

Friday, 23 May 2008

[5] Double R is owned and managed by Richard Ryll. Friday, 23 May 2008 he asked Mr Turipa to attend a meeting at the end of the working day. Mr Turipa agreed. The subject of the meeting was not discussed. Mr Ryll told me he called the meeting because Mr Turipa had been employed for three months and there were several issues he wanted to discuss with him.

[6] The meeting preceded as planned. At about 3pm Mr Turipa met with Mr Ryll in the dispatch office. David Ali, the contractor's store manager, was also present. Mr Ali told me he was there to see if there was any assistance the contractor could offer. I find Mr Ali was present because he was a senior member of the dispatch team and he had relevant information to provide to the meeting. Mr Ryll raised a number of issues. I accept Mr Ryll's evidence that the issues were raised in an informal manner with no threat of disciplinary consequences.

[7] Mr Turipa did not respond directly to the issues. He told Mr Ryll he thought they were ganging up on him – *I'm out of here because there's two against one, you should give me more than 10 minutes notice before you have a meeting*¹. There is a dispute over whether Mr Turipa then told Mr Ryll he could "*stick his fucking job up his arse*". Mr Ryll and Mr Ali say Mr Turipa said this then left the meeting. Mr Turipa says he then told Mr Ryll "*I'm out of here, I don't need to listen to this crap*" and left the meeting.

[8] The meeting lasted no more than 5 minutes. It was the end of the working day and, as usual, Mr Turipa left the work place.

Monday, 26 May 2008

[9] The following Monday Mr Turipa arrived at work at 7am. At paragraphs 55 and 56 of his written evidence Mr Turipa describes the following exchange:

"I was in the kitchen, making a cup of tea, when Richard walked up to me and said, "Because you walked out of the meeting on Friday, you're sacked." I said "No, Richard, I didn't sack myself, you sacked me.

¹ Paragraph 54 Graham Turipa written evidence

I went to the dispatch office and asked Richard for my wages. Other staff members were hanging around during this discussion, (the dispatch lady and one of the office guys). Richard told me in front of the staff that my wages would be paid later. I then left the building humiliated.”

[10] As Mr Turipa recalls the Monday morning exchange, Mr Ryll dismissed him for walking out of the meeting on Friday (*you're sacked*) and Mr Turipa responded by saying he had not resigned (*I didn't sack myself*) and Mr Ryll had dismissed him. These statements seem to me to contradict one another – if Mr Ryll had dismissed Mr Turipa for walking out of the Friday meeting why would Mr Turipa say *I didn't sack myself*. I put this apparent contradiction to Mr Turipa. His answer was unclear.

[11] Mr Ryll says he arrived at work at 7.30am that day. He went into the smoko room and saw Mr Turipa speaking to two drivers. He approached him and asked him what he was doing there. Mr Ryll states at paragraphs 66 and 67 of his witness statement:

I do not think Graham replied. I then said to Graham that he had walked out of the meeting on Friday after telling me to stick the job and had therefore resigned. Graham's response was something like "Oh, that's the way it's going to be" and he said that he was going to take it further by phoning a 0800 number.

Graham then walked over to the dispatch office and asked me for his wages. This was in front of the dispatcher...I said to Graham that his pay would be deposited in the bank on his normal pay day.

[12] I find Mr Ryll put to Mr Turipa that he had resigned. This is consistent with the weight of evidence and Mr Turipa's claim before the Authority that Mr Ryll has seized on words unintended as a resignation.

Resignation or dismissal?

[13] A dismissal is a sending away at the initiative of the employer². In *Monteith v Hakansson*³, Judge Shaw summarised the principals relevant to resignation as set out in *Boobyer v Good Health Wanganui*⁴:

In the absence of a clear and unambiguous resignation, an employer is not entitled to seize on words not intended or capable of amounting to a resignation especially where an employee makes it clear that resignation was not intended.

² *Wellington etc Clerical etc IUOW v Greenwich* (1983) ERNZ Sel Cases 95, at p103

³ Unreported, 18 March 2008, WC5/08

⁴ Unreported, Goddard CJ, WC17/94, 24 February 1994

[14] On Mr Turipa's evidence he did not resign – leaving a meeting with an assertion that the meeting was unfairly constituted, in the circumstances described, does not amount to a resignation. However, Mr Turipa's evidence is disputed.

[15] Mr Ryll and Mr Ali say Mr Turipa told Mr Ryll to “*stick his fucking job up his arse*”. I find this phrase would amount to an unambiguous resignation.

[16] I make the following findings:

- (i) Mr Turipa told Mr Ryll he believed the meeting was unfairly constituted;
- (ii) He then resigned.

[17] I have made these findings for the following reasons:

- (i) Mr Turipa and Mr Ali confirmed in their evidence Mr Turipa's objection to the constitution of the meeting;
- (ii) This objection was raised at the end of the meeting, after Mr Ryll had tabled the matters he wished to discuss and sought a response from Mr Turipa;
- (iii) The resignation then followed;
- (iv) Mr Turipa's conduct the following Monday is consistent with an intention to resign.

[18] The witnesses agree Mr Turipa was angry when he made these comments. The witnesses also agree these were Mr Turipa's only comments in the meeting and were not preceded by an angry exchange between Mr Ryll and Mr Turipa; they were Mr Turipa's response to Mr Ryll's inquiry. I do not accept Mr Turipa's comments were a heat of the moment response; they were not part of an exchange of angry words or said in reaction to angry words⁵, they were his response to a situation from which he wished to remove himself.

[19] If I had accepted Mr Turipa's intention on Friday was unclear, then his actions on Monday confirmed his intention to resign:

⁵ As was the case in *Kostic V Dodds*, unreported, Couch J, CC14/07, 11 July 2007

- (i) Mr Ryll put it to Mr Turipa that he had resigned;
- (ii) Mr Turipa did not deny this was the case; and
- (iii) Mr Turipa then went to the dispatch office and asked for his wages.

[20] Mr Ryll put to Mr Turipa his understanding of the situation, Mr Turipa did not deny this was the case and took deliberate steps to end his relationship with the respondent. I find Mr Ryll's actions were those of a fair and reasonable employer.

[21] Mr Turipa's claim does not succeed.

Costs

[22] Costs are reserved. The parties are invited to attempt to resolve this issue themselves. If they are unable to Mr Light may file a memorandum as to costs within 14 days of the date of this determination. Mr Hargreaves may file a reply memorandum within a further 14 days from receipt of such.

Marija Urlich

Member of the Employment Relations Authority