

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2016] NZERA Wellington 141
5635276

BETWEEN MORGAN CONNEELY
Applicant

AND MADMACMAN LIMITED
Respondent

Member of Authority: M B Loftus

Representatives: Applicant in person
Alexander Jeschkus, for Respondent

Investigation Meeting: 14 November 2016 at Napier

Submissions Received: At the investigation meeting

Determination: 24 November 2016

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Morgan Conneely, seeks payment of wages he has yet to receive. He also seeks compensation under s.123(1)(c)(i) of the Employment Relations Act 2000 (the Act) for *undue extreme financial stress, anxiety and insult and injury to feelings and emotional harm* caused by his employer's failure to pay those wages.

[2] The respondent, Madmacman Limited (Madmacman), accepts wages are due but disputes the amount.

Citation of respondent

[3] The application, as originally lodged, cited the respondent as Alexander Jeschkus. Mr Jeschkus is a director and shareholder of Madmacman Limited. The citation was discussed during a telephone conference on 13 September 2016. The

parties agreed Madmacman was the employer and the citation should change. The change was confirmed at the commencement of the investigation meeting.

[4] Comment must also be made that while Mr Jeschkus participated in the telephone conference and attended the investigation meeting Madmacman's approach to the claim has been far from helpful and not, in my view, in good faith.

Background

[5] Mr Conneely commenced at Madmacman on 14 September 2015. There is no written employment agreement though Mr Conneely says he requested one a number of times. He was paid the minimum adult wage and while Madmacman once referred to him as a *casual* the parties agree he was engaged to work 40 hours each and every week. The employment was, I find, permanent full time.

[6] Unfortunately problems arose with Madmacman's ability to pay in February 2016 and it became the exception, as opposed to the norm, for Mr Conneely to receive his pay thereafter.

[7] Things came to a head on 1 June 2016. That morning Mr Conneely sent Mr Jeschkus a text message which read:

Hey man unfortunately I'm not able to come into work today as I finally run out of money for petrol etc and my parents refuse to loan me anything anymore. These are the weeks I'm waiting on and I'll be able to come back to work once I'm paid for them as I have bills and debts to pay. Hopefully this will give you guys some time to sort it all out, just trying to find the best way to approach this!

[8] There then followed a list of fifteen consecutive weeks for which Mr Conneely claimed he had not been paid. The claim has since been amended to ten weeks' outstanding wages with two of the payments being made in July.

[9] Madmacman disputes there are ten unpaid weeks and states the number is eight. It attributes its failure to pay to financial difficulties and says it tried to do what it could, hence the July payments.

Determination

[10] As already said Mr Conneely seeks the payment of outstanding wages and compensation pursuant to s 123(1)(c)(i) of the Act. Mr Conneely also sought a

reference but was advised in the telephone conference that is not something the Authority will order.

[11] The wage claim comes in two parts – wages outstanding for the period he actually worked and those he might have received had he continued working after 1 June 2016.

[12] With respect to the period up till Mr Conneely ceased coming to work I note Section 132(2) of the Act. Essentially it provides where there is evidence the employer failed to maintain a wages and time record as required by s 130 I may accept the claim as valid unless the respondent can prove otherwise.

[13] There is no wage and time record and while Mr Jeschkus maintains the claim is overstated he produced no evidence to support that contention. I therefore accept Mr Conneely's claim he is owed wages for ten weeks during which he worked.

[14] Turning to the claim for wages from the date upon which Mr Conneely ceased working until the date of hearing. At its simplest an employment relationship is an exchange of labour for remuneration. Here neither obligation was being met after 1 June. Mr Conneely was no longer providing labour and while Madmacman made two wage payments these related to an obligation existing as at 1 June and did not the period after that date.

[15] Given the circumstances I conclude the employment relationship had come to an end as at 1 June and find further confirmation in the fact Mr Conneely did not return after he received some payments and could again afford petrol to do so as his text ([7] above) indicated he might do. The way to challenge a discontinued employment relationship is via a personal grievance where the wages might become payable under s 123(1)(b). An applicant cannot simply seek wage arrears for time not worked.

[16] This raises the fact Mr Conneely did claim compensation under s 123(1)(c)(i) which implies the possible existence of a grievance.

[17] While the amount of information required to raise a personal grievance is low some level of particularity is required.¹ About this the Court has, in more detail, said:

¹ [Dickson v Unilever New Zealand Ltd](#) [2009] NZEmpC 35 at [25] and [26]

It is the notion of the employee wanting the employer to address the grievance that means that it should be specified sufficiently to enable the employer to address it. So it is insufficient, and therefore not a raising of the grievance, for an employee to advise an employer that the employee simply considers that he or she has a personal grievance or even by specifying the statutory type of the personal grievance as, for example, unjustified disadvantage in employment ... What is important is that the employer is made aware sufficiently of the grievance to be able to respond as the legislative scheme mandates.²

[18] While parts of the *Creedy* decision were later overturned on appeal these comments were not.

[19] Here there is nothing that vaguely resembles the raising of a grievance. Indeed the possibility Mr Conneely felt he may have had a grievance was first aired when he made the claim for compensation under s 123 in his statement of problem. That is inadequate given there is nothing else – not even advise he may have though he had a grievance of an unspecified nature.

[20] I conclude the fact there is no grievance means Mr Conneely is unable to claim either compensation or wages lost since 1 June.

[21] Finally there are Mr Conneely's costs and in this respect he seeks *reimbursement of any and all costs*. This claim faces two issues. The first is other than the Authority's filing fee of \$71.56 there is no evidence as to what those costs are. Secondly Mr Conneely was self-represented so reimbursable costs such as those of profession representation are minimal. Reimbursement of the filing fee is a given and that shall be ordered.

Conclusion and costs

[22] For the reasons above I conclude Mr Conneely is owed ten weeks wages being the period he worked and was not paid.

[23] As a result Madmacman Limited is ordered to pay Mr Conneely the sum of \$6,072.00 (six thousand and seventy two dollars) gross for unpaid wages along with a further \$71.56 (seventy one dollars and fifty six cents) as a contribution towards Mr Conneely's costs.

² [Creedy v Commissioner of Police \[2006\] ERNZ 517](#) (EmpC)

[24] I note Madmacman suggested that while its financial situation was improving it still faced significant difficulties. That said there was no evidence tendered in support of those assertions and no application for instalment payments under s 131(1A) so I order the above payments be made, in full, no later than 4.00pm on Friday 9 December 2016.

[25] Lastly I caution Mr Jeschkus that should Madmacman fail to make the payments he may find himself personally liable pursuant to ss 142W and 142Y of the Act.

M B Loftus
Member of the Employment Relations Authority