

The facts

[4] Mr Cline had a 50/50 share milking arrangement with Mr Johnson. Mr Cline owned the land and Mr Johnson owned the herd. Mr Johnson employed a worker under the share milking arrangement. That employment arrangement between Mr Johnson and the worker ended on or about 16 December 2010. Mr Cline offered to help Mr Johnson in the circumstances at the time, and he says they agreed with a hand shake. Mr Cline's role was to work milking the cows and to undertake general farm hand duties for the same pay as the other employee at \$450 per week plus tax to be paid by Mr Johnson. Mr Cline understood that Mr Johnson was the employer personally. There was no disclosure made at the time by Mr Johnson that any other legal entity was the employer.

[5] I accept Mr Cline's evidence. I hold that he understood that Mr Johnson was his employer in the absence of any disclosure of any other arrangement, and that they agreed he would be paid \$450 per week plus tax.

[6] I accept that Mr Cline is owed a total of \$8,550 plus tax for wages he earned to help Mr Johnson from 16 December 2010 until 29 April 2011 (I will refer to this sum as the net sum). Mr Cline provided details of the dates and description of the work. I am satisfied that Mr Cline has attempted to get the wages from Mr Johnson, without any success. I accept Mr Cline's explanation as to why he waited for his wages and decided to claim a lump sum at the end.

Determination

[7] Nathan Johnson failed to provide a statement in reply to the statement of problem lodged in the Authority by Mr Cline. I was satisfied that Mr Johnson had been served with the claim. I considered mediation as a way to resolve the employment relationship problem, but decided it would not have been constructive to resolve it because Mr Johnson had not voluntarily taken up an invitation made by the applicant to go to mediation, and Mr Johnson failed to provide a statement in reply, despite him being contacted by a Authority support officer on the telephone and given advice of the timeframes and what to do. He failed to fulfil a commitment to lodge a statement in reply. Mr Johnson failed to attend the Authority's investigation meeting

and upon being contacted on the day of the investigation meeting by the Authority's support officer he said that he had no intention of turning up. Mr Johnson had been served with the notice of investigation meeting. This was supported by the Authority's support officer's telephone contact with Mr Johnson on the morning of the investigation meeting and asking him as to his whereabouts. Mr Johnson's reply was that he was not turning up. I also relied on the track and trace details on the file. Mr Johnson did not provide any good cause for failing to attend. I continued as if he had duly attended or been represented (clause 12 of Schedule 2 of the Employment Relations Act). Mr Johnson has not cooperated with the Authority in the investigation of the employment relationship problem. His failure to provide a statement in reply and failure to attend has obstructed the investigation and failed to act in good faith during the investigation (see s 181 of the Employment Relations Act).

[8] I hold that Mr Nathan Johnson employed Mr Kelvin Cline from 16 December 2010 until 29 April 2011. I hold that Mr Johnson owes Mr Cline a total of \$8,550 net wages for working for Mr Johnson. In addition Mr Johnson has put Mr Cline to the expense of a filing fee in the Authority to lodge the employment relationship problem to get the money he is owed. This was \$71.56.

[9] I have accepted Mr Cline's sworn evidence given during the Authority's investigation meeting. I accept that Mr Cline has been a reliable and honest witness because Mr Johnson failed to attend the Authority's investigation meeting, and failed to reply with a statement in reply, and failed to seek any leave to reply and respond out of time. Leave would not have been unreasonably declined, even at the least if Mr Johnson had turned up on the day he would have been heard. Further, Mr Cline provided details of his work with dates and what he did. He also was clear and unambiguous and unequivocal about the work arrangement and his understanding of who his employer was.

Comment

[10] I note that this may be a matter where Mr Johnson continues to try and avoid his responsibility. This order can be enforced with the order and a certificate of determination filed in the District Court (s 141 of the Employment Relations Act).

Orders of the Authority

[11] Nathan Johnson is to pay Kelvin Cline a total of \$8,550 net wages and the \$71.56 filing fee.

P R Stapp
Member of the Employment Relations Authority