

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Michael Delshay Taranaki Conroy (Applicant)  
**AND** Hillis Shearing Limited (Respondent)  
**REPRESENTATIVES** Mary-Jane Thomas, Counsel for Applicant  
Craig Smith, Counsel for Respondent  
**MEMBER OF AUTHORITY** Paul Montgomery  
**INVESTIGATION MEETING** 8 June 2004  
**DATE OF DETERMINATION** 9 September 2004

DETERMINATION OF THE AUTHORITY

***The employment relationship problem***

- [1] The applicant, Michael Conroy, claims he was unjustifiably dismissed from his employment as a presser/learner shearer with the respondent. He seeks compensation and remuneration of wages lost as a result of his personal grievance.
- [2] The respondent denies that the applicant was dismissed and says that as a result of his not arriving at work, failing to contact his employer and because of misunderstandings arising from a burglary at the respondent's premises, the employment relationship was frustrated. The respondent thus declined to meet the remedies sought by Mr Conroy.
- [3] The parties attempted to mediate the problem but this was not successful.

***Background***

[4] Mr Conroy was employed by the respondent in November 2002 as a presser/learner shearer. No written agreement was entered into but the parties agree that employment in the shearing business is on a shed by shed basis. The contractor, who in this case is Hillis Shearing Limited, undertakes work for its clients in one of two ways. Contract work is when the contractor undertakes all the tasks in the woolshed; open work is when the contractor supplies only those staff which the client wants – usually because family or friends are assisting in the shed with some tasks. Pressing is one task often performed by friends or family of the farmer. It follows that the applicant's pressing skills were needed for contract work but were likely not to be needed for some open work.

[5] Mr Conroy was employed initially at a rate of \$17 per hour but after an incident in one shed where he was required to bring sheep up to the shed from the paddocks for the shearers, the company agreed to lift his rate to \$18 per hour. The applicant had requested \$21 but says he accepted the \$18 as he says he was told by Mr Hillis that he would get ten and a half months work.



Mr Hillis disputed this and I think it more likely that he told Mr Conroy that the company had ten and a half months work on its books. Mr Conroy says from that day forward his hours of work were reduced.

[6] Another incident occurred soon after. Mr Conroy had been working at a shed for three days with the shed finishing on a Saturday. He was told the gang was starting another shed on the following Monday. He arrived at the shearers quarters at the Hillis property to be told he was not needed as he was not at home on Sunday night to confirm his availability and therefore he was not required.

[7] A little later, on Saturday, 1 March, the applicant was rostered to work. He says he rang the shearers quarters at 6 am that day to report in sick. He spoke to Ruth, a fellow worker, and asked her to advise Mr Hillis. It seems clear that Mr Hillis did not get that message, as the applicant's absence brought into play a somewhat draconian and curious agrarian custom.

[8] What occurs is this; if you are rostered on for work with a shearing gang and fail to show for work others have to perform your tasks if a replacement cannot be found. To address the imbalance the employer takes \$50 from your wages and buys the gang beer with those funds.

[9] This was not understood by the applicant who, when he contacted Mrs Hillis on Wednesday, 12 March 2003 pointing out that his wages were short by \$50 and that a mistake had been made, was told according to Mr Conroy that it was *tough about the \$50*.

[10] Later that evening Mr Conroy again telephoned Mr Hillis and asked why he was not getting work. He says that Mrs Hillis told him it was because they had telephoned and called at his home but were unable to contact him. He also says that Mrs Hillis told him that he never rang to see if work was available. This latter issue surprised Mr Conroy as he says the company had always contacted him when work was available. Significantly, Mr Conroy says he *did get angry during this conversation and my father ended up talking (sic) the phone off me and he spoke to Mrs Hillis. Mr Conroy senior says I ended up taking the phone off Michael when things were getting heated ... I wanted to calm the situation down. Mrs Hillis was saying that Michael had not been performing up to scratch. I told her that I did not believe that Michael had not been performing and said to her that she would need to sort things out with Michael.*

[11] On Sunday, 16 March 2003 upon returning home from church, Mr Hillis discovered that his van had been entered and his shearing gear stolen. He reported the theft to the police who, in the course of their enquiries, asked whether he had any disgruntled employees. Mindful of the angry conversation between the applicant and his wife, Mr Hillis identified Michael Conroy as a disgruntled employee. The police said they knew of the applicant and that he could have been implicated in the burglary.

