

**IN THE EMPLOYMENT COURT  
WELLINGTON**

**[2014] NZEmpC 234  
WRC 24/14**

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

BETWEEN                      MEGA WRECKERS LIMITED  
   Plaintiff

AND                              KEITH TAAFULI  
   Defendant

Hearing:                      17 December 2014  
   (Heard at Wellington)

Appearances:                G Bennett, advocate for the plaintiff  
   G Ogilvie, counsel for the defendant

Judgment:                    18 December 2014

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**JUDGMENT OF JUDGE A D FORD**

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**Introduction**

[1]     In a judgment dated 10 June 2014 I granted leave for the plaintiff to challenge out of time a determination of the Employment Relations Authority dated 6 January 2014.<sup>1</sup> The Authority had found that the defendant, Mr Keith Taafuli, had been unjustifiably dismissed from his employment with Mega Wreckers Limited (Mega Wreckers).<sup>2</sup> It awarded him wages and holiday pay amounting to \$2,407.45 along with compensation for hurt and humiliation in the sum of \$6,000 and costs and disbursements totalling \$2,571.56.<sup>3</sup>

[2]     Mega Wreckers sought a hearing de novo but, as it appeared from the Authority's determination that it may not have participated in the Authority's

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<sup>1</sup> *Mega Wreckers Ltd v Taafuli* [2014] NZEmpC 88.

<sup>2</sup> *Taafuli v Mega Wreckers Ltd* [2014] NZERA Wellington 2 [Determination under challenge].

<sup>3</sup> At [51].

investigation in a manner that was designed to resolve the issues involved, the Court ordered a Good Faith Report from the Authority pursuant to s 181 of the Employment Relations Act 2000 (the Act). At the Authority hearing, Mega Wreckers had been represented by its Wellington Branch Manager, Mr Mohammed Hossaini.

[3] In its Good Faith Report, the Authority provided a comprehensive chronology of Mega Wreckers involvement in its investigation of the employment relationship problem and concluded:

[10] Overall, I consider Mega Wreckers facilitated the Authority's investigation only to a limited extent and did not demonstrate good faith towards Mr Taafuli.

[4] Given that assessment, and following a directions conference, I issued a direction pursuant to s 182(1) of the Act that the hearing would proceed on a non de novo basis, confined to the plaintiff's challenge to the award of \$6,000 on account of hurt and humiliation. The hearing proceeded on that basis.

### **The background**

[5] Mr Taafuli, who had previously worked for a courier firm, commenced employment with Mega Wreckers on Tuesday, 26 February 2013.<sup>4</sup> His job involved driving tow trucks and collecting vehicles that Mega Wreckers had arranged to purchase. He did not have a written employment agreement but he was told that he would be paid \$14 per hour. Mr Taafuli was given \$1,000 in cash every morning which he was to use for purchasing vehicles. He was to be paid weekly in arrears by direct credit to his bank account. As the Authority noted, in fact, Mr Taafuli received only one wage payment by direct credit and that was for the period from 26 February to 1 March 2013, which was paid into his bank account on Thursday, 7 March 2013.<sup>5</sup>

[6] Mr Taafuli's next pay was due to be deposited into his bank account on Thursday, 14 March 2013, but that did not happen. On the same day he raised the issue with Mr Hossaini, and was initially told that his wages would be paid the

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<sup>4</sup> At [5].

<sup>5</sup> At [6].

following day. After further discussion Mr Hossaini paid over his wages in cash for the second and third weeks of his employment and told him not to come back to work again because he had been dismissed.<sup>6</sup> The Authority noted that Mr Hossaini acknowledged having dismissed Mr Taafuli on the Thursday because of the way he (Mr Taafuli) had shouted at him in the presence of others – although no threats were made – about Mega Wreckers' failure to pay his wages on time.<sup>7</sup>

[7] The Authority noted that the following morning, Mr Hossaini telephoned Mr Taafuli at his home around 9.30 am and asked him to come into work. When Mr Taafuli reminded him that he had been dismissed the previous evening Mr Hossaini said that they would "work something out". He asked Mr Taafuli to go to the Wellington suburb of Kelburn to purchase a vehicle from a customer on his way into work and he told Mr Taafuli to use the wages he had been given the previous evening to pay the client for the vehicle.<sup>8</sup>

[8] Mr Taafuli went to the Kelburn address and negotiated a price of \$300 for the vehicle. Mr Taafuli claimed that he gave the customer \$300 cash. A receipt for \$300 was signed by the customer. Later that same day, however, the customer contacted Mega Wreckers and stated that she had received only \$200, not \$300.<sup>9</sup> Mr Hossaini questioned Mr Taafuli about the matter and Mr Taafuli reiterated that he had paid the customer \$300 and he referred to the receipt that she had signed in that amount.<sup>10</sup>

[9] At about 6.00 pm on the evening of 15 March 2013, Mr Hossaini set up a three-way telephone conversation with the customer and Mr Taafuli. The customer still insisted that she had been paid only \$200 despite having signed the receipt for \$300. She threatened to go to the police and/or a consumer group if she did not receive the additional \$100.<sup>11</sup> The Authority concluded that Mr Hossaini then made an assumption that the customer would not make a threat of that nature unless her

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<sup>6</sup> At [7].

