

CITATION: *Mark Payne v Red Centre Security and Fire Services* [2004] NTMC 075

PARTIES: MARK PAYNE

v

RED CENTRE SECURITY AND FIRE
SERVICES

TITLE OF COURT: Small Claim

JURISDICTION: Local Court – Alice Springs

FILE NO(s): 20406667

DELIVERED ON: 5 October 2004

DELIVERED AT: Alice Springs

HEARING DATE(s): 17 August 2004

JUDGMENT OF: M Little

CATCHWORDS:

REPRESENTATION:

Counsel:

Plaintiff: K Kilvington

Defendant: M Khan

Solicitors:

Plaintiff: CAALAS

Defendant: Povey Stirk

Judgment category classification:

Judgment ID number: [2004] NTMC 075

Number of paragraphs: 45

IN THE LOCAL COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20406667

BETWEEN:

MARK PAYNE
Plaintiff

AND:

**RED CENTRE SECURITY AND FIRE
SERVICES**
Defendant

REASONS FOR JUDGMENT

(Delivered 5 October 2004)

Ms M LITTLE SM:

1. This is a claim brought by the plaintiff in the sum of \$6,120 plus interest and costs. The plaintiff was employed by Red Centre Security and Fire Services until the 17th of July 2003. The circumstances surrounding his resignation on the 17th of July 2003 are at the heart of this claim. The claim is for payment by the defendant of the 2 month notice period. The plaintiff orally amended their claim at the end of the hearing so that the sum being claimed was 2 months less one week's pay. A hearing was conducted on the 17th of August 2004 and I reserved my decision. Both parties were represented. Simon Lewis is the managing director of the defendant company. This is now the decision in the matter.
2. I will commence by summarising the evidence at the hearing.
3. The first witness called was the plaintiff, Mark Payne. He is currently a service technician with AJ Services. He is experienced as a security worker and has undertaken patrol and static guard work. In 1994 he obtained a security licence. In 2002 he saw an ad for a security officer in The Centralian Advocate and he contacted Red Centre Security. He spoke to Simon Lewis and was given a job

shortly afterwards. He was employed as a casual. He commenced work around mid December 2002. In February or March 2003 there were discussions with respect to a 12 month fixed term contract. An agreement was reached between the plaintiff and the defendant dated the 20th of March 2003. That agreement was in writing and was tendered in the course of the hearing and became exhibit P1.

4. The plaintiff recounted incidents where he said he had not been paid his wages in full while employed with the defendant. The plaintiff recounted occasions where he said that the defendant had discussed with him management problems. For example, that clients of Red Centre Services were not paying their bills on time, workers were not turning up for work and then claiming sick leave on short notice and other such matters. He gave evidence that there was tension within management as to whether to put people on fixed term contracts, thereby hoping to secure better attendance, or leaving them as casuals thereby ensuring that people were easier to get rid of. He gave evidence that Peter Lewis, the brother of Simon Lewis, said at one stage, “No bastard is going to work out their last two months”. This was a reference to the periods of notice set out in exhibit P1 at paragraphs 24.2 and 24.3.
5. Paragraphs 24.2 and 24.3 read as follows:

24.2 Termination by RCS&FS

RCS&FS can terminate the employment of the Employee by giving two calendar months notice, or pay in lieu of notice.

24.3 Termination by the Employee

The Employee can terminate the Employment of the Employee by giving two calendar months notice. If the Employee fails to give the required period of notice, RCS&FS can deduct pay in lieu of notice equal to the shortfall in notice, from any money owing to the Employee on termination.

6. Soon after the plaintiff entered the contract he formed the view that the relationship between Red Centre Security and himself had changed. In particular he felt that he was being blamed for other people’s misdemeanours and that he was being excluded. His evidence was that on the 17th of July 2003 Peter Lewis

said there was a need for a chat. There followed a discussion related to accounting for his time during the day and in particular that Red Centre Security wanted to see evidence that he was out canvassing for work. He said that Simon Lewis had asked him to do the canvassing work. Simon and Peter Lewis and the plaintiff were at the meeting. The plaintiff told them that he was doing cold canvassing and that he would take the information back to Simon Lewis. He recorded the information in his notebook and referred them to that information at the meeting. He recounted some of the organisations that he had approached and said that Simon and Peter wanted to see more paperwork.

