

Employee Fault and Taking Days Off

Employers sometimes feel it's impossible to follow a perfect dismissal process, especially when that is judged with the benefit of hindsight, but one factor in employers' favour is the requirement that the Authority take into account an employee's contribution to the situation.

A recent example is *Rockell v Rainbow Falls Organic Farm Ltd*. Mr Rockell was responsible for managing a dairy herd. During his employment the company decided to include horned cows in the herd. Mr Rockell was instructed not to dehorn the cows. He disobeyed that instruction, because he said it was necessary to avoid injury to the cows. He was dismissed for disobedience.

The Authority held that the dismissal was unjustified because the instruction was not reasonable in the circumstances. Managing a horned dairy herd required specialist skills but the company did not take any steps to help Mr Rockell acquire those skills. Furthermore, the company had not investigated the allegation before dismissing Mr Rockell, or given him any opportunity to respond to their concerns.

Mr Rockell found alternative work immediately so he had not lost any remuneration. However that left the question of compensation for the distress and humiliation he suffered. The Authority decided:

"Taking matters into his own hands and dehorning mature cattle was cruel and resulted in unnecessary suffering by these animals. There were other ways of dealing with this matter which he did not consider before taking the drastic step of dehorning mature cattle. This is especially [so] in circumstances where he had never tipped or dehorned cattle before."

Mr Rockell's conduct was both causative of his dismissal and blameworthy. He was awarded no compensation at all.

The Authority has always had to take into account an employee's contribution, but cases where no or minimal remedies were awarded seem to have become more common in recent years. Perhaps this is an indication that employees are generally quicker now to blame employers and less willing to accept their own responsibility for the situation they find themselves in.

Mr Rockell did succeed in a claim for wage arrears of \$42,793.12. This is a timely reminder for employers to ensure:

- that management staff do take days off, annual leave, and public holidays, and
- that time, holiday and leave records are kept to verify that.

Please contact one of our specialist [employment](#) lawyers if you would like further information or if we can help you.