

[3] The issues for this determination are whether:

- TD&C breached its obligations of good faith;
- Mr Smith's final pay, including holiday pay remains outstanding;
- Mr Smith was subject to an unjustified disadvantage; and
- a penalty should be awarded for the delay in producing wage and time records.

Breach of good faith

[4] The actions giving rise to this claim are not clear from either the statement of problem, or the evidence of Mr Smith. It seems to me that the claim for breach of good faith relates to the conduct of the respondent at mediation, the conduct of an insurance company post dismissal, and the failure to provide wage and time records, also post dismissal.

[5] The Authority has no ability to enquire into the conduct of either party at mediation. Further, I am not satisfied that the second and third actions complained of by Mr Smith has established a breach of good faith on the part of TD&C.

[6] This claim is dismissed.

Arrears of wages

[7] Mr Smith claims an amount was deducted from his final pay for training courses he was required to attend as part of performing his role, and for safety boots which were paid for by TD&C.

Deductions for training

[8] The employment agreement at clause 16 requires Mr Smith to attend training courses as required by TD&C. The clause states that the costs of the required training will be met by TD&C in the first instance. Mr Smith has agreed however, that should he leave his employment within 12 months of completing a training course the costs of the training will be deducted from his final pay, including any holiday pay, on a pro rata basis.

[9] TD & C produced invoices showing the training courses attended by Mr Smith and the costs of each course. The total deduction from Mr Smith's final pay for these courses was \$1,522.25. TD & C has shown how it has calculated the costs of each course and the pro-rata rate.

[10] I find the deductions made from Mr Smith's final pay were made in accordance with the employment agreement entered into between the parties.

Deductions for work boots

[11] The final calculation worksheet provided to the Authority shows an amount for a pair of boots being taken into account.

[12] Clause 8 of the employment agreement requires the employer to provide one pair of safety work boots and one pair of rubber gumboots every twelve months. It is a requirement of his employment that Mr Smith wear these items of safety footwear.

[13] Mr Smith's employment did not exceed 12 months. He was therefore entitled to one pair of work boots. I am satisfied Mr Smith received a pair of work boots in accordance with the employment agreement a couple of weeks after the commencement of his employment.

[14] Mr Smith then purchased a second pair of boots just before he resigned from his employment. Mr Smith purchased the boots using an order form from a company order book he carried with him and which was to be used for miscellaneous day to day items only.

[15] The evidence produced to the Authority shows that while the cost of the second pair of work boots was taken into account in the final pay calculations, by the time the lawful deductions for the training courses had been made from his final pay, the cost of the boots could not be deducted as there was no money left from which to make the deduction.

[16] I find on the balance of probability that no deduction was made from Mr Smith's final pay for the second pair of boots.

Unjustified disadvantage

[17] Mr Smith claims he was subject to disadvantage in his employment as a result of the manner in which the respondent pursued an insurance claim following a motor

vehicle accident in Mr Smith's company car. Mr Smith says the disadvantage was exacerbated by the fact that the respondent insisted that Mr Smith was responsible for the accident. Mr Smith also claims that the failure to provide wage and time records contributed to his disadvantage.

Motor vehicle insurance claim

[18] Clause 9 of the employment agreement provides for Mr Smith to have the use of a company vehicle. The unchallenged evidence of Mr Lester Foxall, TD&C's Manager, was that Mr Smith was involved in two motor vehicle accidents during his employment. The first was in April 2009. Following the accident Mr Foxall lodged a claim with the TD&C's insurers.

[19] The second accident occurred on 15 May 2009. Mr Foxall again lodged a claim with the company's insurer's who requested a statement from the driver, Mr Smith. After failing to obtain the statement, the Insurance Company appointed its own investigator who requested a meeting with Mr Smith. Mr Foxall says Mr Smith failed to attend any of the pre-arranged meetings with the insurance investigator and did not provide a statement about the accident until after he had left his employment.

[20] Mr Smith says he suffered from harassment as a result of the actions of the insurance company and says that the insurance company was acting on instructions by TD&C.

[21] I am satisfied TD&C did not harass or take any action against Mr Smith in relation to the motor vehicle accident. TD&C left the matter entirely in the hands of its insurer. Any decision by the insurer to seek information from Mr Smith was not an action which could be attributed to TD&C. It follows that Mr Smith's employment or one or more conditions of his employment were not disadvantaged by TD&C in relation to the actions of the insurance company.

Failure to provide wage and time records

[22] Mr Smith claims the failure by TD&C to produce wage and time records amounted to a disadvantage in his employment. Mr Smith, through his representative requested the wage and time records on 21 August 2009. This was nearly one month after the ending of the employment relationship.

[23] A claim for disadvantage relates to actions occurring during the existence of an employment relationship. At the time TD&C failed to produce the wage and time

records the employment relationship had ended. It follows that Mr Smith's employment or one or more conditions of his employment were not disadvantaged by TD&C in relation to its failure to provide the wage and time records.

Penalty for failure to provide wage and time records

[24] Mr Smith seeks the payment of a penalty for breach of section 130(4) of the Employment Relations Act 2000 for failing to supply the wage and time records.

[25] Mr Smith requested copies of the wage and time records on 21 August 2009 but these were not forthcoming until a direction from the Authority in April 2010. I am satisfied that this is a case in which a penalty at the lower end of the scale should be ordered. TD&C were under a statutory obligation to provide the full wage and time records when requested. It was only after a direction from the Authority that the records were provided.

Tasman Design & Civil Limited is ordered to pay to the Crown a penalty of \$500.00.

Costs

[26] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, they may file and serve a memorandum as to costs within 28 days of the date of this determination. I will not consider any application outside that timeframe without the prior leave of the Authority.

Vicki Campbell
Member of Employment Relations Authority