7. The plaintiff said that he listened to the discussion but in the end felt that the Lewis brothers didn't believe anything he was saying. He was upset and at the end of the meeting said "thank you for making me feel dishonest and untrustworthy, is this the end of the meeting?" He then got up and went to finish his work. He went back to his office and wrote out a letter of resignation. Exhibit P2 was tendered, the notice of resignation dated the 17th of July 2003 signed by the plaintiff. He said that he intended to work out the period of notice as stipulated by exhibit P1 – that being 2 months (see paragraph 24.3 of P1).

8. The notice of resignation (P2) reads:

I Mark Payne here by tender my resignation effective date 17/07/03 my last day on the job will be 17/09/03. Reason for is personal. Forwarding address is PO Box 3008. Signed Mark Payne. Dated 17/07/03.

9. The first reference to the date of resignation has been changed from 17th of September 03 to 17th of July 03; that is a 9 is crossed out and replaced with a 7. The change appears to be in the same writing as the rest of the document and there is no reason to suggest that it was written by any person other than the plaintiff.

10. The plaintiff said he was in a de-facto relationship of approximately 15 years and had children dependant on him and a wife who he also provided for, albeit she was undertaking work as well. He said he had no other income and no other employment lined up as at the 17th of July 2003. He said he intended to work out his contract and thought that around the Christmas period there would be work

available. He handed the letter to Simon Lewis. Simon Lewis sat and stared at it for a couple of seconds and then said to him “is that your final resignation?” and the plaintiff said “yes”. The evidence of the plaintiff was that Simon Lewis then said “bring back your keys and fuck off”. He said he stood there for a while and then went home. He said that he washed and dried his uniforms, got the keys and codes for the buildings altogether and took them back into Mr Lewis the next day. He said he felt unwelcome after what had been said to him.

11. He recounted an incident he witnessed where another ex-employee of Red Centre Security was treated in the same or similar way. He said Simon Lewis said to the other person “give me the fucking keys and go home”.
12. The plaintiff then gave details of the efforts he made to find other employment. He approached organisations such as Chubb and Shane Ride Security and there were no shifts available. He said that he looked for other work but only came to dead ends. In January 2004 he started at AJ Services. He was not able to claim any social security because of the fact that he had been on a contract and his wife had been working at the Post Office. He said that during the 2 month period of notice (as set out in P1) he had not been in receipt of any income.
13. He was then cross-examined. He said he had not looked for alternative employment whilst he had been working with the defendant. He had an offer from Arrente House - that when it was re-opened he may have some work there - but that he had not commenced work with them. He said after the meeting with Simon and Peter Lewis he felt that no one believed him so he wanted to put an end to the situation. He thought about it and then resigned. With respect to the Arrente House position he said he had never disclosed that possibility to the Lewis’, that there had never been a firm offer and that nothing had come of the conversation he had with the person as to potential employment with Arrente House.
14. He said in the period between the 17th of July 2003 and January 2004 he was actively looking for work. For example, he contacted organisations such as Qantas, Chubb and Shane Ride Security. He contacted them, did follow up contacts and there were no available shifts. He looked in newspapers and circulated his resume trying to look for work himself. With further reference to

Arrente House, he said that even if he had been given a firm offer he had decided he did not have the heart for the job.

