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# Western Australian Industrial Relations Commission

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## Lautaro A. Peredo - and - Metland Products [1999] WAIRComm 3 (13 January 1999)

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

INDUSTRIAL RELATIONS ACT, 1979

Lautaro A. Peredo

- and -

Metland Products

(No. 1311 of 1998)

13 January 1999

### REASONS FOR DECISION

**SENIOR COMMISSIONER:** The Respondent carries on business as a sheet metal fabricator. It is essentially a family business run by the Buggins family. At all material times it employed four production personnel, one of whom was the Applicant. The other production employees were sons of the manager and co-proprietor of the Respondent, Mr Dennis Buggins. With the exception of the Applicant, all of the production employees were members of the religious order known as the

## ← Exclusive Brethren →.

The Applicant was employed by the Respondent from 31 January 1994 until 3 July 1998. He was employed in the position of a sheet metal worker's assistant. The history of his employment appears to have been uneventful, at least for the purposes of these proceedings, until on or about 11 June 1998. On that day he and another employee, Mr Andrew Buggins, the son of the co-proprietor of the Respondent had a difference of opinion about the activities of ← the Brethren →. It appears that this difference arose out of discussions prompted by newspaper articles which appeared at or about that time regarding the activities of ← the Brethren →. At all events, the Applicant asserts that on that day Mr Andrew Buggins told him that he would soon be "removed from the face of the earth". The Applicant took that as a threat on his life and reported the matter to Mr Dennis Buggins, who was the manager and a co-proprietor of the business. Mr Dennis Buggins indicated that he would be surprised if his son had made such a threat. He took the matter up with his son in the presence of the Applicant. Mr Andrew Buggins, whilst not disputing that he had said what he was alleged to have said, denied that he intended it as a death threat or to otherwise harm the Applicant. Rather, he intended it as a statement of biblical fact. This did not satisfy the Applicant, who left the workplace, reported the matter to the police and obtained an interim violence restraining order against Mr Andrew Buggins. The Applicant returned to work the next day. Thereafter it seems to be common ground Mr Andrew Buggins and the Applicant had little to do with each other. However, the Applicant asserts from that time he was "under constant harassment, intimidation, provocation and offensive behaviour by two other sons of the manager-owner : N. Buggins and J. Buggins". In short, he says that they taunted and mocked him almost daily by giving him a single finger sign or poking their tongue out at him when eye contact was made. On at least one occasion one of them passed wind in an offensive manner in his presence. On another occasion he was forcibly pushed aside by one of them. In addition, he asserts that after that time Mr Dennis Buggins on two occasions and another of his sons, Mr Nelson Buggins, accused him of being "the mythical Antichrist". On 1 July 1998 he complained to Mr Dennis Buggins about this harassment and at the same time indicated to him that he would be taking the following day off work to report the actions of Mr Nelson Buggins to the police.

On 3 July 1998 the Applicant tendered his resignation, principally on the grounds of the "death threats" made against him by Mr Andrew Buggins on 11 June 1998; "the intent of physical attack on the same date and by the same person"; the "climate of harassment and provocation created by" Nelson and Geoffrey Buggins following 11 June 1998; and the belief of Mr Dennis Buggins and his sons that the Applicant was "the mythical Antichrist". The Applicant indicated that he had "extreme concern" for his personal safety because of the strong religious beliefs held by the Buggins family and "the cases of mental illness affecting" Messrs Dennis and Nelson Buggins which the Applicant said he witnessed some months before his resignation.

The Applicant asserts that he was constructively dismissed. He asserts that he was forced to resign on "the grounds of extreme stress" brought about by the conduct of the Respondent and its employees towards him. Moreover, he asserts that the dismissal was either harsh, unjust or unfair and

seeks compensation equivalent to six months' pay.

The Respondent denies that the Applicant was dismissed from his employment, either constructively or otherwise. It asserts that the resignation was tendered without encouragement from the Respondent and that the instrument of resignation "contained untrue and unfounded accusations towards all other personnel, including the manager, of an extreme discriminatory nature".

In order to succeed, it is essential that the Applicant first establish, on balance, that he was dismissed from his employment. It is trite to say that for these purposes an employee may be taken to have been dismissed from his employment, although the actual termination of employment was effected by a resignation on the part of the former employee. For a resignation to be taken as a dismissal, it is necessary, for these purposes, for the Applicant to establish that the real and effective initiator of the termination of employment was the conduct of the employer (see: *Allison v. Bega Valley Council (1995) 63 IR 68*). Whether or not that position obtains in a given case is largely a question of fact involving an analysis of facts and circumstances which led to the termination of the employment. The critical question in matters of this nature is simply whether on the facts the former employee can be said in reality to have been dismissed from his employment by his former employer. The answer to that question does not depend upon the concept of "constructive dismissal", which is essentially a statutory concept created in some other jurisdictions based on breach of contract (see: *The Attorney General v. Western Australian Prison Officers' Union of Workers (1995) 75 WAIG 3166*; and see too: *Allison v. Bega Valley Council (supra)*).

