

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 116
5400800

BETWEEN AARON BLANCHARD
 Applicant

A N D TREVOR GILL
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Aaron Blanchard, Applicant
 No appearance for Respondent

Investigation Meeting: 4 April 2013 at Auckland

Date of Determination: 8 April 2013

DETERMINATION OF THE AUTHORITY

- A. The applicant, Mr Aaron Blanchard was employed by the respondent, Mr Trevor Gill.**
- B. Mr Gill is liable to pay Mr Blanchard the sum of \$2,834.70 gross being wages and holiday pay owing;**
- C. No order as to costs.**

Non-appearance of the respondent

[1] Mr Gill was properly served with the statement of problem and subsequent correspondence from the Authority together with a notice of investigation meeting but refused to attend the meeting unless Ms Heather Blanchard produced a document he felt was relevant.

[2] The Authority requested that Mr Gill attend the meeting so that this matter could be dealt with but he refused. In those circumstances, I proceeded to investigate the matter in the absence of Mr Gill.

Issues to be determined

[3] The issues for the Authority to determine are firstly whether Mr Blanchard was employed by Mr Gill for work performed by him in June and July 2012. Secondly, if so, whether Mr Blanchard is owed wages by Mr Gill

[4] Mr Blanchard and Mr Gill met through Mr Blanchard's mother, Ms Heather Blanchard. Ms Heather Blanchard is a mobile accountant and trades as Heather Blanchard Accounting. Ms Blanchard has an office at home and performs various accounting tasks for clients including tax returns, GST returns and annual accounts

[5] Mr Gill obtained one of Ms Blanchard's business cards in late October 2011 and contacted her about the possibility of undertaking some accountancy tasks for him. After meeting Mr Gill, Ms Blanchard agreed to take him on as a client.

[6] Mr Gill and Ms Blanchard met on a number of occasions at Ms Blanchard's home office to discuss his accounting requirements including preparation of GST returns and annual accounts.

[7] At one of these meetings in March 2012, Mr Gill asked Ms Blanchard if she knew of anyone who could work as a labourer's assistant as he needed some work to be done on a building he had recently leased known as The Castle and located in Mangatawhiri. Ms Blanchard suggested he speak with her son Mr Blanchard who was looking for work. Mr Blanchard is and was at the relevant time a casual labourer employed by Allied Workforce Limited (Allied). The nature of the work for Allied is that during the winter months there is little or no work available.

[8] Mr Gill spoke with Mr Blanchard about the type of work he needed to be done at The Castle which included gib stop work, touch painting, and laying tiles. Mr Blanchard was interested in taking on the role when the work at Allied reduced over winter. Mr Gill offered to pay Mr Blanchard \$15 per hour which Mr Blanchard accepted. Ms Blanchard heard the conversation.

[9] Following this discussion, Ms Blanchard walked out to the car with Mr Gill and asked him whether he was going to employ Mr Blanchard or hire him as a contractor. Mr Gill said he wished to employ Mr Blanchard. Ms Blanchard told Mr Gill that in that case he would need to provide Mr Blanchard with an employment agreement and he would have to make PAYE deductions. Mr Gill asked Ms Blanchard to arrange an employment agreement for him to use which she did within a couple of days.

[10] Ms Blanchard obtained a template for a casual employment agreement which provided that Mr Blanchard would be paid “\$15 gross taxable per hour worked”. The employment agreement referred to “*payment of 8% holiday pay*” and that either party “*could terminate the casual work engagement by giving the other party one day’s notice of such termination*”. Mr Blanchard signed the employment agreement on 8 April and it was subsequently given to Mr Gill. Mr Gill never signed the employment agreement.

[11] In the statement in reply, Mr Gill claims Mr Blanchard was a “volunteer”. I do not accept this to be the case. Mr Gill and Mr Blanchard agreed verbally that Mr Gill would employ Mr Blanchard to do some labouring work for him at the rate of \$15 gross per hour. Mr Gill accepted, when the issue of Mr Blanchard’s employment was raised with him by Ms Blanchard, that he would employ Mr Blanchard, he asked for an employment agreement and was aware of his responsibility for wages and PAYE. Further he paid Mr Blanchard \$300 cash at the end of his first week of employment. I find that Mr Gill employed Mr Blanchard.

[12] Mr Blanchard commenced work on 10 June and at the end of his first week was told by Mr Gill that he did not have sufficient funds to pay him the whole amount for the week’s work. Mr Gill paid Mr Blanchard \$300 in cash towards his first week’s wages and said that he would pay him the rest when he had the money.

[13] Mr Blanchard continued to work for Mr Gill and says Mr Gill promised him each week that he would be paid when funds that he was waiting for were paid. Mr Blanchard believed that Mr Gill would pay him the wages due for the work that he was doing. Mr Blanchard continued to do the work because he believed he was going to be paid. Mr Blanchard thought Mr Gill would pay him because he was a client of his mother’s and he trusted him.

[14] Apart from the initial \$300 cash payment, Mr Blanchard never received any further wages for work done for Mr Gill. Mr Blanchard stopped working for Mr Gill on 26 July because he was not being paid and was not going to continue until he was paid.

[15] Mr Blanchard worked a total of 193.50 hours from 10 June to 26 July at \$15 gross per hour which totals the sum of \$2,902.50. Mr Blanchard was entitled to a further amount of \$232.20 being 8% holiday pay. After deducting the \$300 cash payment by Mr Gill, from these amounts, the total sum owing to Mr Blanchard is \$2,834.70 gross for wages and holiday pay.

Determination

[16] Mr Gill is ordered to pay Mr Blanchard the sum of \$2,834.70 gross.

Costs

[17] Mr Blanchard was not represented and so there will be no order for costs.

Anna Fitzgibbon
Member of the Employment Relations Authority