15. He said when he resigned on the 17th of July 2003 he intended to serve out the notice and would have worked the 2 month period, until the discussion he had with Simon Lewis after he handed Simon Lewis the resignation notice. He said he really didn't know what to do at that point. He returned to the work place the next day, delivered the keys and uniforms and he did not resume any further work with Red Centre Security. That was the case for the plaintiff.
16. The defendant Simon Lewis was then called. He is the managing director of Red Centre Security and he was the person running the business at the relevant time. The business involved mobile patrols, static guard work, repairing fire alarms and security systems. He said patrols were mainly at night. There were some cash escorts in the daytime and some patrols between 3 and 7pm. When he won a new contract he needed extra staff and put an ad in the paper. He employed the plaintiff and believed that, on paper, he had the relevant credentials including the relevant licences. After a period of three months probation he was offered a full time position. The plaintiff was offered a written contract. The defendant felt that people would stay on longer if there was a contract.
17. He said there was one occasion where he was not able to pay his employees on time, as an employee had a total of 18 months holiday pay owing and that had stretched his finances. He said all employees agreed to a payment in instalments and then the plaintiff came to his house and said he needed to rest of the money. He gave evidence that he arranged that straight away.
18. He said the meeting to discuss what the plaintiff was doing with his time was in the beginning of May 2003 not July 2003. At that meeting the plaintiff had said he was looking for new work for the business and gone to possible client's premises and "put the foot in the door". He agreed that the plaintiff had given him some leads for possible new clients. He said that employees were given a \$50 "bounty" if they were able to establish new clients. This was in addition to their wages. He said that the duties of the employees did not include, as part of their job, to look for new clients.

19. The plaintiff was employed to undertake daytime patrols and service equipment. He said the plaintiff started in November 2002 and appeared energetic and happy. In approximately February 2003 the plaintiff approached him and said that, for family reasons, he would like to do less night work. The defendant advertised internally and the plaintiff was given a position involving daytime patrols. He gave some evidence of the plaintiff making some irregular attendances at work and the phone bill increasing during the time the plaintiff was employed with the defendant.
20. He said the plaintiff told him in approximately May 2003 that he had been approached by Arrente House and he was contemplating taking a position with them. The defendant's evidence was that he said to the plaintiff words to the effect "if you obtain other employment I am happy to let you go without serving the notice period".
21. On the 17th of July 2003 the plaintiff came to his office and the defendant said to the plaintiff "we need to talk". There was a discussion about a speeding ticket which the plaintiff had disputed. The defendant told the plaintiff that he had gone through the rosters and those rosters had proven that the plaintiff was on duty at the relevant time. The defendant, although not happy about the situation, agreed to pay the fine. The plaintiff left the office. The plaintiff then came back into the office and threw a letter on the defendant's desk. This was the document now marked P2. The evidence of the defendant was that he said "are you sure you want to resign". The plaintiff then said "if I had my way I would go now but I have to work out the two months". The defendant said "you can go now". He said the plaintiff shook his hand and they left on cordial terms.
22. The defendant's view was that the plaintiff had left voluntarily having been relieved of the obligation to work out the notice period. He was paid holiday pay and one week's severance pay in Lieu of notice. He was paid forty hours pay. The next day the plaintiff bought in his uniforms and keys. The uniforms were washed and pressed. The defendant was surprised about that, as that was not a usual situation. He said he had not asked the plaintiff to return the uniforms. He said that there had been a mutual agreement between the plaintiff and himself for the plaintiff to leave straightaway.

