement between Mr Maynard and SFL that is capable of being legally complied with or enforced.

**Costs:** Given the nature of this dispute and the circumstances involved, I conclude that it is appropriate that costs should lie where they fall.

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