

**IN THE EMPLOYMENT COURT
CHRISTCHURCH**

**[2012] NZEmpC 22
CRC 14/11
CRC 15/11**

IN THE MATTER OF a challenge to determinations of the
Employment Relations Authority

BETWEEN VINE-TECH CONTRACTING LTD
Plaintiff

AND CONAL ROYCE WATTAM and INGER
PAULINE CULLING
Defendants

Hearing: 13 February 2012
14 February 2012
(Heard at Alexandra)

Appearances: Diana Hudson and Rachel Brazil, counsel for the plaintiff
Kieran Tohill, counsel for the defendants

Judgment: 14 February 2012

ORAL JUDGMENT OF JUDGE A A COUCH

[1] The plaintiff provides services to vineyards in Central Otago. The defendants were employed by the plaintiff; Mr Wattam as a vineyard manager and Ms Culling as a vineyard supervisor. On 5 February 2009, they were each called to a meeting with the directors of the plaintiff. In the course of those meetings, they were told that their positions were redundant and were dismissed.

[2] The defendants each pursued personal grievances. The Employment Relations Authority determined¹ that they had been unjustifiably dismissed and awarded them remedies. The plaintiff challenged both determinations and the matter proceeded before me by way of a hearing de novo.

¹ [2011] NZERA Christchurch 106 & 107

[3] After hearing the evidence and considering the submissions of counsel, I told the parties that I had formed a clear view of the outcome. I explained that, if they wanted to have a decision with full reasons, I would provide one but that it would be some time before I could do so because of my commitments to previous matters. As an alternative, I said that could deliver a decision today without reasons. After consulting with counsel, all parties requested me to give a decision today without reasons.

[4] The challenge is unsuccessful. I sustain the remedies awarded by the Authority, that being what was sought by the defendant in the statement of defence. The only exception to that is in relation to the reimbursement for lost earnings by Mr Wattam.

[5] Although the parties have expressly agreed that a decision be given today without reasons, I will say that I very largely agree with the reasons given by the Authority. In addition, a major factor in this case is that the procedure followed by the plaintiff was inappropriate and plainly in breach of its statutory duty of good faith, particularly that under s 4(1A)(c) of the Employment Relations Act 2000. The first time the defendants were made aware that dismissal was a possibility was part way through the relatively brief meetings in which they were actually dismissed. The dismissals were not what a fair and reasonable employer would have done in all the circumstances at the time.

[6] The amount of reimbursement of lost income to be paid to Mr Wattam will be reduced by \$1,500 from the amount ordered by the Authority. That is to take account of the earnings he had as a winemaker following his dismissal and prior to 27 April 2009. It appears the Authority was not made aware of this.

[7] The other issue that I should deal with is interest. The defendants have been kept out of their remedies for a considerable time. There will be interest payable on the orders for reimbursement of lost remuneration from 1 March 2009 down to the date of payment. That will be at the Judicature Act rate which is currently 5 percent per annum. I have set the start date at 1 March 2009 as being part-way through the

period in which the income was lost. There will be no order for interest on the compensation for distress.

[8] Costs are reserved. I encourage counsel to agree costs between the parties. If they are unable to do so, memoranda should be filed. Mr Tohill will have 20 working days after today in which to file a memorandum. Ms Hudson and Ms Brazil will then have a further 20 days after that in which to file a memorandum in response.

A A Couch
Judge

Judgment delivered at 3.30pm on 14 February 2012