

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 110/09
5148717

BETWEEN SHARON VIRGINIA
BRYANT
Applicant

AND STEVE DAWSON
Respondent

Member of Authority: Helen Doyle

Determination: On basis of the affidavit of Sharon Bryant dated 11 June
2009 and telephone conferences 2 April 2009 and 21 July
2009

Determination: 22 July 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Ms Bryant says that she worked for Mr Dawson for a short period in Queenstown between 13 October 2008 and 7 November 2008 undertaking couriering on a florist and dry cleaning run and some store work.

[2] Ms Bryant says that she was not paid wages and left her position after Mr Dawson, when questioned about this, advised her that the reason she was not paid was that he had no money and could not pay her.

[3] Ms Bryant deposes in her affidavit that she is owed unpaid wages for 62.5 hours and she seeks reimbursement for calls made on her cellphone for reasons related to her employment with Mr Dawson. Ms Bryant confirmed that her hourly rate was \$15.00 and she was also not paid holiday pay.

[4] I am satisfied that Mr Dawson was served with Ms Bryant's statement of problem on 15 January 2009. Mr Dawson did not lodge and serve a statement in reply within the required timeframe of 14 days after receipt of the statement of problem.

[5] On 18 March 2009, a support officer from the Employment Relations Authority wrote to Mr Dawson advising him that the Authority wanted to hold a telephone conference with him and Ms Bryant to discuss the employment relationship problem. The telephone conference was organised for 2 April 2009 at 2.30pm. Although Mr Dawson had been asked in a letter from the support officer to provide a telephone number to the Authority so that he could be contacted and connected into the telephone conference, he failed to do so.

[6] The Authority duly proceeded with the telephone conference and talked to Ms Bryant about the nature of her claim. Arrangements were made for the Authority to conduct an investigation into the employment relationship problem in Queenstown on 19 May 2009.

[7] The Authority prepared a notice of direction setting out what had been discussed during the telephone conference together with an investigation meeting notice. They were forwarded for service on Mr Dawson to CourierPost, however he was unable to be served to the satisfaction of the Authority. The investigation meeting did not proceed.

[8] On 4 May 2009, a support officer was able to obtain a mobile phone number for Mr Dawson's partner. Contact was made between the support officer and Mr Dawson's partner who advised that no correspondence from the Authority had been received to date and provided a preferred address for sending correspondence to Mr Dawson.

[9] The Authority then asked Ms Bryant if she would provide an affidavit setting out the basis of her claim which could then result in the matter being dealt with on the basis of the affidavit rather than an investigation meeting.

[10] On 6 July 2009, the Authority received a sworn affidavit from Ms Bryant setting out the basis of her claim and attaching as an exhibit the relevant Telecom records.

[11] The Authority then set out in a written directions notice the steps that it had taken to that point of time. I am satisfied that that notice of direction and a copy of Ms Bryant's affidavit was served on Mr Dawson at his preferred address. Mr Dawson was advised in the notice that he should provide a telephone number at which he could be contacted for a conference on Tuesday, 21 July 2009 at 10.30am. He was

also asked to provide wage and time records and any information completed by Ms Bryant for IRD purposes by 17 July 2009. The Authority expressed a preliminary view in the notice of direction that the matter be dealt with on the basis of the affidavit from Ms Bryant, the telephone conference discussion that had taken place on 18 March 2009 and the statement of problem already before the Authority.

[12] Mr Dawson was also provided with the support officer's direct line in the event that he wished to talk with her. The only contact that Mr Dawson has made with the Authority is by way of a telephone message left on the support officer's answer phone on 21 July 2009.

[13] I have listened to the telephone message. Mr Dawson said he would be unable to attend the telephone conference with the Authority at 10.30am. In the message, Mr Dawson accepted that Ms Bryant was owed wages but he disputed that she should be reimbursed for any telephone calls made whilst employed by him. He said that Ms Bryant had been told that she was not to make calls herself and that several calls she made she simply hung up and I have taken from this message that he considered this wasteful. Mr Dawson also said that he, not Fastway, employed Ms Bryant and the proceedings should reflect that.