23. Under cross-examination the defendant agreed that at first there had been harmonious working relations. He agreed that there seemed to be a strained relationship between himself and the plaintiff but he believed that was a mental thing in the mind of the plaintiff. He said he was quite happy with the plaintiff's work. He disputed that he ever expressed concern to the plaintiff with respect to work place issues and said, "he was not in the loop". He agreed there were cash flow problems with the business. He said there were two other people on contracts at the time the plaintiff was employed on contract. He disputed that there was more than one occasion in which the plaintiff was not paid on time.
24. It was put to him that the meeting with respect to the canvassing of new businesses was in July. He disputed that and said the meeting happened in May 2003. Notes were produced but did not become tendered evidence. The witness agreed that the notes did not mention who was being canvassed.
25. He said the plaintiff had said he felt he was not trusted and made to feel dishonest on an earlier occasion. The witness said that he had found out there were some duplicate keys to a gate and car and he had asked for those keys back. He said approximately two days after that incident the plaintiff had made the comments with respect to not feeling trusted. He disputed that the conversation with respect to not feeling trusted happened at the end of the meeting relating to the canvassing of new businesses. He then agreed that it was possible that such a comment was made but he had no recollection of such a comment being made then.
26. In cross-examination he confirmed his evidence in chief that, on the 17th of July 2003, the resignation by the plaintiff had occurred after a discussion about the speeding ticket. It was put to him by the plaintiff's counsel that this sequence of events was denied and he reaffirmed his evidence. He said that the plaintiff threw the letter on his desk and said that this was his resignation. The defendant denied telling the plaintiff to fuck off. The defendant denied he said for the plaintiff to get his uniforms and keys back to him. He did agree that these items were returned to the business. He said he paid the entitlements and severance pay as early deposed to. The defendant said he got the impression that the plaintiff had obtained other work.

27. He said he believed he had given the plaintiff what he had wanted. He was asked why he had given an extra weeks pay and the witness said, “to avoid this sought of confrontation”. He said there was always the opportunity of a court case starting if people leave employment. The defendant denied that the plaintiff was sacked. It was put to him that the plaintiff never said words to the effect of “if I had my own way I would go without working out the 2 months”. The defendant re-asserted that the plaintiff said this. The defendant then said that the plaintiff had not been working hard and had made himself unavailable on Fridays, Saturdays and Sundays. The defendant said he had made sure the plaintiff had been paid his entitlements. He said there had been a decision made to give an extra weeks pay to the plaintiff. He said he had paid above awards rates.
28. He said that he always checks the phone bills and wage sheets. There was evidence with respect to phone accounts being increasingly higher during the time the plaintiff had been employed with the defendant. He agreed that he wanted the plaintiff to go.
29. He said that once the plaintiff had thrown the resignation letter on his desk he accepted it. He denied he lost his temper at the time the letter of resignation was given to him and said that he had kept his cool. He said he knew of three times when the plaintiff had lied to him. He said that the plaintiff was taking time off near the end of the week and that he had once asked the plaintiff if he had another job, the plaintiff had denied that he had another job. Because of the plaintiff’s family situation he had accommodated the request for the change in working hours. The defendant had formed the view that the plaintiff had other options and that he was happy to leave the work place rather than working out the notice.
30. In re-examination the defendant said that the two had come to an amicable end to their relationship and that they had shaken hands. The defendant was of the view that the plaintiff was relieved when he was released from the requirement to work the notice period out and seemed happy to go. The defendant had paid above award rates and the relevant award was the Security Award 2002. He felt if he had paid above award rates people would stick around. People were paid according to their work sheets.

31. That was the close of the defence case.
32. The onus of proof rests with the plaintiff to prove his case on the balance of probabilities. That is, the contested facts must be proven on the balance of probabilities. (That is, to be more likely than not). As stated the burden of proof rests with the plaintiff and accordingly he bears the onus to call the evidence in support of his case to satisfy the required standard of proof.
33. As the matter is a small claim, it is governed by the Small Claims Act. Section 12 of the Small Claims Act sets out as follows:

“In proceedings, the Court is not bound by the rules of evidence and may inform itself in any manner it thinks fit.”

34. This matter was conducted with both parties being represented – the evidence was called and documents were tendered in the usual way.
35. There are a myriad of contested facts which do not directly go to the issues in this case. The contested facts which are directly relevant to this proceeding relate to what happened immediately before and after the defendant was in receipt of the plaintiff’s letter of resignation. To a large extent the defence did not properly put its case to the plaintiff in cross-examination and this has caused me to reflect upon the evidence much more closely. In particular, I do not have the benefit of considering the plaintiff’s response to all of the defendant’s case.
36. In the final analysis I am not satisfied that the plaintiff has discharged the onus of proof and the claim will be dismissed. In coming to this decision I have considered all matters before me and in particular the payment of one week in lieu, the fact that the plaintiff went to the time and trouble to return the uniforms clean and pressed, that he returned the following day with the items including the keys and codes and the defendant’s claim that the final discussion related to the speeding ticket rather than the question of the canvassing. There is no independent evidence of any type which assists the plaintiff’s case. While it is not necessary for such evidence to be before the Court, it would have assisted the plaintiff had there been some independent evidence which he could have pointed to in support of his claim.

