

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2015] NZERA Wellington 18
5517677

BETWEEN MICHAEL SOUTHEE
Applicant

AND CRAIG MOYNIHAN
Respondent

Member of Authority: Trish MacKinnon

Representatives: No appearance by Applicant
No appearance by Respondent

Investigation Meeting: Scheduled for 26 February 2015 at Palmerston North

Determination: 2 March 2015

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Michael Southee filed a Statement of Problem which was received in the Authority on 8 September 2014. He claimed he had been unjustifiably dismissed by the respondent, Craig Moynihan. Mr Southee sought compensation for lost wages and compensation for humiliation, loss of dignity and injury to feelings arising out of his unjustifiable dismissal. He also sought costs.

[2] Mr Moynihan did not formally file a Statement in Reply. However, on 4 November 2014, he emailed the Authority asking it to note that he disputed any wrongful dismissal, or unfair employment issues between Mr Southee and himself. He noted Mr Southee had worked for him as a sales person for two weeks only on a trial basis. He said that during that time Mr Southee's sales performance was "*totally dismal*". Mr Moynihan stated that Mr Southee was an independent contractor on commission only for sales he secured for Mr Moynihan's business, Colourprint Promotions.

[3] Mr Moynihan asked that those comments, and others relating to Mr Southee's conduct and behaviour during his association with Colourprint Promotions, be formally noted by the Authority.

The Authority's investigation

[4] A telephone conference was convened with the parties on 5 November 2014. Rowland Ingram, employment advocate, attended on behalf of Mr Southee. Mr Moynihan attended the telephone conference in person. During the course of the telephone conference, an investigation meeting was scheduled for 26 February 2014. Witness statements from the applicant and the respondent were scheduled for filing in the weeks leading up to the investigation meeting. The parties were directed to attend mediation before the scheduled date for the investigation meeting.

[5] On 11 November 2014, an Authority Officer emailed the parties to confirm the date and starting time of the investigation meeting which was to be held in Palmerston North. The Authority Officer's email also confirmed the timetable for the filing and serving of witness statements. For the benefit of the parties it noted the types of information required in witness statements. By separate email on 11 November 2014, the Authority Officer confirmed the direction to mediation. Details about the mediation and the parties' obligations in relation to it were specified in that email.

[6] Mr Ingram advised the Authority by email dated 16 November 2014 that he no longer represented Mr Southee. He provided contact details, comprising an address, cellphone number and email address for Mr Southee.

[7] On 28 November 2014, the Authority Support Officer wrote to Mr Southee noting the advice from Mr Ingram that he no longer represented him in his employment relationship problem; confirming the investigation meeting scheduled for 26 February 2015; enclosing a Notice to that effect; and reminding Mr Southee of the timetable applying to the filing and serving of witness statements.

[8] The letter and attachment were emailed to Mr Southee and hard copies were sent by CourierPost to the address Mr Ingram had provided. The envelope was returned unopened by the courier company on 24 December 2014 which had been unsuccessful in delivering the item to the recipient.

[9] I am satisfied, however, that Mr Southee received the emailed documents from the Authority on 28 November 2014, because he responded to the Authority Officer's email on 8 December 2014, asking how he could contact her. The Authority Officer again provided full work contact details by return email.

[10] The Authority Officer contacted Mr Southee by email again after he failed to file witness statements by 9 December in accordance with the notified timetable. She asked him to contact her to advise when the written statements could be expected. If he no longer intended proceeding to an investigation meeting, the Authority Officer asked Mr Southee to advise the Authority urgently that he wished to withdraw the matter. The email, dated 21 December 2014, was copied to Mr Moynihan, as had all previous correspondence.

[11] On 15 January 2015 the Authority Officer made a further attempt to contact Mr Southee, this time by leaving a voicemail message on his cell phone. She asked that he contact her as soon as possible regarding his witness statements. Alternatively, if Mr Southee did not wish to proceed, she asked that he advise the Authority of this as soon as possible. Her voicemail message noted that, if he did not, the investigation meeting would proceed and, if he did not attend, the matter may be dismissed and costs awarded against him. There was no response from Mr Southee.

[12] On 23 February 2015 the Authority Officer left a further voice mail message on Mr Southee's cell phone asking him to contact her urgently regarding the investigation meeting scheduled for that week. He did not respond.

[13] Neither the applicant nor the respondent attended the investigation meeting on 26 February 2015. At my instigation an Authority Officer attempted to contact both parties and left voicemail messages for them to call her urgently. There was no response from Mr Southee. Mr Moynihan contacted the Authority Officer to inform her he had assumed the investigation meeting had been withdrawn due to the disappearance of the applicant. He advised he was not in Palmerston North in any event and was unable to attend the investigation meeting.

[14] I am satisfied Mr Southee was properly notified of the date, time and venue of the investigation meeting. I am also satisfied he had ample opportunity to advise the Authority if he had any difficulty in attending on the specified day. I note he has not

made contact with the Authority since the investigation meeting was scheduled to occur.

[15] As Mr Southee has failed to provide any evidence to support his claim, I do not accept that he was unjustifiably dismissed or that he has any sustainable personal grievance against Mr Moynihan.

Determination

[16] Mr Southee's application is dismissed.

Trish MacKinnon
Member of the Employment Relations Authority