[14] The support officer made several other attempts to talk to Mr Dawson, including talking to Mr Dawson's partner, to encourage him to attend at the telephone conference. When the support officer contacted Ms Bryant for the telephone conference with the Authority, Mr Dawson was unavailable.

[15] I am of the view that the best way to resolve this employment relationship problem is to proceed to determine the matter on the basis of the documentation that I have, the affidavit provided by Ms Bryant, the statement of problem and the discussions during the telephone conference.

[16] Ms Bryant has attempted to talk to Mr Dawson on several occasions about the money she is owed but matters did not progress further as a result of that.

[17] Ms Bryant also asks for holiday pay which she is entitled to receive on her wages and reimbursement of the filing fee that she has had to pay in order to lodge her statement of problem. I note that Mr Dawson accepts he owes Ms Bryant wages and the only matters that I am aware of that are at issue, is the amount that Ms Bryant

claims for reimbursement for the telephone calls, and the issue from Mr Dawson that he should be the only named respondent.

Determination

[18] Ms Bryant's claim is against Mr Dawson personally. Mr Dawson accepts that he employed Ms Bryant. The two business entities that she referred to in the statement of problem, FastPost and C.B.S. Queenstown are not limited liability companies.

[19] Ms Bryant seeks an amount for telephone calls that she says she made during her employment. She has attached to her affidavit as an exhibit the Telecom accounts for the relevant period and has highlighted the calls that she says she should be reimbursed for. Ms Bryant said during the telephone conference on 21 July that she was required to make the calls because the cellphone that she was promised by Mr Dawson was never provided.

[20] I have considered Mr Dawson's telephone message to the extent that he says Ms Bryant was told not to make calls on her cellphone. Given the nature of Ms Bryant's employment, couriering on a florist and dry cleaning run, then I would have considered it likely that she would have made calls on business related matters whilst undertaking her work. The calls made as the record from Telecom supports were therefore for the benefit of Mr Dawson's business. In those circumstances I consider reimbursement to be fair and reasonable. I do note that six of the calls that Ms Bryant has highlighted took place before 13 October 2008 and I have not included them in the amount that I find Mr Dawson should reimburse Ms Bryant for.

Lost wages

[21] I find that Ms Bryant worked for Mr Dawson for 62.5 hours between 13 October 2008 and 7 November 2008. There was an agreed hourly rate of \$15.00. Mr Dawson owes Ms Bryant the sum of \$937.50 gross being unpaid wages.

[22] I order Mr Dawson to pay to Ms Bryant the sum of \$937.50 gross being unpaid wages.

Holiday pay

[23] Ms Bryant is entitled to annual holiday pay under the Holidays Act 2003. As the employment ended within a 12 month period, holiday pay is calculated on the basis of 8% of Ms Bryant's gross earnings since the commencement of her employment.

[24] Ms Bryant was not paid anything at all for the period that she was employed but I have found she should have received \$937.50 gross. On that basis, I have calculated holiday pay to be $\$937.50 \times 8\%$ to arrive at a holiday pay figure owing of \$75 gross.

[25] Mr Dawson owes Ms Bryant the sum of \$75 gross being holiday pay.

Telephone calls

[26] I have found that Ms Bryant was entitled to be reimbursed for calls made by her that related to her undertaking work for Mr Dawson between 13 October 2008 and 7 November 2008. Having regard to the Telecom phone records that were annexed to Ms Bryant's affidavit, I have calculated the sum for which she is to be reimbursed as \$33.43.

[27] I order Mr Dawson to pay to Ms Bryant the sum of \$33.43 for reimbursement of calls made by her while she was employed and for that purpose.

Costs

[28] I find that Ms Bryant is entitled to be reimbursed for the filing fee in the sum of \$70.

[29] I order Mr Dawson to pay to Ms Bryant the sum of \$70 being the filing fee.

Helen Doyle
Member of the Employment Relations Authority