

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 124/08  
5053253**

BETWEEN      ALANI TAIONE  
                         Applicant  
  
AND              AUCKLAND AUTO CLINIC LIMITED  
                         Respondent

Member of Authority:      Leon Robinson

Representatives:          Amelia Schaaf for Applicant  
                                 Rodger Pool for Respondent

Investigation Meeting:      09 May 2007  
                                 22 August 2007

Further Information:        28 March 2008

Determination:              01 April 2008

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**DETERMINATION OF THE AUTHORITY**

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**The problem**

[1] The applicant Mr Alani Taione ("Taione") applies to the Authority for an investigation into his dismissal. He says his dismissal from Auckland Auto Clinic Limited ("Auto Clinic") on 10 October 2006 was unjustifiable. Mr Taione asks that the problem be resolved by orders for reimbursement and compensation. Auto Clinic says Mr Taione was justifiably dismissed for redundancy.

[2] The parties were unable to resolve the problem between them by the use of mediation.

**The issues**

[3] Mr Taione was employed by Auto Clinic as "*Manager, WOF Inspector and Senior Mechanic*" and was paid \$25.00 gross per hour. These terms are confirmed in a letter from Auto Clinic director Mr David Rouse ("Mr Rouse") dated 14 June 2006.

[4] The issues for determination are these:-

- (i) Was Mr Taione dismissed? and if he was;
- (ii) Was the dismissal justifiable? and if not;
- (iii) What orders should there be for resolution.

***Was there a dismissal?***

[5] Auto Clinic's authority to issue motor vehicle warrants of fitness was suspended effective as from 28 September 2006 for twelve months.

[6] Although Mr Taione denies it, I find that on 2 October 2006 Mr Rouse communicated to Mr Taione his concern that the loss of the authority to issue warrants of fitness had implications for Mr Taione's employment. I find that there was a suggestion as to whether Mr Taione should leave but, significantly, I find that there was no agreement that Mr Taione should actually leave. Mr Rouse concedes this to the Authority, resiling from his written correspondence. I accept however, that Mr Taione was to ponder the situation and revert to Mr Rouse. I accept too that Mr Taione did not return to work until 10 October 2006 when his employment ended.

[7] Mr Rouse and Mr Taione disagree about the detail of the discussion between them on 10 October 2006. I find that Mr Rouse told Mr Taione that he could not afford to pay Mr Taione because of the suspension of the warrant of fitness authority. Mr Taione apprehended that he had been dismissed and demanded that Mr Rouse record the situation in writing. This is what Mr Rouse wrote by hand:-

*Alani Taione*

*Dear Alani*

*Last Monday we had a conversation following the loss of our WOF Licence. We agreed maybe the best thing would be for you to leave, and we both said we would think about it. I contacted you on Thursday 5th and I asked for you to come and talk about this and you said you would try to come ASAP.*

*Finally you arrived today at 9am and we discussed these issues. Due to the fact that it appears we can not afford to keep you employed without our WOF Licence, I thought you should be advised early that the best*

*thing is probably for you to leave until further notice while I complete my investigation as to whether or not we can have you and how we will afford to pay you while we have no WOF Licence.*

*I have tried my hardest to keep the WOF Licence and written exactly what you recommended to LTNZ but still we lost it, I had followed your example and done WOFs as you asked and loaded them up, but when you were away you complained to LTNZ that we were doing illegal WOF's which is what you had usually asked me to do anyway. I was very hurt that I was trying my best and you used it against me and this is why we have now lost our WOF Licence.*

*There are many other issues to discuss but this is the main reason **I think the best think the best thing is for you to leave your position as WOF Inspector/WOF Manager/Workshop Manager.***

*I do not want to argue as I feel we have helped each other, but due to this situation I can't see any way of making it work until we have our WOF Licence again.*

*I hope you understand.*

*David Rouse*

The emphasis is mine.