[12] Two events followed from this. Firstly, the police executed a search warrant on the applicant's home but found nothing, and secondly, recommended that Mr and Mrs Hillis take out a trespass order on their property barring the applicant from it. Mr and Mrs Hillis say *we both felt somewhat threatened* and took the advice although Mr Hillis says *I had no reason to suspect that Michael would be involved [in the theft]*.

[13] The search warrant was issued and executed on Tuesday, 18 March 2003 as was the trespass notice, although the latter was later in the day. The applicant telephoned Mr Hillis to complain about the search and it appears that Mr Conroy was very upset. Later in the day the applicant and his father drove out to the Hillis property but as only Mrs Hillis and the children were at home they left. Later on the applicant again telephoned and spoke to Mr Hillis asking that they meet to discuss

the issues. As a result of the telephone conversations and more particularly the tone of them, Mr Hillis spoke to the police who recommended the trespass action. This was put in place late on 18 March and *Constable Wilkes duly executed this for us on both our residential home and the shearers' quarters*. Mr Hillis made it clear his intention was to protect his family who were living in an isolated area.

[14] Mr Hillis also spoke to his staff on Wednesday, 19 March 2003 and *told them that shearing gear had gone missing and warned them to keep everything locked. I also told them that a trespass notice had been taken out against Michael because of his threatening behaviour. I said at the meeting that I didn't think Michael was involved with the burglary*. On 26 March 2003 the applicant wrote a long letter to Mr and Mrs Hillis setting out his view of the events, outlining the difficulties he had faced, notifying his grievance and asking for reinstatement to his position. That letter was frank and open but for reasons not explained, no reply was received.

### ***The investigation meeting***

[15] I was assisted in the investigation by the applicant and his father and by Mr and Mrs Hillis and a number of supporting statements for either party. Counsel for each party was constructive and their input was appreciated.

[16] The meeting provided the opportunity to observe the parties and their interaction with each other. My observations indicate that the applicant is inclined to be impulsive and direct when his views are challenged and I think it highly probable that he can become excited when dealing with a conflict situation. His father is a well balanced and mature man, concerned for his son's welfare yet who was quick to challenge where he saw matters differently from those posed by the respondent.

[17] Mr and Mrs Hillis I found genuine people who at the meeting were prepared to concede that they may have read the issues incorrectly at the time and who had accepted the recommendations of the police without considering the impact on the employment relationship. They said their concern in relation to the trespass notice was for the safety of their family who live in an isolated area.

[18] A significant indicator of their reconsidered position was their acknowledgement that the trespass order was something of an *over-reaction*. Their offer of an apology to Mr Conroy and the offer of *re-engagement to him* assured me that Mr and Mrs Hillis genuinely wished to repair whatever breach had occurred.

[19] That Mr Conroy rejected the offer made at the second mediation is regrettable, but his view was by that time, word had gone about the district that he was a thief and he was unable to find employment in the shearing industry. The employer acknowledged Mr Conroy was a good worker but that they had been concerned about his *unreliability*.

### ***Legal principles***

[20] Where an unjustified dismissal is claimed the Authority must consider two joint issues. Was the behaviour on which the dismissal was founded sufficiently serious to go to the heart of the relationship and render it voidable. The other consideration is whether, following a full and fair enquiry in which the employee is given the opportunity to be represented and to have his or her opportunity to respond to any allegations before any decision has been made.

### *Discussion*

[21] In his submission Mr Smith for the respondent stated that it was regrettable that the matter needed to be determined by the Authority. I agree, and believe that Ms Thomas for the applicant would concur with that view.

[22] There are issues to be balanced in this case if a fair and equitable outcome is to be achieved. Mistakes have been made by both parties however, some mistakes are more serious than others.

[23] Mr Conroy was hired without a written agreement on a shed to shed basis. His work largely depended on either contract work or open work when a presser was needed.

[24] Given the lack of written agreement, the duty of who was to contact whom if Mr Conroy was required to work may appear unclear. Yet on its own evidence, the respondent telephoned and called at the applicant's home to advise him of work but was unable to contact him. That strongly suggests it is the role of the employer to advise when Mr Conroy was required. I find it unusual and said so at the meeting, that no-one left a note for Mr Conroy at his home advising him he was required and asking him to ring Mr Hillis.

