



[3] Because of those circumstances, I proceeded to investigate the applicant, Mr Patrick Toia's employment relationship problem in the absence of Aariz today.

### **The investigation meeting**

[4] Mr Toia provided evidence at the investigation meeting today and confirmed under oath that his evidence was true and correct.

[5] As allowed under s.174 of the Employment Relations Act 2000 (the Act) this determination does not set out all of the evidence. Relevant facts and legal issues are set out along with the Authority's conclusions.

### **Employment relationship problem**

[6] Aariz is in the business of predominantly fitting and replacing used tyres. Mr Saif Ali is the sole director and shareholder of Aariz.

[7] Mr Toia was employed by Aariz from 5 August 2015 until his dismissal on 17 February 2016.

### **Employment agreement**

[8] Mr Toia was not provided with a written individual employment agreement. A verbal employment agreement between Mr Toia and Mr Ali was agreed on behalf of Aariz. The verbal agreement was that Mr Toia would be employed as a labourer/tyre fitter for 30 hours a week at the rate of \$15 gross per hour.

[9] In fact during the course of his employment, Mr Toia never worked 30 hours a week. He always worked in excess of that. Mr Toia worked 45 hours a week, but was only paid for 30 hours a week. The work was hard and difficult and the work environment dirty.

[10] Mr Ali asked Mr Toia on one occasion to dispose of old tyres by dumping them wherever he could. Mr Toia did not agree to do so.

### **Dismissal**

[11] Shortly after this discussion, Mr Ali dismissed Mr Toia. Mr Ali told Mr Toia he no longer wanted him working at Aariz. No reason was given to Mr Toia. No warnings were given to Mr Toia. He was simply told he was no longer needed.

[12] Mr Toia was shocked and angry with this and asked Mr Ali for a letter. The letter was provided which stated:

*Dear Patrick,  
After careful consideration you gave me no choice but to ask you to leave from your employment agreement effective from today the 17th of February 2016. I wish you all the very best in your future endeavours. Thank you.  
Yours faithfully  
Sali Ali*

[13] Mr Toia was provided with a final payslip which did not include any holiday pay.

### **Personal grievance claim**

[14] Mr Ali did not tell Mr Toia why he felt he had no choice but to ask Mr Toia to leave. Mr Toia's representative wrote to Mr Ali on 23 February 2016 raising a personal grievance claim and seeking payment of unpaid wages and holiday pay together with compensation in relation to the alleged unjustified dismissal.

[15] On 24 February 2016 Mr Ali replied on behalf of Aariz denying the claim and stating that Mr Toia had damaged property and had used abusive language on three occasions. Nothing further was heard from Mr Ali on this matter and Mr Toia disputed the allegations.

[16] Mr Toia has unsuccessfully applied for 44 positions since his dismissal. Mr Toia has had a recent job interview and hopes to hear back next week about whether his application for work has been successful.

[17] At the investigation meeting, Mr Toia spoke of his anger at losing his job without notice or any warning and described his job at Aariz as his "bread and butter".

### **Unjustifiable dismissal**

[18] In relation to his claim that he was unjustifiably dismissed, I accept that Mr Toia was unjustifiably dismissed by Aariz.

[19] A fair and reasonable employer could not dismiss in the circumstances. The dismissal was not justified and I consider that, in the circumstances, compensation in the sum of \$5,000 pursuant to s.123 of the Act appropriate.

[20] Mr Toia seeks payment of unpaid wages, namely for work performed over and above the 30 hours per week at \$15 per hour.

[21] There was no dispute that Mr Toia worked 45 hours a week and over the period of his employment that amounts to a shortfall of \$5,771.25 gross.

[22] I order payment of the shortfall to be made by Aariz to Mr Toia.

[23] Mr Toia seeks reimbursement of wages from the date of his dismissal for a period of 12 weeks pursuant to s.128 of the Act as a result of his unjustified dismissal.

[24] I accept that in the circumstances that amount should be paid. This amounts to \$3,313 gross.

[25] In addition, Mr Toia seeks holiday pay which was not paid to him during the course of his employment. Total holiday on wages Mr Toia earned and on unpaid wages which he was entitled to, amounts to \$1,433.68.

[26] Under s.124 of the Act I am obliged to consider whether or not Mr Toia's conduct in any way contributed to the circumstances leading to his dismissal. I consider there was no contribution by Mr Toia to the circumstances leading to his dismissal and accordingly there is no deduction of remedies I have awarded in his favour.

[27] I order Aariz to pay the above amounts to Mr Toia within 14 days of today's date.

[28] Costs are reserved.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**