[8] Mr Taione insisted that Mr Rouse type out the letter he had written by hand. Mr Rouse complied and prepared a computer generated letter, but revised from the hand written one, as follows dated 11 October 2006:-

*11/10/06*

*Dear Alani*

*You joined the company last year, then left us early this year, and returned to work towards the end of march from memory, where we offered you a re-instatement of your old contract for position of WOF inspector, but with amendments to include more responsibilities including Managing the WOF side of the workshop, and Managing the workshop. It also came with a pay rise.*

*We had a conversation last week on 2nd October about Auto Clinic and the recent loss of our WOF licence, and we both thought maybe the best plan for both of us would be for you to leave before things get out of hand. I spoke to you a couple of days later and asked you to come ASAP to speak with me, but you did not come until 9am Tuesday 10th when I advised of the following.*

*Following that conversation I agree, and I think the best thing for both of us would be to wrap up your employment - at least until we are at a stage where we are likely to get the WOF Licence back. As you know I would prefer to give you as much notice as possible rather than leave it until the company gets stuck in a rutt.*

*All your entitlements intend to be paid but I hope you will allow me to deduct the \$820 cash I advanced you already, and let Brigita sort out what needs to be done when she is back from Australia (she is back at work on Monday).*

*I am currently investigating things to see what we can do to part on fair terms so we can both try to receiver and move forward.*

*Thanks for your understanding  
David Rouse*

[9] I regard the handwritten advice as most accurate, being the most contemporaneous record of events, and I particularly note Mr Taione does not and did not challenge the accuracy of its account at least in terms of the narrative of events. I find that there was a sending away amounting to a dismissal evidenced by this advice:-

*Due to the fact that it appears we can not afford to keep you employed without our WOF Licence, I thought you should be advised early that **the best thing is probably for you to leave until further notice** while I complete my investigation as to whether or not we can have you and how we will afford to pay you while we have no WOF Licence.*

The emphasis is mine.

[10] I find that the "leaving" although qualified "until further notice" was a still a sending away because it deprived Mr Taione of his entitlement to continuing indefinite employment.

[11] Mr Taione wrote a letter to Mr Rouse dated 10 October 2006 as follows:-

*10.10.06  
Auckland Auto Clinic  
291 Church St  
Onehunga*

*Dear David Rouse*

*I received your termination of my contact with Auckland Auto Clinic as a workshop Manager and I was very upset and disagreed with all the verbal comments about myself.*

*That you can't afford to pay my wages because the wof has been revoked due to mismanagement or unauthorised person issue wof while the AVI (A10748) Alani Fisher Taione is no presents on the sites. AVIC (M516483) Auckland Auto Clinic Refer to the LTSA 1st letter of warning that they will suspended or revoke your wof licence if you don't comply with their demands and part of this conditions that you will reviewed the management and dismiss Steve Spencer, Ron and*

others that are not performing in the workshop. We discuss this issues and the names to be dismiss and also assign me to be the new workshop manager to replace Steve Spencer and you stated in your letter to LTSA that you already sacked or dismissed Steve Spencer due to restructer(sic) of the business. As a results the LTSA reply back with a conditions that you must score 2.4 or more in order to continue to issue wof or face revoke. Dave you pack and came home and asked me to come back and help you to get your site reapproved and I told you that I had enough of the staff you hired to work mainly Steve Spencer, Ron, and Roy. My partner Nila Morh was present at the times we discussed my employment and I told you I don't want to work or accepted the offer because I will started and run my own workshop when I finished from your work so that I used my skills and expertise the way I to run my business. Not for them to tell me this and that. I told the staffs what to do they don't listen to me but they came back to you. You know this is an ongoing problems here because I tell them one thing you told them another. The problems you have here is caused by you Dave. If you listen to LTSA and me the staff know their positions in this place. One man one rule.