[25] To Mr Hillis's credit he accepted that telephone calls made on the evenings of 2, 3, 4 and 5 March may not have been answered as both Michael and his father were away at the relevant times.

[26] It is apparent that the applicant became verbally violent in his telephone calls to Mrs Hillis and later to Mr Hillis, although the issues at the heart of those calls were significantly different. I heard no evidence claiming that Mr Conroy in these phone calls uttered any threats against Mr and Mrs Hillis or their family. The first call was about the lack of work offered and the \$50 deducted, the second was following a search warrant executed on his home. I heard no evidence of any history of physical violence attributed to the applicant or to his father.

[27] While I accept in these times people living in rural areas have every right to have serious regard for their family's safety, a *disgruntled employee* over \$50 should not have triggered a trespass order in my personal view. It is apparent that the respondent, inappropriately advised by the police (relying on a conviction of the applicant some six years earlier for transporting goods that were stolen but which he had not stolen) did not realise that the trespass order on their home and more particularly the shearing quarters, where staff assembled to be transported to the shed they were engaged in, in effect sent the applicant away, preventing him from working.

[28] To the respondent's considerable credit it acknowledged this error of judgement and offered *re-engagement* to the applicant. It also made good the \$50 deducted and a disputed three hours wages. In short, it genuinely sought to repair the breach in the employment relationship.

### *Determination*

[29] By refusing the applicant access to his workplace, the respondent in fact dismissed Mr Conroy. It did so without any factual information that he was implicated in the burglary and without any attempt at a full and fair investigation on its own part.

[30] The acceptance by the respondent that it was prepared to offer re-engagement clearly denotes an acceptance that it had disengaged the applicant. Disengaged is a fancy word for "fired". However, the respondent was prepared to eat a share of humble pie and offer the applicant re-employment. That he chose to decline this must reduce his claim to remedies.

[31] I find that Mr Conroy was unjustifiably dismissed in that there was no sustainable ground on which to prohibit his attendance at his workplace. No full and fair enquiry was undertaken by the employer into the issues at the heart of this matter.

[32] I need to make a point in relation to the hurt and humiliation Mr Conroy says he suffered in the Mataura and surrounding districts. Mr Hillis, questioned by the Authority, said he had not mentioned any names when he advised other staff of the burglary, yet in his brief of evidence he clearly states that he told his staff that Mr Conroy had been served with a trespass notice order for his threatening behaviour. That revelation in a small community inevitably sent a message down the grapevine. I accept that he suffered detriment as a result.

### **Remedies**

[33] Having found the applicant unjustifiably dismissed it falls to me to address remedies. The applicant claimed \$15,000 compensation which is at the upper edge considering a relatively short period of employment. In this regard I need to balance his declining of reinstatement which I accept was genuinely offered.

[34] Another factor is Mr Conroy's contributory behaviour on the telephone calls and which gave rise to the respondent's safety concerns.

[35] Having considered the issues, and the applicant's contribution to the situation, I think \$4,500.00 is a fair compensatory sum. I order the respondent to pay the applicant this sum without deduction.

[36] When addressing wages lost as a result of Mr Conroy's grievance, the equation is more difficult. On behalf of his clients, Mr Smith provided the Authority with a calendar identifying the days on which work would have been available to the applicant during the period of Mr Conroy's employment and has Mr Hillis been able to contact him.

[37] In order to arrive at a just calculation of what wages Mr Conroy would have earned, I require that Mr Smith and Mr Hillis provide to Ms Thomas a similar calendar identifying the days the gang worked and when a presser was required. The calendar is to cover the 13 weeks beginning on 19 March 2003, that is the day following the service of the trespass notice on the applicant.

[38] In the event that counsel are unable to reach accord I require that the information is forwarded to the Authority for a determination. If counsel are able to agree on the earnings Mr Conroy would have earned during this period, I direct that 15% be deducted from those gross earnings for his contributory conduct.

### **Costs**

[39] Costs are reserved. I urge counsel for the parties to resolve cost issues between them. Should that not be achieved, Ms Thomas has 21 days from the date of issue of this determination and Mr Smith a further 14 days to file and serve their respective memoranda on behalf of their clients.



Paul Montgomery  
Member of Employment Relations Authority

