

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
OTAUTAHI ROHE**

[2023] NZERA 601
3226979

BETWEEN	CANTERBURY WATERBLAST LIMITED Applicant
AND	KEIRAN STEWART Respondent

Member of Authority:	David G Beck
Representatives:	Michael Diver, company director, for the Applicant No appearance for the Respondent
Investigation Meeting:	3 October 2023 at Christchurch
Submissions Received:	3 October from the Applicant and further documentation supplied on 9 and 13 October 2023 None from the Respondent
Date of Determination:	16 October 2023

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Canterbury Waterblast Ltd (CWL) is a well-established, small family business that utilises water blasting equipment to clear blocked drains, liquid waste removal, hydro excavation and provides water blasting services in commercial and residential settings. They engaged Kieran Stewart for a very brief period of employment (12 days) in late 2022 as a truck driver-water blaster. The employment commenced on 12 December 2022 and was on a

full-time basis for a minimum of 32 hours per week. The parties executed an individual employment agreement on the same day. Mr Stewart completed a Dangerous Goods and Class 4 truck driving course shortly after commencing work, on 23 December, at CWL's expense.

[2] CWL closed for the Christmas holiday break but Mr Stewart was rostered to work one day during the break and was paid for this and statutory holidays in advance. Mr Stewart did not work the day allocated and on 9 January 2023, he did not turn up for work. When texted he initially said he had a sore throat and the next day he texted to say he had contracted Covid-19. Mr Stewart then went 'incommunicado' with CWL making various fruitless attempts to contact him. After observing him driving around in his former employer's truck in late January, CWL's managing director Michael Diver, sent a text on 26 January indicating: "We take it you are not coming back. Can we get the phone and uniform back please." Mr Stewart did not respond, so CWL on 2 February, by email, invoiced Mr Stewart for the costs of his course, the uniform he retained and company phone. Mr Stewart responded by email of 19 February, saying he would return the phone and uniform but he disputed that he was obliged to pay his course costs.

[3] Subsequent correspondence up to 27 March, including CWL engaging a debt collecting agency, did not resolve the disputed debt and Mr Stewart did not return the phone or uniform and became abusive in email correspondence.

[4] CWL is claiming the reimbursement of the courses costs as per a bonding provision in Mr Stewart's employment agreement, reimbursement of the costs of the phone and uniform and repayment of wages paid in advance that they say Mr Stewart did not work for. Mr Diver provided documentation to support the claims made by CWL.

[5] Mr Stewart did not engage in the Authority proceedings so I did not hear his perspective of the situation but I am satisfied he has been served with CWL's statement of problem and was aware of the disputed matters.

The Authority's investigation

[6] Pursuant to s 174E of the Act, I make findings of fact and law and outline conclusions to resolve the disputed issues and make orders but I do not record all evidence. I have carefully considered the helpful submissions and information provided and refer to these where appropriate and relevant.

[7] At the investigation meeting I heard evidence from Michael Diver who spoke to a written statement previously provided. Mr Diver says he was annoyed that Mr Stewart had abandoned his brief period of employment with no explanation or notice given after CWL incurred the expense of upgrading his driving qualifications and paid him in advance during the Christmas break. In addition, Mr Stewart has retained CWL property. Mr Diver also provided the Authority with documentary evidence of expenses CWL incurred in employing Mr Stewart.

Issues

[8] The Authority must consider whether:

- (a) the training bond is enforceable;
- (b) Mr Stewart had any lawful justification for refusing to repay his training costs, retaining pay for no work and not reimbursing or returning, CWL's property in his possession; and
- (c) CWL can recover identified costs incurred and wages paid to Mr Stewart?

The bond for training costs – is Mr Stewart bound by it?

[9] Mr Stewart signed a comprehensive CWL individual employment agreement on 12 December 2022 that referenced to a company work rules document and he separately signed a declaration that he had read and understood the rules and was bound by them, on 11 December 2022. Of relevance to these proceedings is:

(a) The Employment Agreement

Section 4 “Position, Duties and Employee Obligations” – cl 4.5.12 In the event the Employee in gaining further qualifications or registration the Employee agrees to be bonded by the Employer for not less than two years from the date of payment of that support, or the Employer can claim back costs on a pro rata basis should the Employee leave before the completion of the two-year bond period. The Employee agrees any such reimbursement to be made can be deducted from any final pay or holiday pay owing.

(b) Company Work Rules

Employer Supplied Work Gear

CI 25.8 Where the equipment provided by the Employer has been removed from the workplace by the Employee, the Employer will be entitled to deduct the equipment’s replacement cost from the Employee’s wages if it is not returned when required by the Employer.

(c) Licences, Upskilling, Courses and Seminars

CI 26.3 Due to courses being an individual qualification, any course costs and/or registration costs that the Employer financially supports the Employee agrees to be bonded by the Employer for not less than two years from the date to which the qualification or registration has been completed. If the Employee resigns or is terminated prior to the bond period, the Employer can claim costs on a pro rata basis....

(d) Obligations Upon Termination or Resignation

CI 37.7 Upon termination of his/her employment from the Employer for whatever reason, the Employee shall:

- Immediately return any property (including but not limited to, items of uniform, mobile phone and charger, security keys, vehicle keys and tool, fuel cards, ID Card) to the Employer in good condition, fair wear and tear excepted.

Assessment

[10] As Mr Stewart did not participate in my investigation the only evidence, I have of his stance on the matters in dispute was text and email exchanges. The content of such displayed an inexplicably belligerent and finally abusive attitude, in response to requests to meet his obligations to CWL. I find that the terms of the employment agreement and work rules cited above, are clear, binding and enforceable. I also note in abandoning his employment without explanation Mr Stewart breached a further term of his employment agreement by not providing notice of one week.

The payments in advance – are they recoverable?

[11] CWL paid Mr Stewart in advance on 1 January 2023 for a day he was scheduled to work and two statutory holidays (Christmas Day and Boxing Day) and then on 8 January 2023 he was paid a further two statutory holidays (New Years Day and the day after). However, after 23 December when he attended his driving course, Mr Stewart did not return to work. It was not until 9 January 2023 after CWL contacted him did he indicate he was unable to attend work (initially saying he had tonsillitis then Covid the next day). Thereafter, Mr Stewart did not return to work and was not in contact with CWL. Mr Stewart did not give notice and he abandoned his employment. Mr Stewart's employment agreement that he breached required him to give notice of one week.

Assessment

[12] While there is no qualifying period for being paid the four statutory holidays and Mr Stewart was entitled to be paid for them, he did not work a further day allocated to him. Given this amount's to five days' pay in dispute, the Authority considers it equitable to direct Mr Stewart to pay CWL five days' pay for his abandonment and failure to work out an agreed notice period (effectively breaching his employment agreement).

[13] The five days' notice not worked is to be calculated as the minimum agreed hours of 32 hours at \$27 per hour (\$864).

Orders

[14] I order that Keiran Stewart must pay Canterbury Waterblast Limited the following amounts:

- (i) Five days remuneration for breaching a requirement to give one week's notice, in the amount of \$864.
- (ii) \$253.26 as cost of phone replacement
- (iii) \$1,035 as cost of Class 4 licence/DG Endorsement course costs
- (iv) \$607.29 uniform costs.

Costs

[15] Costs are not at issue as the applicant company was self-represented but I do order that Keiran Stewart is to reimburse Canterbury Waterblast Limited their Authority application fee of \$71.55.

David G Beck
Member of the Employment Relations Authority