

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 83/09
5103592

BETWEEN STEVEN REECE DOUGLAS
 Applicant

AND SOUTH ISLAND DAIRIES
 LTD
 Respondent

Member of Authority: Paul Montgomery

Representatives: Barbara Douglas, Advocate for Applicant
 Grant Walker, Counsel for Respondent

Investigation Meeting: On the papers

Submissions received: None received from Applicant
 20 April 2009 from Respondent

Determination: 16 June 2009

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This matter arises from the allegation the applicant, Steven Douglas, makes that he was approached by Mr Norris, a director of the respondent, to undertake part time tractor driving on Coldstream Downs Farm to free other workers for other tasks. The applicant says the arrangement was he would receive payment at the rate of \$12 per hour plus holiday pay.

[2] Steven says in his statement of problem he began working for the respondent on 24 August 2007. Further, he says he did not hand in his timesheets fortnightly but handed *all of them* in on 27 September 2007 (*including the hours my father had told me to work for the 27th and 28th September 2007*).

[3] Steven says he expected his wages before his parents, who were managing the property, took personal grievance proceedings against the respondent. The expected wages failed to arrive and Steven has lodged his claim with the Authority.

[4] The respondent's position is it never, through Mr Norris or any other authorised party, engaged Steven to undertake any work on behalf of the respondent. Through its advocate the respondent has applied to have the matter struck out and has sought a security for costs.

[5] There is no correspondence from the respondent authorising the work and agreeing to the rate of payment let alone an individual employment agreement. This lack of evidence to support the applicant's position is a major difficulty. On the statements provided from dairy workers from overseas who have now returned to their homeland, I am satisfied the work was done. The difficulty is as I have said, Steven's inability to point to any contractual arrangement with Mr Norris.

The procedure adopted by the Authority

[6] Faced with a *prima facie* claim the Authority considered the statement in reply. It initiated a telephone conference which appeared promising until the link to Mrs Douglas's telephone was lost.

[7] In a second teleconference I explained the difficulties facing the applicant. While not disputing Steven had done the work, I made it clear a contractual basis needed to be established with the respondent before a possible finding that Steven was owed the sum claimed. I also made Mrs Douglas aware that in the event Steven's claim was not made out, Steven faced the possibility of costs.

[8] Since that time, in spite of the Support Officer's advice to Mrs Douglas she needed to respond to the respondent's application for strike out and costs and provide additional information, no contact has been received at the Authority.

[9] In these circumstances where the Authority has provided Mrs Douglas the opportunity respond and none has been received, I am satisfied the applicant has been given the opportunity to contest the position taken by the respondent.

Determination

[10] Given the applicant's failure to pursue the claim against the respondent and, in particular, his failure to provide any substantive evidence of an employment agreement and relationship, the Authority will cease its investigation on this matter.

Costs

[11] The Authority, while acknowledging the respondent has incurred costs in defending the applicant's claim, it is not prepared to provide the respondent with security for costs in respect of this application. Costs are to lie where they fall.

Paul Montgomery
Member of the Employment Relations Authority