My contract didn't stated that the wof licence is cancelled and I will be dismissed I was hired to run the overall of the day to day running of the Auckland Auto Clinic. I will point to you this simple equations:-

1) Removed me as you stated that you can't afford to pay my wages of \$25.00 per hrs. ok you hire Rori the other mechanic to work on average \$20.00 per hour. Steve Spencer is not a qualified mechanic is paid clear \$600.00 - 700 per week. Ron is \$400 - \$500 per week. ( ) put me off doesn't prove any things. You just trying to play games. Dave you hire Rori the new mechanic because you told me that you a going to apply the "AA" Approval Repairer in here and use his certificate for "AA" to approve the premises because the LTSA did revoke your wof licence for a year from 28/09/06. Dave you suing people and manipulate thing like the program that you run with the TV One on Diesel fuel. You stated that we a specialists diesel repair and you stated that you a qualified technician and all times this is a hoax (false). Dave I will contacted "AA' Head Office and forward my letters to and I will forward a copy to TV One because I want to make a comments on this programme and the public of New Zealand to keep away from Auckland Auto Clinic until my voice and the truth to be heard. I will challenge you and contact all the agencies to inform of the corruption in here

Dave I spent my life and times in this place to bring up to a stage you denied and took away from me. This letter is serious and I will protested outside to tell the people not to use your workshop anymore.

The conditions is this:-

1. Pay my contacted off for a years wages as from today 10-10-06 - 10-10-07 included holiday and sick leave
  2. Letter of apology and Reference to stated my work history in your company
  3. I prefer a compensation from your company for wrongly dismiss me from my jobs and this causes me stress and financial hardships for me and my family
- I will give you up to 4.00 pm today if not I will be calling on the media to have a press release outside your work area ASAP.

I hope that you understand that you ruin my life and my family and we always support your when you down

Sorry for anything that you feel that I done but I called Auckland Auto Clinic as my home because my life and time was fully left in this place. Today you kick me in the guts and I'm very hurtful of it but I go and good luck on your future

Regards

Alani Fisher Taione

Former workshop manager

10-10-06

***Was the dismissal justifiable?***

[12] The Auto Clinic defends Mr Taione's claim on the basis that he was genuinely redundant and further states that in any case, he would have been dismissed for serious misconduct. I do not concern myself with misconduct issues because Mr Taione was not dismissed for that. Auto Clinic says essentially that after it lost its authority to issue warrants of fitness, it had no further warrant of fitness work and no longer required a warrant of fitness inspector, which it says was two thirds of Mr Taione's work.

[13] Mr Rouse says that when Mr Taione took over as Workshop Manager he was meant to undertake the responsibilities set out in his advice of 1 May 2006 which should have taken "*no more and probably less than a third of his time*". That advice states this:-

*The New Position for which Alani has been accepted into is the Workshop Manager in addition to duties and responsibilities as set out in the Original Employment Agreement.*

*Responsibilities include:*

1. *Daily smooth running of the workshop*
2. *Improving the workshop to meet the performance objectives.*

*Performance objectives will be to improve:*

*Satisfaction & Retention of the customer and resulting reputation of the workshop*

*Growth of the workshop in customer numbers & job quantity & quality.*

*Efficiency & smoothness of the workshop & Quality levels of the staff.*

*Minimise disruption/interruptions within the workshop and workshop system*

*Profitability of the workshop short and long term.*

[14] The parties are unable to produce to the Authority the responsibilities set out in the original employment agreement.

[15] It was a reality that Auto Clinic was no longer authorised to issue warrants of fitness and therefore, Mr Taione would no longer perform that work, at least for the year of the suspension. Mr Rouse tells the Authority this warrant of fitness work comprised two thirds of Mr Taione's work. That contention is not readily apparent from Mr Taione's title as "workshop manager". Nor is Mr Rouse's assessment of the proportion of warrant of fitness work apparent from the stated responsibilities above.

[16] These are enquiries which are contemplated by an investigation or consultative process that a fair and reasonable employer would have undertaken prior to termination for redundancy, but more than that, those which Mr Rouse himself wrote about in his handwritten advice of 10 October 2006 thus:-

*... while I complete my investigation as to whether or not we can have you and how we will afford to pay you while we have no WOF Licence*

[17] The investigation Mr Rouse referred to was the consultative process which should have preceded Mr Taione's sending away. It is the same consultative process that a fair and reasonable employer would have carried out before terminating an employee. I find that the discussion held on 2 October 2006 was not the consultation required either.