37. In the scenario put forward by the defendant there had been a discussion where the defendant has confronted the plaintiff with the relevant rosters and the defendant has said that he believes the plaintiff has (in effect) lied to him on the question of when he was using the motor vehicle. The defendant agreed to pay the fine for the speeding ticket, although said he was not happy about the situation. This sounds like the type of scenario where a person is being accused and not believed. It is not surprising that a person may feel uneasy about an ongoing working relationship in these circumstances.
38. It is my view that it is much more likely that the plaintiff would have gone on and completed a letter of resignation based upon the matters put to him in this scenario than the scenario put forward by the plaintiff. I accept the evidence of the defendant that the canvassing for work was not part of the plaintiff's duties and I fail to see how there would be an issue – so serious as to the plaintiff to feel he was not trusted –to be raised in the way the plaintiff says. Perhaps the suggestion that the canvassing was being carried out in work time may raise such an issue. But the defendant would be justified in raising such an issue – it not being part of the duties of the plaintiff, but rather a way for extra money to be earned.
39. The plaintiff suggests that the defendant said to him “bring back your keys and fuck off”. That scenario does not ring true. The plaintiff was on duty at the time and there is no reason why the defendant could not have insisted upon keys being handed over there and then, or they could have travelled to the plaintiff's house if they were not on hand. Given the nature of the business, I can not accept that a proprietor of a security service would allow a potentially disgruntled ex-employee to leave without handing over the keys and codes to premises they were guarding. On the other hand, if the relationship had ended cordially (as the defendant says) then there would be less cause for concern as to precisely when the keys were returned.
40. The plaintiff did not advise the Court that he had received one weeks pay. That does not reflect well on his credit. While it may have been an oversight, it was an important matter in this case.

41. The notice of resignation does not give any clue as to why the resignation was tendered save for the word “personal” (P2). In the context of this case that word does not assist one way or another in resolving the factual disputes in question. It does not strengthen the plaintiff’s claim.
42. The plaintiff’s evidence is that despite having dependants and no employment lined up, he resigned believing that there would be work available around the Christmas period. He resigned effective from the 17th of September 2003, well short of the Christmas period. The decision to resign can be seen as rather a rash decision in these circumstances. The defendant’s account as to the circumstances of the resignation appear to be more convincing than the plaintiff’s when considering these issues.
43. The care in which the plaintiff took in making sure that all matters were attended to at the end of his service with the defendant – that he washed and dried his uniforms, got the keys and codes together and took them back into Red Centre Security – is more consistent with the defendant’s version of events than the plaintiff’s version. Had the plaintiff been treated as badly as he said, it is my view it is much more likely that he would not have taken the time and trouble to tend to the matters as he did. The actions of the plaintiff are more consistent with those of an ex-employee who is happy with the way the relationship has ended.
44. The attention the plaintiff paid to the details of finalising his employment relationship with the defendant is, in my view, more consistent with the scenario that the defendant had relieved him of the obligation of working out his time, had paid him one week in lieu and that both parties were happy with the arrangement. I do not accept that it has been proven on the balance of probabilities that the defendant, by his words and actions, had acted in such a way as to leave the plaintiff with no option but to leave the workplace without working out his notice, after tendering his resignation.
45. I am not persuaded that the plaintiff has proven its case on the balance of probabilities and I dismiss the claim. There are no grounds to make an order for costs pursuant to s.29 of the Small Claims Act and I do not make an order for

costs in the matter. I will direct that a copy of the order dismissing the claim and these reasons be forwarded to the parties' solicitors.

Dated this 5th day of October 2004.

M Little
STIPENDIARY MAGISTRATE