

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 4/09
5139001

BETWEEN GERARD ALAN AND
 KATHLEEN TERESA LYNCH
 Applicants

AND PAUL DAVID CLEEVE
 Respondent

Member of Authority: P R Stapp

Representatives: Kathleen Teresa Lynch for Applicants
 No Appearance for Respondent

Investigation Meeting: 14 January 2009 at Wanganui

Determination: 15 January 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Paul Cleeve resigned from his employment. His employers incurred costs of \$492.39 that they want to recover for cleaning, rubbish removal and the replacement of locks and a garage door opener, plus the \$70 filing fee.

[2] Mr Cleeve has made no attempt to reply. He has not responded to the statement of problem filed in the Authority by the applicants. The applicants say they attempted to contact Mr Cleeve. He did not respond. When they did contact him and requested he fulfil his obligations he took no action.

Mr Cleeve's conduct in the Authority's investigation

[3] I am satisfied Mr Cleeve was put on notice of the statement of problem at his personal address at the time the statement was filed in the Authority: the mail was not returned to the Authority. There is a courier track and trace of that delivery.

[4] I am also satisfied that at a new address provided by the applicants Mr Cleeve was put on notice of the Authority's investigation meeting, although the mail was returned from that address as set out in the statement of problem. The delivery at the alternate address was supported by a track and trace from the courier and supports being signed for by "P Cleeve".

[5] An attempt to contact Mr Cleeve by telephone prior to the investigation meeting was unsuccessful.

[6] I considered mediation as a way for the parties to resolve the employment relationship problem to save the cost of the Authority's investigation. Mr Cleeve's failure to reply and respond and failure to make any contact with the Authority's office and the Lynch's led me to conclude that mediation would not contribute constructively to resolve the matter because I had no confidence that Mr Cleeve could be relied upon to turn up or engage in that process. Thus the matter was not directed to mediation to save the employer any more costs and time.

[7] I decided to proceed under clause 12 of Schedule 2 of the Employment Relations Act because there was no good cause for Mr Cleeve's failure to attend the Authority's investigation meeting. I proceeded as if Mr Cleeve had duly attended or been represented at the Authority's investigation meeting.

The issues

[8] How much money does Mr Cleeve owe his former employer?

The facts

[9] Paul Cleeve was employed from 5 June 2007 by the G A & K T Lynch partnership on their dairy farm at Marahau Road Maxwell, Wanganui.

[10] The parties signed off and dated an employment agreement that included a provision for accommodation and deductions:

"5...

5.2...

d) The Employee shall keep the house and the surroundings clean and free from all rubbish and shall leave the premises in a clean and tidy condition and free from any damage beyond fair wear and tear. The Employee is responsible for regularly mowing the lawns, weeding and maintaining gardens and surrounds, and at least annually washing the exterior of the house. If the Employee fails to do so, the Employer may employ some other person to do the work, and may deduct the cost of such work from any money due to or accruing to the Employee occupying this accommodation.

[11] Mr Cleeve resigned on 14 July 2008 with effect from 25 July 2008. His final pay was calculated including holiday pay. He was put on notice dated 16 July 2008 by the Lynchs of his obligations to clean the accommodation, mow the lawns and return the keys.

[12] Mr and Mrs Lynch say they had to get the carpet cleaned, the house cleaned, rubbish removed and lawns mowed, replace all locks and replace a garage door opener.

Determination

[13] Mr Cleeve has not opposed the sum claimed by the applicants.

[14] I accept Mr and Mrs Lynch's evidence that they had to arrange to mow the lawns, clean the house and the carpet, and remove rubbish involving the cost of two contractors and another employee.

[15] They say they had to replace all locks and the garage door opener because Mr Cleeve did not return them when he left his employment.

[16] It is my decision that these are within Mr Cleeve's contracted responsibilities to maintain the employer's property and return property and keys under the terms of his employment agreement (clauses 5.2(d) and 16.4 and 16.6). Thus, the money falls within the meaning of money or debt owed to the employer.

[17] Mr Paul Cleeve owes G A & K T Lynch the sum of \$492.39 as claimed.

[18] I order that Paul Cleeve pay G A & K T Lynch the sum of \$492.39 as claimed.

[19] In addition Mr Cleeve is to pay G A & K T Lynch the \$70 filing fee for putting them to the cost of getting this judgment for payment.

Summary of the amounts owed by Mr Cleeve

[20] In summary Paul Cleeve is to pay G A & K T Lynch:

- \$492.39 as claimed.
- \$70 filing fee.

P R Stapp
Member of the Employment Relations Authority