

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2016] NZERA Christchurch 89  
5525372

BETWEEN                      MIKE MUIR  
   Applicant  
  
A N D                              INVERCARGILL TAXIS  
   LIMITED  
   Respondent

Member of Authority:        David Appleton  
  
Representatives:              No appearance by or for the Applicant  
   Mary-Jane Thomas, Counsel for Respondent  
  
Investigation Meeting:        16 June 2016 at Invercargill  
  
Date of Determination:        20 June 2016

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**DETERMINATION OF THE AUTHORITY**

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- A.     Mr Muir not having appeared at the Authority’s pre-arranged investigation meeting, his claims against the respondent are dismissed in their entirety.**
- B.     Costs are reserved.**

**Employment relationship problem**

[1]     In his statement of problem, which had been drafted by an employment law advocate, Mr Muir claimed unjustified dismissal from his employment as a taxi driver. He also claimed unjustified disadvantage in his employment by alleging that pressure was put on him to become an owner/driver and, also, to convert to Islam.

[2] The respondent denies that Mr Muir was dismissed, saying that he resigned of his own accord. It also denies that undue pressure was put on Mr Muir to become an owner/driver or to convert to Islam.

[3] The Authority's Notice of Investigation Meeting, together with a Notice of Direction, were sent out to the parties on 18 February 2016. This clearly stated the time, date and venue of the investigation meeting, and was obviously received by Mr Muir's advocate, as Mr Muir's statements of evidence were served and lodged through his advocate in accordance with the Authority's directions, albeit slightly late. The Notice of Investigation Meeting stated that, if the applicant did not attend the investigation meeting, the matter may be dismissed and costs awarded against the applicant.

[4] On 20 May 2016 Mr Muir's advocate advised the Authority by email that he was no longer acting for Mr Muir and that *the applicant will proceed with the matter, representing himself when the matter is heard on 16 June 2016*. The advocate copied Mr Muir into his email and gave Mr Muir's mobile telephone number.

[5] Mr Muir did not turn up to the Authority's investigation meeting, and he sent no message, or any representative. The Authority called him on the mobile number given by his advocate, but there was no answer and no ability to leave a message. I also waited half an hour in case Mr Muir was running late.

[6] In light of the warning given on the Notice of Investigation Meeting about the consequences of an applicant not appearing at the investigation meeting, I asked the two witnesses for the respondent to affirm that the contents of their signed statements of evidence were true and accurate, which they did. As their statements denied each allegation made by Mr Muir, and the contents of the statements were credible on their face, I accepted them. Accordingly, in the absence of sworn statements from Mr Muir and his witness (and their written statements produced to the Authority were not even signed), I prefer the evidence of the respondent's witnesses in all respects.

[7] I would add one more point. Mr Muir asserted that he had been dismissed by the respondent summarily, without any process being followed. However, the respondent produced to the Authority a copy of the letter which Mr Muir had written on 28 May 2014 (the day he was alleged to have been dismissed). Its opening line read as follows:

*I hereby give you notice that I have finished up working for Invercargill Taxis for the following reasons.*

[8] In the absence of convincing sworn evidence from Mr Muir as to why he wrote a letter that bears all the hallmarks of a resignation, his allegation that he was dismissed summarily by the respondent looks unconvincing.

### **Determination**

[9] I dismiss Mr Muir's claims in their entirety.

### **Costs**

[10] I reserve costs. Ms Thomas is to serve and lodge a memorandum setting out what contribution to the respondent's costs she seeks from Mr Muir within seven days of the date of this determination, setting out a breakdown of the costs incurred. Mr Muir will then have a further seven days within which to serve and lodge a response. The Authority will then determine the issue on the papers, unless the parties agree between themselves beforehand how costs are to be dealt with.

David Appleton  
Member of the Employment Relations Authority