[18] A fair and reasonable employer would have conducted appropriate enquiries before asking the employee to "*leave until further notice*". There was no consultation before the decision to dismiss, about the proportion of Mr Taione's warrant of fitness work. Nor was there any enquiry as to his workshop manager tasks and duties or in relation to those as senior mechanic. There were multiple facets of Mr Taione's position but there was no enquiry into what each part entailed and most critically whether his employment could be sustained in relation to those as workshop manager or senior mechanic.

[19] Mr Rouse says that Mr Taione's workshop management duties were "*always meant to fit in between WOF inspections*" and that given the size of the company it could not sustain a full time position for a workshop manager. Mr Rouse does not discuss the senior mechanic role. But Mr Taione was never consulted about these matters. I do not accept the submissions made that Mr Rouse was to consider ways to assist Mr Taione because I discern no evidence of the same.

[20] I find that consultation was practicable in these circumstances. I also find that it was required pursuant to the implied terms of the employment but also the provisions of the *Employment Relations Act 2000* ("the Act") in relation to good faith. As well, the employment agreement accepted by the parties required Auto Clinic to act as a good employer in all dealings with Mr Taione and to deal with him in good faith. Mr

Taione was not dealt with in good faith and the implied terms.

[21] While Auto Clinic presents the Authority with much suggestion of poor performance and misconduct by Mr Taione, the fact remains he was not dismissed for poor performance or misconduct. It has been found he was dismissed purportedly for reasons of redundancy. The enquiry must necessarily and properly be confined to those issues only.

### The determination

[22] For these reasons set out above, I conclude that Auto Clinic's actions were not what a fair and reasonable employer would have done. **I find therefore, that the dismissal was unjustifiable. Mr Taione has a personal grievance and he is entitled to formal orders in settlement of that grievance.**

[23] Having made those findings and in considering both the nature and the extent of the remedies to be provided, I am bound by section 124 of Act to consider the extent to which Mr Taione's actions contributed towards the situation that gave rise to the personal grievance, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly.

[24] I have referred to the reality the suspension of Auto Clinic's authority to issue motor vehicle warrants of fitness. Land Transport New Zealand had suspended the authority from 28 September 2006 for twelve months. Real too is Mr Taione's part in that suspension - it was the result of his own complaint to Land Transport New Zealand.

[25] Mr Taione tells the Authority he had concerns about losing his status as a licencing inspector. He tells the Authority there were previous problems with the issue of warrants of fitness that he was not pleased about. He says he raised his concerns with Mr Rouse but matters were not resolved and eventually he reached a stage where he resolved he had to complain. He did so and accepts that the suspension of Auto Clinic's authority to issue warrants of fitness was a result of his complaint.

[26] His dismissal was also a result of that complaint, at least in part, because Auto Clinic terminated his employment because it considered two thirds of his work had gone. But that is not established to my satisfaction as I have said. Mr Taione's actions were directly causative of his termination. It would have been plainly obvious to him that the loss of the authority would impact on him directly. He now seeks remedies for a situation at least partially caused by him. Mr Rouse says Mr Taione tried to persuade him that if he transferred the business into Mr Taione's name, Land Transport New Zealand would permit it to retain its authority to issue warrants of fitness.

[27] Is Mr Taione deserving of remedies where his termination results from his own actions? That is what the principles of contribution address. But only actions which are blameworthy will justify a reduction for contributory fault. The Land Transport New Zealand advice of 23 August 2006 concluded that Auto Clinic had been inspecting vehicles and issuing warrants of fitness using non-authorized staff members in contravention of the prevailing regulatory stipulations. It is stated that Land Transport New Zealand had no reason to doubt the evidence provided by its reviewer and Mr Taione's own statements. I conclude that it would be wrong and contrary to justice to regard Mr Taione's actions, in raising unlawful behaviour, as blameworthy. I therefore find there is no basis to reduce either the nature and extent of remedies to be awarded to him.

[28] Mr Taione's partner Ms Nila Mohr ("Ms Mohr") was a woman scorned apparently because Mr Taione had been unfaithful to her. She tells the Authority that in about late September she gave Mr Rouse a checksheet book and a slip of paper that had the names of customers Mr Taione had issued warrants of fitness to privately. She says Mr Rouse did not say anything but retained the documentation. She says that later he asked her to sign a statement against Mr Taione but she declined.