<sup>7</sup> At [11].

<sup>8</sup> At [8].

<sup>9</sup> At [9].

<sup>10</sup> At [10].

<sup>11</sup> At [14].

assertion was correct and he felt he had no choice but to dismiss Mr Taafuli, which he then proceeded to do, for the second time in two days.<sup>12</sup>

[10] The Authority concluded that there was insufficient evidence of dishonesty on the part of Mr Taafuli for a reasonable employer to rely on, particularly in light of the evidence of the receipt that the customer had acknowledged signing.<sup>13</sup> The Authority found that Mr Taafuli's dismissal was not an action a reasonable employer could take in all the circumstances and, hence, it was unjustifiable.<sup>14</sup>

### **The evidence**

[11] Before me, Mr Taafuli said in evidence that he was "totally shocked at being dismissed". He was quite sure that he had given the customer \$300 and she had signed the receipt for that amount. He said that Mr Hossaini did not give any reason as to why he accepted the customer's word over his or why he believed he was lying. Mr Taafuli stressed that he had been working for Mr Hossaini for three weeks handling up to \$1000 in cash every day and there had been no question about his honesty during that period.

[12] Elaborating on this aspect of his evidence, Mr Taafuli went on to say:

7. I felt terrible after the dismissal having been dismissed for alleged dishonesty. My employer made no effort to investigate it any further. He just said he believed the woman. I couldn't understand how he could believe her when she had signed for receiving \$300. I felt terrible having to go home and tell my partner I had been fired because [Mr Hossaini] thought I had stolen from him. My partner was pregnant at that time so I was really worried about her and about being out of work when she could not work. I knew I had to quickly find more work but I was really worried about being asked why I had left this job. I was also very worried in case any new employer spoke to [Mr Hossaini]. I found it was a terrible experience being wrongly accused of theft. It was a terrible slur on my character and I thought that even if I told people what had happened, they might still think I was a thief.
8. I was also very upset that I had no warning that [Mr Hossaini] was thinking about dismissing me this second time. I had no prior warning this meeting was coming up at 6pm. He didn't raise it with me when

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<sup>12</sup> At [15], [30].

<sup>13</sup> At [31].

<sup>14</sup> At [33].

the customer first phoned but he waited until I finished the whole day's work before he told me the lady had phoned. He didn't tell me why he wanted to talk to me and didn't give me any opportunity to get advice or to have someone else attend the meeting with me. I have never been in a situation like that before and I had no idea what I could do, other than tell the truth. I felt totally alone at the time of the dismissal as I didn't have anyone I could talk to or who could help me. I couldn't understand why he believed the lady who had only made a phone call to him when I had shown over the time working for him that I was always honest. I felt he was trying to make me feel I was a criminal and this made me feel really bad. I didn't know what I could do in this situation and being on my own without any support.

[13] I accept this evidence. Mr Taafuli impressed me as a conscientious person. He told the Court that he had to borrow money after his dismissal. He had to turn to Work and Income for assistance in meeting his rent payments. Mr Taafuli and his partner have two young children and he now works as a truck driver.

## **Discussion**

[14] The challenge relates to the Authority's award of \$6,000 under s 123(1)(c)(i) of the Act as compensation for "humiliation, loss of dignity, and injury to the feelings of the employee". In its determination dealing with this particular remedy, the Authority said:<sup>15</sup>

Mr Taafuli asks for compensation in the sum of \$8,000 for the hurt and humiliation he has suffered. I accept evidence from Mr Taafuli that he was shocked to have been dismissed for dishonesty by his employer. I also accept that the fact that his partner was pregnant at the time, and fear that the stigma of dismissal for dishonesty would prevent him from obtaining alternative employment, added to his distress. I find an award of \$6,000 to be appropriate.

[15] One of the submissions made by Mr Bennett, advocate for the plaintiff, was that compensation could only be awarded for the distress suffered by Mr Taafuli and not for any hurt suffered by his partner. I am not convinced that the Authority did, in fact, award compensation for distress suffered by Mr Taafuli's partner. It seems to me that in the passage cited in [14] above, the Authority was doing no more than giving recognition to the principle enunciated in *Harawira v Presbyterian Support*

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<sup>15</sup> At [49].

