

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Neil Stuart Boyd (Applicant)
AND En'Zaq Aquaculture Limited (Respondent)
REPRESENTATIVES Diane Harvey, Counsel for Applicant
Mick Hollyer, Counsel for Respondent
MEMBER OF AUTHORITY Helen Doyle
SUBMISSIONS RECEIVED 16 December 2004, from the respondent
17 January 2005, from the applicant
DATE OF DETERMINATION 27 January 2005

COSTS DETERMINATION OF THE AUTHORITY

[1] In my determination dated 4 November 2004 I found that the applicant was owed the sum of \$48,000.00 and that he was entitled to interest on that sum from 13 January 2004 until the date of payment.

[2] I reserved the issue of costs.

[3] I received submissions from Mr Hollyer on behalf of the respondent seeking a cost award of \$10,000.00 against the applicant and from Ms Harvey on behalf of Mr Boyd seeking a cost award against the respondent of \$4000.00.

The submissions

[4] Mr Hollyer submits that the company promptly acknowledged that it owed Mr Boyd \$48,000.00 in its statement in reply. He submits that Mr Boyd then expanded his claim which put the company to considerable cost in trying to reconstruct the accounts over a period in which it says Mr Boyd was effectively in sole charge of the company. Mr Hollyer submits that the defence of the claim by the respondent was entirely successful and that none of the costs would have been incurred if Mr Boyd had not expanded his claim. Mr Hollyer submits that the costs incurred of \$10,000 plus GST reflected lawyers' costs and the costs incurred by En'Zaq with its accountant Mr Williden.

[5] Ms Harvey in her submissions accepts that the respondent did acknowledge that the sum of \$48,000.00 was due to Mr Boyd in its statement in reply but would not sign a consent memorandum to that effect. An investigation meeting was then scheduled and issues of additional funds owing to Mr Boyd were only uncovered at that time. Ms Harvey submits that Mr Boyd has incurred costs of some \$4000.00 including legal fees, time off work and travelling costs. She submits that had En'Zaq signed the consent memorandum the majority of the costs would not have been incurred.

Analysis

[6] There was one investigation meeting held in May 2004. It was approximately two hours duration and neither the applicant nor the respondent was represented by legal counsel. Mr Williden did attend for the company to provide information about the accounts. It was clear that the accounts for the company were not in a satisfactory state at the time that Mr Williden was instructed as the company's accountant. They did not assist in concluding what was owed to Mr Boyd for the period of his employment. There were issues with respect to whether two payments had been made to Mr Boyd which reduced the original claim of \$48,000.00. It was clear at the conclusion of the investigation meeting that further discussion and provision of information was necessary. Some direct discussion took place between the parties following the investigation meeting and there was a telephone conference with the Authority. There was no agreement however at the conclusion of that meeting that \$48,000.00 was owing to Mr Boyd.

[7] Mr Hollyer represented the company following the investigation meeting and whilst Mr Boyd generally represented himself Ms Harvey would occasionally correspond with the Authority.

[8] In or about late June 2004 the company signed the consent memorandum acknowledging that Mr Boyd was owed \$48,000.00. Mr Boyd wanted the Authority to investigate whether he was owed more than the \$48,000.00 on the basis of his own calculations and IRD records of payment which had been made to him. The Authority obtained, in or about October 2004, an independent accountants report and appraisal which it forwarded to the parties.

[9] I am of the view though that most of the expense and cost incurred by the company would have been leading up to June 2004 when the accounts were unravelled by Mr Williden to conclude that the \$48,000.00 was owed to Mr Boyd in accordance with the workings provided. I do not accept Mr Hollyer's submission therefore that none of the expenses would have been incurred by the company if Mr Boyd had not expanded his claim. The company was subsequently asked to provide some further documents and there was some correspondence about whether there should be payment to Mr Boyd before the Authority issued its determination in the sum of \$48,000.00. In any event no such payment was made to Mr Boyd.

Determination

[10] The respondent always acknowledged that it owed Mr Boyd wages in the vicinity of \$48,000.00. It was not however prepared to pay that sum to Mr Boyd before he lodged a statement of problem with the Authority or sign a consent memorandum until late June 2004. Even after it acknowledged that it owed Mr Boyd \$48,000.00 no payment was made to him of that amount prior to the issuing of a determination.

[11] I see no reason in this case to depart from the usual rule that costs follow the event. Mr Boyd was successful in obtaining a determination that he was owed \$48,000.00 by the respondent. I would in the ordinary course of events have made an award of costs to Mr Boyd.

[12] I do not intend to do so in this case because apart from a few occasions where Ms Harvey communicated with the Authority Mr Boyd represented himself in this matter. I was not provided with details of any actual expenditure Mr Boyd incurred for Ms Harvey's services. The general rule is that lay persons representing themselves cannot claim costs for their time and I do not depart from that rule in this case.

[13] I am of the view however that Mr Boyd should be entitled to recover his filing fee of \$70.00 and I so order.

Helen Doyle
Member of Employment Relations Authority