On this occasion there is a marked conflict in the evidence adduced by and on behalf of the respective parties. Of all the witnesses, I consider Mr Dennis Buggins to have been the most credible. The more I heard from him, the more convinced I became that he had the most accurate and reliable recollection of the events. At least from and after 11 June 1998 he kept notes of what occurred and apart from that impressed me by his demeanour as being a reliable witness. Where his evidence conflicts with that of the Applicant, I accept his evidence in preference to that of the Applicant. Whilst I have no doubt that the Applicant honestly believed what he said to be true, he left me with the distinct impression that for one reason or another he had a propensity to exaggerate and too readily to convert assumptions to fact or otherwise embellish the facts. In short, he left me with the impression that his evidence was not always reliable. In general I accept the evidence of Mr Nelson Buggins in preference to that of the Applicant. He impressed me as being a frank and reliable witness. On the other hand, Messrs Geoffrey and Andrew Buggins impressed me as being more interested in protecting their position than reciting the facts as they happened. Where their evidence conflicts with that of the Applicant, except where it is supported by Messrs Dennis or Nelson Buggins, I prefer the evidence of the Applicant.

The decided authorities make it abundantly clear that for a resignation to constitute a dismissal for the purposes of proceedings of the kind now in question, the resigning employee must have no real alternative but to resign so that in effect the act of resignation is really the act of the employer (see: *The Attorney General v. Western Australian Prison Officers' Union of Workers (supra)*). The conduct of the employer must be such that no reasonable employee could be expected to put up with

it any longer.

It is common ground that the Applicant knew from the commencement of his employment, or soon afterwards, that he was the only employee of the Respondent who was not a member of **the Brethren**. With one exception, the religious beliefs of the Buggins family do not appear to have led to any difficulties between the Applicant and the Respondent until the existence of the newspaper article concerning **the Brethren** early in June. The exception concerned him being prevented from eating his lunch with members of the Buggins family, apparently on religious grounds. I do not accept that the Applicant's inability to eat with the Buggins family was as significant a problem as he claimed. Rather, I accept the evidence of Mr Dennis Buggins that from and after his first day at work when he was told that he could not eat with them he appeared happy to eat in his car parked on the premises, as did other employees in the same situation. Furthermore, I accept the evidence of Mr Dennis Buggins that this arrangement continued thereafter without complaint from the Applicant until shortly before his resignation. That is, it existed for over four years without complaint. Equally, I do not accept that Mr Andrew Buggins threatened the well-being of the Applicant on 11 June 1998 as claimed. Even if Mr Buggins' remarks were capable of the interpretation initially placed on them by the Applicant, I am satisfied and find that soon afterwards that the Applicant was assured, not only by Mr Dennis Buggins but also by Mr Andrew Buggins, that the latter did not intend his remarks to constitute a death threat or to otherwise harm him. Likewise, I remain unconvinced, in the face of Mr Dennis Buggins' evidence, that Mr Andrew Buggins attempted to strike him, as distinct from attempting to knock the tape recorder the Applicant was then holding from his grasp. In any event, as the Applicant acknowledges, from and after the issue of the interim violence restraining order, there was little or no communication of any sort between him and Mr Andrew Buggins. Indeed, the Applicant in effect said that because of the interim restraining order he felt secure from any interference by Mr Andrew Buggins.

So far as the allegations of mocking and taunting thereafter are concerned, whilst I have little or no doubt that from time to time Messrs Geoffrey and Nelson Buggins either pulled faces or made finger signs to him, I remain unconvinced that this occurred as frequently as the Applicant complained or was as severe as he complains. Also, it seems clear that at least on one occasion the Applicant engaged in such conduct. In any event, on the first and only occasion the Applicant took this matter up with Mr Dennis Buggins, Mr Buggins took positive steps to stop such conduct. He issued the Applicant and his sons with a written directive that no religious or personal matters were to be discussed at the workplace and they were to co-operate with each other. The Applicant resigned before that edict was tested.

Insofar as the Applicant complains that he was accused of being "the mythical Antichrist", the Applicant was not told that directly by Mr Dennis Buggins. Instead, it appears that the Applicant inferred that Mr Buggins held such a belief from the fact that he was given a pamphlet explaining the beliefs of **the Brethren** and from the fact that on another occasion, in answer to a complaint by the Applicant that Mr Nelson Buggins held that belief, was told by Mr Dennis Buggins only to make sure that he was not "the mythical Antichrist". I accept the evidence of Mr Dennis Buggins that

he did not say or hold the belief that the Applicant was "the mythical Antichrist". Likewise, I accept the evidence of Mr Nelson Buggins that he raised the matter only in answer to a question from the Applicant as to whether he believed the Applicant was the mythical Antichrist and responded to the effect "that he probably was". I accept the evidence of Mr Nelson Buggins that he indicated this to be the case in an equivocal fashion and I find it difficult to accept that the Applicant regarded the answer as being as significant as he now contends. The Applicant acknowledged that Mr Nelson Buggins was the youngest of the brothers and, moreover, contends that he had a mental illness. Furthermore, the Applicant, on his own admission, clearly did not believe himself to be the mythical Antichrist.

The Applicant also complained that from time to time he was given unsavoury tasks to perform or otherwise asked to perform tasks at short notice. However, having regard to the evidence of Mr Dennis Buggins and the other employees, I am far from convinced that these were not routine requests or otherwise untoward.

On the facts as I find them to be, I am not satisfied, even on balance, that the situation was as bad as the Applicant suggests, such that he had no real alternative but to resign. In short, I am far from convinced on the credible evidence that the Respondent was the effective cause of the termination of the Applicant's employment. Rather, my impression is that the Applicant was himself largely the architect of the termination. In the circumstances the application should be dismissed.

Appearances: The Applicant in person

Mr K.C. Brown as agent for the Respondent

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