

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Terence Joseph Doran (Applicant)
AND Temarama 2004 Limited (Respondent)
REPRESENTATIVES Applicant in person
No appearance for the Respondent
MEMBER OF AUTHORITY Marija Urlich
INVESTIGATION MEETING 28 June 2006
DATE OF DETERMINATION 29 June 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Terence Doran was made redundant from his position with Temarama 2004 Limited. His employment ended on 5 May 2006. Mr Doran says monies due and owing to him remain outstanding and he seeks orders for the payment of those sums to be made in his favour.

[2] Mr Doran filed his statement of problem with the Authority on 30 May 2006. He asked that the Authority deal urgently with his application.

[3] On the day of filing a copy of the statement of problem was couriered to the respondent's registered offices along with copies of a statement of reply for filing and advice that Mr Doran had sought urgency. The respondent has not filed a statement in reply.

[4] On 31 May a representative of the respondent advised the support officer assigned to this application that the parties were in the process of resolving the employment relationship problem. On 9 June the applicant advised the Authority that, despite the parties having reached agreement on the amount of outstanding monies, the sums had not been received by the agreed date. The Authority then attempted to set up a telephone conference call at a time convenient to the parties. The respondent did not return the Authority's messages and a conference call was unable to be convened. Notice that an investigation meeting would be held today was issued on 14 June 2006. I am satisfied that the respondent was duly served with this notice at its registered address for service.

[5] The respondent did not attend the scheduled investigation meeting and did not apply for an adjournment. I record that the investigation meeting started 20 minutes after the scheduled time to accommodate any possible lateness on the part of the respondent.

Issues

(i) redundancy compensation

[6] The applicant and his wife, Angela Doran, gave evidence at the investigation meeting.

[7] Mr Doran was made redundant from his position with the respondent effective 5 May

2006. He does not dispute the genuineness of his redundancy.

[8] Clause 15 of Mr Doran's written employment agreement provides that he will received 2 weeks notice of redundancy and a maximum of 20 weeks redundancy compensation calculated on his length of service. I am satisfied that the following payments under clause 15 of the written employment agreement remain outstanding:

- (i) one weeks notice pursuant to clause 15.2.1 of the written employment agreement; and
- (ii) five weeks and four days wages pursuant to clause 15.2.2 of the written employment agreement.

[9] Temarama 2004 Limited is ordered to pay Terence Doran a sum equivalent to one week's notice, being \$943.91 (gross), pursuant to clause 15.2.1 of the written employment agreement.

[10] Temarama 2004 Limited is ordered to pay Terence Doran a sum equivalent to 5 weeks and four days pay, being \$5513.46 (gross), pursuant to clause 15.2.1 of the written employment agreement.

(ii) wage arrears

[11] Following a period of sick leave earlier this year, Duncan McRobie, a director of the respondent, and Mr Doran's boss, asked Mr Doran to return to work to perform light duties. Mr Doran accepted this request and worked two full weeks performing light duties as directed by Mr McRobie. Wages for that fortnight period were due on 16 February 2006. Mr Doran was not paid these wages. Mrs Doran emailed Mr McRobie the following day seeking payment of the outstanding wages. These wages remain outstanding.

[12] I am satisfied that Mr Doran is owed two weeks wages, at the usual rate, from 16 February 2006, that demand has been made for the payment of those wages and that the wages remain outstanding. The respondent directed the duties to be performed, Mr Doran performed those duties and there was no agreement that the work would be paid at a lesser rate than Mr Doran usually received.

[13] Temarama 2004 Limited is ordered to pay to Terence Doran two weeks arrears of wages at the sum of \$1887.81 (gross).

(iii) expenses

[14] Clause 4.3 of the written employment agreement provides that Mr Doran will be reimbursed for vehicle expenses incurred during the course of his duties. I am satisfied that Mr Doran has provided the respondent with receipts to substantiate his reimbursement claim and has made demand on the respondent for the sum sought.

[15] Temarama 2004 Limited is ordered to reimburse Terence Doran work related vehicle expenses to the sum of \$524.66.

(iv) holiday pay

[16] I am satisfied that Mr Doran has not received holiday pay due and owing at the date of termination of his employment.

[17] Temarama 2004 Limited is ordered to pay Mr Doran \$1510.25 (gross), a sum equivalent to 8 days holiday pay.

(v) interest

[18] Mr Doran seeks interest calculated on the above sums from the date they became due

and owing. I am satisfied that the sums were due and owing on the respective dates, that Mr Doran has been unlawfully deprived of these sums and that it is proper that interest be calculated on those sums from those dates until payment.

[19] In making this order I record that Mr Doran received a cheque for \$2000 from Temarama 2004 Limited on 21 June 2006 in part payment of the outstanding sums. Any interest calculation should factor in this payment.

[20] Temarama 2004 Limited is ordered to pay to Terence Doran interest on the sum of \$1887.81 (gross) at the rate of 9% per annum from 17 February 2006 until the date of payment.

[21] Temarama 2004 Limited is ordered to pay to Terence Doran interest on the total gross sum of \$8492.28 (gross) at the rate of 9% per annum from 6 May 2006 until the date of payment.

(vi) costs

[22] Mr Doran seeks to be reimbursed for the filing fee incurred in lodging this application with the Authority.

[23] Temarama 2004 Limited is ordered to reimburse Terence Doran a sum equivalent to the Authority filing fee being \$70.

Marija Urlich
Member of Employment Relations Authority