

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Michael Delshay Taranaki Conroy (Applicant)

**AND** Hillis Shearing Limited (Respondent)

**REPRESENTATIVES** Mary-Jane Thomas, Counsel for Applicant  
Craig Smith, Counsel for Respondent

**MEMBER OF AUTHORITY** Paul Montgomery

**SUBMISSIONS RECEIVED** 26 October 2004  
3 November 2004

**DATE OF DETERMINATION** 9 February 2005

DETERMINATION OF THE AUTHORITY ON LOST REMUNERATION AND COSTS

[1] In a determination issued on 9 September 2004 I invited the parties to calculate the wages lost to the applicant over the 13 weeks following what I determined was his unjustified dismissal. I also invited the parties to resolve the matter of costs between them.

[2] The parties have been unable to resolve either of these issues and counsel have made submissions to assist the Authority. I will deal with the remuneration lost first.

***Loss of remuneration***

[3] In the determination I clearly stated that I preferred, on the balance of probabilities, that what the respondent offered the applicant was not full time employment but work on every day on which the gang worked. I refer the parties to paragraph 5 of the original determination. I did not then, and do not now, accept that Mr Conroy was offered and accepted ten and a half months work on a permanent full time basis. The offer was clearly based on a shed by shed arrangement.

[4] I disagree with the submission of counsel for the applicant that *a permanent fulltime position* is equivalent to *he would work when the gangs worked*.

[5] On behalf of the respondent, counsel has submitted that in the period 19 March 2003 to 18 June 2003 pressers worked a total 222.75 hours over 29 days. Further, it is submitted that the applicant's hours of work would have been no greater than those worked by the pressers employed to work. That is simply logical.

[6] Counsel also submits that as 18.5 hours of the pressing work was undertaken on the McKenzie property on which the applicant had declined to work, those hours would not have been available to the applicant at this own election.

[7] Taking the 222.75 hours and deducting the 18.5 hours on the McKenzie property, the result is 204.25 hours which could have been available to the applicant in the 13 week period following his dismissal.

[8] I need to be clear that I do not accept the respondent's submission that *as two pressers were employed, the Applicant's actual working hours would in fact have been half the total available hours or 111 hours @ \$18 per hour*. I remind the respondent that while rejecting the proposition that Mr Hillis offered full time permanent employment, the Authority accepted that he offered the applicant work as a presser on every day the gang worked.

[9] I direct the respondent to pay the applicant the sum of \$3,676.50 which when reduced by the 15% deduction for Mr Conroy's contributory conduct comes to \$3,125.03 gross.

### **Costs**

[10] In her submission, counsel for the applicant set out the actual costs incurred by her client in pursuing his largely successful claim. These costs were \$3,870.47. Ms Thomas sought a contribution of \$3,000.00 towards her client's costs.

[11] Mr Smith, on behalf of the respondent, submits that given the offer of reinstatement made to the applicant, an award of 50% of his costs would be equitable. Mr Smith also invited me to consider the applicant's contribution *to this whole saga* in a costs setting.

[12] Having weighed the submission with that of the applicant's counsel, namely, *that the applicant's contribution has already been taken into account and he should not be penalised a second time*, I favour the proposition put by Ms Thomas solely on the basis that the respondent initially rejected the reinstatement sought by the applicant and thereby prolonged the resolution of the employment relationship problem.

[13] Taking the factors into account in the context of overall fairness to the parties, I order the respondent to contribute the sum of \$2,650.00 to the applicant's reasonably incurred costs.

### **Terms of payment**

[14] The Authority is concerned at the advice from the applicant's counsel *that the Respondent has yet to make any payment to the Applicant (even in relation to the award for compensation which is not at issue)*. Ms Thomas submits that should the applicant have to accept a time payment as proposed at the rate of \$1,000.00 per month, his costs should be met in full.

[15] I address the respondent's proposal from a different perspective having become aware of its apparent financial position only through Mr Smith's submission.

[16] As I have stated above, the parties were unable to reach resolution on the issues of lost remuneration and costs. However the issue of compensation has not been contested yet remains unpaid. The inability of the parties to reach accord on these issues does not provide a stay for the payment of compensation.

[17] I accede to Mr Smith's request for a monthly payment schedule but direct as follows:

Payments to the applicant are to be made at the rate of \$1,000.00 per month in addition to which interest calculated at the rate of 6.75 per cent per annum are to be added to each payment. Unless otherwise agreed with the applicant, payments are to be made by direct credit to an account designated by Mr Conroy and are to be made on or before the first day of each calendar month. The first payment is due on 1 March 2005.

Paul Montgomery  
Member of Employment Relations Authority