[29] Mr Rouse gives evidence that Ms Mohr approached him on 20 October 2006 although it is unclear when the submissions refer to Mr Rouse "first" being made aware of the matters raised by her. Ms Mohr says she approached Mr Rouse in late September. I prefer Ms Mohr's evidence because I regard it unlikely indeed that she would have done so after Mr Taione's employment had ended. I find then she did so before Mr Taione's employment had ended sometime in September 2006. The

allegations were known to the employer at the time of the termination. I conclude that Mr Rouse did not pursue these matters formally with Mr Taione and elected to pursue only a redundancy situation with him. It is because of this finding that I reject the submissions made that this conduct should be regarded as egregious conduct disentitling Mr Taione to remedies as a matter of equity and good conscience.

[30] The circumstances of this present dismissal cause me to have concerns as to whether a dismissal for unsubstantiated allegations of serious misconduct would have been any more justifiable than the dismissal, bearing in mind the procedural infelicities that feature presently.

[31] I do not regard this problem as an instance of an inevitable dismissal in any event or that Mr Taione is entitled only to remedies in respect of "procedural infelicities". It is by no means certain that he would have been redundant had there been a fair and sensitive process directed at ascertaining that situation. This is an example of substantive justification being obscured by procedural considerations. I am not then prepared to find that Mr Taione would have been made redundant anyway, but for procedural irregularities.

### ***Compensation***

[32] Mr Taione claims \$6,000.00 compensation. He was tearful on a number of occasions when he gave his evidence to the Authority. He obviously continues to feel much anxiety about the termination of his employment.

[33] He described how he was unable to feed his family and experienced great difficulty paying his rent. He said he felt humiliated by the decision to terminate his employment because he had worked hard for the Clinic and he had been returned to it many times after he was begged to go back.

[34] I am satisfied that he has suffered loss. Having regard to his evidence and his periods of service and the circumstances of his personal grievance, I award him compensation in respect of his loss suffered as a result of the unjustifiable termination of his employment for redundancy in the sum of \$6,000.00. **I order Auckland Auto Clinic Limited to pay to Alani Taione the sum of \$6,000.00 as compensation.**

***Reimbursement***

[35] Mr Taione claims three months loss of wages because he was not employed during that period. He eventually found work in January 2007. He quantifies his loss in respect of the three months he was out of work as \$13,500.00 based on an average of 45 hours per week @ \$25.00 per hour.

[36] During that three month period he commenced an engagement with Church Motors Limited in Onehunga. The engagement did not proceed beyond his first day. He says he applied for six vacancies but was unsuccessful on each occasion.

[37] Mr Taione's evidence was that he did not earn any income in the period between his employments. Mr Jerry Goundar of AZ Autos in Otahuhu gives evidence to the Authority that Mr Taione worked for him from late October 2006 to early January 2007. Despite formal request, Mr Goundar has not provided the detail of this statement. I prefer Mr Taione's evidence that warrants were issued in Mr Taione's name for Mr Goundar's auto operation. Mr Poole urges the Authority to regard the matter as one of credibility, that Mr Taione is not to be believed and Mr Rouse's evidence is to be preferred. I have to say I have equal concerns about the credibility of both witnesses.

[38] Mr Goundar advises the Authority that the Mr Taione earned "approximately \$2,700.00 to \$3,000.00". Despite request there is no verifying evidence offered. I accept Mr Goundar's information to the Authority. I therefore reduce Mr Taione's claim for reimbursement by the gross sum of \$3,000.00.

[39] I am satisfied that Mr Taione has lost income as a result of the personal grievance I have found. I award him lost wages of gross wages I round to \$10,000.00. I order Auckland Auto Clinic Limited to pay to Alani Taione the gross sum of \$10,000.00.

**Costs**

[40] In the event that costs are sought, I invite the parties to resolve the matter between them, but failing agreement, Ms Schaaf is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Mr Pool is to lodge and serve a memorandum in reply thereafter but within 28 days of the date of this Determination. I note the advice to the Authority that Mr Taione is in receipt of a grant of legal aid.

Leon Robinson  
**Member of Employment Relations Authority**