*Services*, where, in relation to the equivalent statutory provision under the Employment Contracts Act 1991, where Judge Finnigan stated:<sup>16</sup>

It appears to me to be established law that the remedies section of the Act was not designed to remedy consequences of unjustifiable dismissal felt by persons other than the employee concerned. However, the consequences on other persons such as family members can in the facts of a particular case contribute to the humiliation and injury to feelings suffered by a dismissed employee and in that way they can become relevant to the quantum of compensation.

[16] The facts in *Harawira* also have relevance to another of Mr Bennett's submissions, namely, that the assessment of compensation had to take into account the duration of the distress suffered. Mr Bennett submitted that Mr Taafuli suffered only a limited amount of stress and humiliation because, as he expressed it, "it must have been obvious to Mr Taafuli that his employment was not safe given the manner in which he was paid."

[17] In *Harawira*, the employee had been interviewed and offered a position with the employer but he had agreed to defer his starting date for a few weeks pending the outcome of a government funding review which the employer was undergoing at the time. In the interim period, an official with the employer discovered that the employee had been convicted of assault two years previously and the organisation then withdrew the employment proposal altogether. The employee failed in his claim before the Employment Tribunal, essentially on the ground that as the starting date had never been agreed to there was no contract of employment.<sup>17</sup> On appeal, however, Judge Finnigan concluded that a contract of employment had come into existence and his Honour awarded compensation in the sum of \$6,000 for humiliation and injury to feelings.<sup>18</sup>

[18] The authority Mr Bennett relied upon for his submission about the duration of the distress suffered was the decision of the Court of Appeal in *Transmissions & Diesels Ltd v Matheson*, where Richardson P, delivering the judgment of the Court stated:<sup>19</sup>

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<sup>16</sup> *Harawira v Presbyterian Support Services* [1994] 2 ERNZ 281 (EmpC) at 289.

<sup>17</sup> At 283.

<sup>18</sup> At 287-288, 290.

<sup>19</sup> *Transmissions & Diesels Ltd v Matheson* [2002] 1 ERNZ 22 (CA) at [19].

The assessment of [compensation] had to take into account both the duration and the intensity of that distress. In assessing the duration the Judge focused particularly on the short period from 5 to 6 February but she was well entitled to find, as she did, that Mr Matheson's vulnerable and already stressed state on 5 February was affected by the developing pressures over previous weeks. In short, the continuing breach by T & D of their duty to act fairly and reasonably towards Mr Matheson and provide him with proper support in his employment contributed to his vulnerability . . .

[19] It seems to me, based on that authority, that in the present case the award of compensation can properly take into account the distress suffered by Mr Taafuli over Mega Wreckers' failure to pay his wages into his bank account the previous day and then Mr Hossaini's bizarre reaction to his expressed dissatisfaction, culminating in Mr Taafuli's summary dismissal that same day.

[20] In the recent decision of *Robinson v Pacific Seals New Zealand Ltd*, Judge Inglis stated:<sup>20</sup>

It appears that \$5,000 by way of a compensatory award in the Authority is relatively standard. While there are instances in which awards of more than \$5,000 have been awarded there are, unsurprisingly, cases which have attracted less. Although it is relevant to have regard to the sort of awards made in analogous cases, the exercise cannot be applied rigidly. Each case must ultimately be assessed on its own merits, and in light of its facts.

[21] I respectfully agree with those observations. In the present case the duration of the term of employment was only 16 days but the level of compensation payable is not dependent upon the length of service but upon the way in which the employer's unjustified actions or dismissal have impacted upon the employee. I accept that the circumstances surrounding the unjustified dismissal were stressful and traumatic for Mr Taafuli in every respect. The allegation of theft was particularly hurtful and the way in which the dismissal process was carried out showed an almost contemptuous disregard for the employer's good faith obligations and the statutory principles applicable to any consideration of the test of justification.

[22] For the foregoing reasons, I am satisfied that the compensation award by the Authority of \$6,000 for humiliation, loss of dignity and injury to the feelings of the employee was appropriate and I confirm the award in that amount.

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<sup>20</sup> *Robinson v Pacific Seals New Zealand Ltd* [2014] NZEmpC 99 at [54] (footnotes omitted).

[23] There was never any question of contributory conduct by Mr Taafuli.

[24] Both Mr Bennett and Mr Ogilvie have made the request that costs should be reserved and I so order.

A D Ford

Judge

Judgment signed at 3.00 pm on 18 December 2014