

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 329/07
5081530

BETWEEN	RICHARD & TRASI BASSETT Applicant
AND	DAWSON R AGRI LTD First Respondent

Member of Authority:	Vicki Campbell
Representatives:	Mr and Mrs Richard and Trasi Bassett in person No Appearance for Respondent
Investigation Meeting	3 September 2007 at Hamilton
Determination:	18 October 2007

DETERMINATION OF THE AUTHORITY

Preliminary matters

[1] This employment relationship problem was filed in the Authority on 15 March 2007. A statement in reply was received from Mr Glen Dawson on behalf of the respondent, on 2 April 2007. Since then Mr Dawson has failed to participate in either mediation processes or the Authority's processes.

[2] The matter was referred to mediation on 4 April and scheduled for 11 May 2007. On the morning of 11 May 2007, Mr Dawson contacted the mediation service and advised he could not attend due to sick animals. The matter was rescheduled to be dealt with by way of mediation on 20 June 2007. On the morning of 20 June 2007, Mr Dawson once again contacted the mediation service, this time advising that the company was insolvent and there was no money.

[3] I have checked the companies register and note that the company continues to be registered and has not been put into liquidation or receivership.

[4] As a result of the failure of the respondent to participate in mediation, the file was referred back to the Authority and a directions conference call was scheduled for 25 June 2007 at 5.00pm or 26 June 2007 at 9.00am in order to discuss timetabling for an investigation meeting. Neither call went ahead. After a number of fruitless attempts to make telephone contact with Mr Dawson by the

Employment Relations Authority Support Officer, the conference call was abandoned.

[5] Given the difficulties experienced by both the mediation service and the Employment Relations Authority support staff I considered mediation would not contribute positively to the resolution of the employment relationship problem. I therefore directed that the matter be set down for investigation.

Employment relationship problem

[6] Mr Richard and Mrs Trasi Bassett were employed by Dawson R Agri Ltd on 14 November 2006 as junior farm manager and assistant, respectively. The requirements of the job included milking cows, calving, pasture management, stock control and general farm work.

[7] The parties were subject to a written employment agreement which provides for Mr and Mrs Bassett to be employed as a couple on a salary of \$38,000 per annum. An allowance for the provision of farm rental accommodation was included in the annual salary at the specified value of \$70.00 per week. Wages were paid weekly by direct credit to the employee's bank account. There is also a provision for the reimbursement of fuel when the Bassett's agree to provide a farm bike for use on the farm.

[8] Deductions from final wages and holiday pay for any money owed at the end of employment is also provided for in the employment agreement.

[9] Mr Bassett says that following unacceptable conduct by Mr Dawson, he and his wife resigned from their employment, giving two weeks notice in accordance with the employment agreement. At the end of the notice period Mr Bassett says they left their employment and Mr Dawson has failed to pay three days wages owed, plus holiday pay. Mr Bassett is also claiming reimbursement of payments made for the purchase of two bikes which Mr Dawson has possession of, to the value of \$945.00.

Arrears of wages

[10] Mr Basset claims he never received wages for three days, being 12, 13 and 14 January 2007 in the amount of \$248.57 and holiday pay of \$330.00.

[11] In his statement in reply Mr Dawson says Mr Bassett actually owes him \$111.69 for costs associated with telephone rental and toll calls together with other deductions amounting to \$461.94.

[12] Clause 21.5 and 11.5 of the employment agreement between the parties provides for deductions to be made from final wages and holiday pay. The provision allows monies owed to the employer by the employee, at termination, to be deducted and includes amounts for private toll calls, power and charge accounts.

[13] At the investigation meeting Mr and Mrs Bassett acknowledged that they owed the respondent an amount of \$111.69 being telephone rental and toll calls which remained unpaid on termination date.

[14] In its statement in reply the respondent says the deductions amounting to \$461.94 related to overpayments made for a paid sick day taken during employment to which no entitlement had arisen, and for overpayments relating to ACC. No further evidence has been produced.

[15] The employment agreement at clause 15.1 allows for paid sick leave to be taken in advance. Sick leave becomes an entitlement after six months employment. Mr and Mrs Bassett's employment lasted only 2 months, therefore, they did not become entitled to any sick leave. Given, I am satisfied that the sick leave taken during the employment was sick leave in advance. Clause 21.5 of the agreement provides for deductions to be made from the final wages and holiday pay, for leave taken in advance.

[16] I find Mr and Mrs Bassett are entitled to payment for their final three days of employment and holiday pay with deductions for telephone rental, toll calls and one days sick leave taken in advance.

Dawson R Agri Ltd is ordered to pay to Mr and Mrs Bassett the sum of \$389.89 gross being wages and holiday owing as arrears of wages within 28 days of the date of this determination.

Bike Payments

[17] During their employment Mr and Mrs Bassett entered into an agreement with Mr Dawson to purchase two farm bikes from him. The bikes were a Kawasaki Stockman 250 (\$5,500.00) and a Yamaha King Quad (4 wheeler, \$4,000.00). Further, it was agreed that the Bassett's would pay for the bikes over time on the basis of \$67.50 for each bike each week, being \$135.00 per week, until each bike had been paid for.

[18] At the investigation meeting Mr Bassett told me that when he and Mrs Bassett resigned from their employment Mr Dawson told them he wanted to take the bikes back. Mr Bassett's uncontested evidence is that when they resigned they asked if they could take the bikes and continue paying them off. The respondent's statement in reply acknowledges that the respondent took the bikes back from the Bassett's and made no refunds for the payments made to date, for purchasing the bikes.

[19] The evidence shows that the Bassett's met all their financial commitments in relation to purchasing the bikes. There does not appear to be any reason at all why the Bassett's were not allowed to keep the bikes, and to continue paying them off, or to purchase them outright.

[20] I am satisfied that the Bassett's entered into a contract with Dawson R Agri Ltd on 27 November 2006, to purchase the two bikes and the contract was confirmed when payments were received by Dawson R Agri Ltd. I have concluded that the bikes were removed from the Bassett's without any reason and without refunding the money which had been paid in good faith and in reliance on the agreement struck to purchase the bikes.

[21] Pursuant to section 161(1)(r) the contract entered into for the purchase of the bikes related directly to the employment relationship. I am mindful of the requirement to act as I think fit in equity and good conscience (s.157(3)) and am satisfied that the Bassett's are entitled to a full refund of the money paid to the respondent.

Dawson R Agri Ltd is ordered to pay to Mr and Mrs Bassett the sum of \$945.00 without deduction (being seven payments of \$135.00), to be paid within 28 days of the date of this determination.

Costs

[22] Mr and Mrs Basset are entitled to have their lodgement fee on this application reimbursed.

Dawson R Agri Ltd is ordered to pay to Mr and Mrs Bassett the sum of \$70.00 being the lodgement fee on this application.

Summary of Orders

[23] Dawson R Agri Ltd is ordered to pay to Mr and Mrs Bassett the following amounts:

- \$389.89 gross being wages and holiday owing as arrears of wages;
- \$945.00 without deduction being seven payments of \$135.00;
- \$70.00 being the lodgement fee on this application.

Vicki Campbell
Member of Employment Relations Authority