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Cullinane v H & M Sawmilling Limited [2011] NZERA 128; [2011] NZERA Christchurch 26 (11 February 2011)

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Cullinane v H & M Sawmilling Limited [2011] NZERA 128 (11 February 2011); [2011] NZERA Christchurch 26

Last Updated: 20 June 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2011] NZERA Christchurch 26

5321968

BETWEEN TIMOTHY BERNARD CULLINANE

Applicant

AND H & M SAWMILLING LIMITED

Respondents

Member of the Authority: Philip Cheyne

Representatives: Timothy Cullinane, the Applicant in person

No appearance for the Respondent

Investigation Meeting: 11 February 2011 at Christchurch

Determination: 11 February 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Timothy Cullinane worked for H & M Sawmilling Limited for about 13 weeks but says he was only paid wages for 5 weeks. He is claiming arrears of wages, damages and reimbursement of company expenses incurred by him.

[2] The company has not responded so its position is unknown. That mirrors the company's failure to provide a substantive response to Mr Cullinane when he attempted to resolve this problem before initiating these proceedings.

No appearance by the respondent

[3] The statement of problem was sent by courier post to 16 Dents Road Kanieri which is the respondent company's registered office and address for service. No response was received.

[4] At my direction a date was set for a phone conference to progress this matter and the respondent was advised by letter of that direction. The letter stated that the Authority would attempt to contact the respondent at the appointed time on the phone number given to us by Mr Cullinane unless advised of an alternative phone number. There was no response to this letter. On 2 December 2010 when the Authority rang the mobile number provided by Mr Cullinane there was no response. The conference proceeded with Mr Cullinane and I set a date for an investigation meeting.

[5] I am satisfied that the notice of meeting was served on the company at its address for service.

[6] There was no appearance for the company this morning. In the absence of any good reason for the non-appearance, I decided to proceed.

Arrears & Damages

[7] I accept Mr Cullinane's evidence that he worked at least 40 hours per week for 13 weeks finishing on or about 9 September 2010 because of the company's failure to pay him.

[8] The agreed rate of pay was \$18.00 per hour. Mr Cullinane should have been paid \$9,360.00 (gross) for this work. He was also entitled to holiday pay at 8%, a further \$748.80 giving a total of \$10,108.80 (gross). Mr Cullinane says his tax rate was 19.54% so he should have received \$8,133.54 (net).

[9] Mr Cullinane's bank records show that he received \$2,818.38 (net). He is therefore owed \$5,315.16 (net) in arrears of wages and holiday pay.

[10] Mr Cullinane also seeks interest on the arrears and reimbursement of cash advance fees incurred by him because he was not paid his wages.

[11] I accept that Mr Cullinane incurred fees of \$8.00 because of the company's breaches of its obligation to pay him wages and I will order the company to pay damages in that amount.

Reimbursements

[12] I accept Mr Cullinane's evidence that he paid \$99.33 for fuel for the respondent's machines. The company is to reimburse Mr Cullinane for that expenditure.

Orders

[13] H & M Sawmilling Limited is to pay Mr Cullinane arrears of wages and holiday pay of \$5,315.16 (net) without deduction.

[14] H & M Sawmilling Limited is to pay Mr Cullinane damages of \$8.00 without deduction.

[15] H & M Sawmilling Limited is to reimburse Mr Cullinane the sum of \$99.33 without deduction.

[16] H & M Sawmilling Limited is to pay Mr Cullinane interest on these three amounts at the rate of 5% per annum starting on 9 September 2010 until the sums are paid in full.

[17] H & M Sawmilling Limited is to reimburse Mr Cullinane the sum of \$70.00 as his lodgement fee for these proceedings.

Philip Cheyne
Member of the Employment Relations Authority

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