

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

Determination Number: WA 101/07  
File Number: 5084186

BETWEEN Michael Epplett  
(Applicant)

AND Brett Emerson t/a Emerson Distribution  
(Respondent)

Member of Authority: P R Stapp

Representatives: Applicant in Person  
No Appearance for the Respondent

Investigation Meeting: 17 July 2007 at Napier

Determination: 23 July 2007

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Michael Epplett has claimed unpaid wages and holiday pay from his employer Brett Emerson trading as Emerson Distribution.

**Mr Emerson's Non Appearance**

[2] Mr Emerson did not appear and was not represented at the Authority's investigation meeting. He was put on proper notice of the statement of problem filed by the Applicant and the notice of investigation meeting. I was satisfied Mr Emerson was served with the relevant documents. Mr Emerson was given an opportunity to file a statement in reply and provide his reasons for not replying or responding in time. He did not do this. He was requested to attend mediation services provided by the Department of Labour. He was requested to provide a wage time and holiday record. He did not provide the wage time and holiday records as requested.

[3] I decided to proceed in the absence of any good cause for Mr Emerson's failure to appear or be represented. I proceeded fully in the matter as if Mr Emerson was present or represented.

**The Facts**

[4] Michael Epplett was employed by Brett Emerson personally trading as Emerson Distribution. Mr Epplett had no knowledge of Mr Emerson's business arrangements. I was satisfied that Mr Epplett only understood his employer was Mr Emerson personally. Mr Emerson's failure to cooperate with the Authority's investigation has meant that if there are any other business arrangements he has to take personal responsibility. Indeed I am supported in my decision by a pay slip produced by Mr Epplett, and his mother Jeannine Epplett, that recorded only "Emerson Distributions". An unsigned individual employment agreement produced provided no indication of the any other employer entity.

[5] Mr Epplett was paid \$11 per hour to deliver newspapers and advertising and he used his own vehicle, a Nissan Pulsar. He was reimbursed 40 cents per kilometre for the use of fuel. The pay slip confirmed the hourly rate and fuel reimbursement.

[6] Mr Epplett gave two weeks notice that he was willing to work out. He says he was subsequently told his job had been restructured and that he was not required any more, thus his employment ended without being paid.

**The Claim**

[7] Mr Epplett has claimed a total of \$823.85 wages and holiday pay which has not been paid by Mr Emerson. Mr Epplett has also claimed a total of \$311.60 for the reimbursement of fuel that was not paid to him. He has incurred a \$70 filing fee to proceed in the Authority.

**The Authority's Determination**

[8] I was satisfied that Mr Emerson established his claim. The wages owing comprise the following. Mr Epplett is owed wages for 26 June until 17 July 2006 for 24.75 hours at \$11 per hour. The total owed is \$272.25. He is owed the reimbursement of fuel for 569 kilometres at 40cent per kilometre. The total is \$227.60. He is owed wages for three days in the week beginning 12 February 2007 in the sum of \$33. He is owed the sum of \$24 for fuel for 66 kilometres.

[9] Mr Epplert's holiday pay has been calculated at 6% from his gross earnings of \$6,310 obtained from Inland Revenue Department since no wage time and holiday records are available. He is owed \$378.60 holiday pay.

[10] Mr Epplert's 2 weeks notice amounts to 14 hours at a total of \$140. He also claimed an estimated 150 kilometres for fuel but I have rejected the claim because he never incurred the cost of the use of the fuel because he did not work out his notice. He did not actually incur any expense on fuel. I have deducted this from the total claimed for the fuel reimbursement.

[11] The claim was supported by some copies of time sheets produced by Michael and Jeannine Epplert. The claim could have involved more with other underpayments but Mrs Epplert decided to keep the matter simple, and I have accepted that approach.

### **Orders of the Authority**

[12] Brett Emerson is ordered to pay to Michael Epplert the following sums of money:

- \$823.85 wages and holiday pay
- \$251.60 fuel reimbursement
- \$70 reimbursement of the filing fee for costs.

[13] A certificate of determination is to be provided for enforcement purposes and my decision has been based on Mr Emerson's failure to co operate with the Authority's investigation that makes it likely that enforcement proceedings will be needed.

P R Stapp  
Member of the Employment Relations Authority