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Fogarty v G Media Group Ltd AA 385/07 (Auckland) [2007] NZERA 853 (7 December 2007)

Last Updated: 23 November 2021

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 385/07 5089095

BETWEEN	CHARLES GEORGE FOGARTY Applicant
AND	G MEDIA GROUP LIMITED Respondent

Member of Authority: Alastair Dumbleton

Representatives: Charles Fogarty in person Warwick Gowland, for Respondent

Consideration of papers: 7 December 2007

Determination: 7 December 2007

DETERMINATION OF THE AUTHORITY

[1] The applicant Mr Charles Fogarty was employed as a radio broadcaster by the respondent G Media Group Limited.

[2] Mr Fogarty has complained to the Authority that he was not paid any wages for the time he spent working for the company under his contract of employment. He asks for an order to be made against the respondent requiring it to pay him wages for the period from 12 February 2007 to 3 April 2007.

[3] G Media Group Limited employed Mr Fogarty to work at station GFM in Gisborne. Written under GFM letterhead, a job description refers to Mr Fogarty's position of Broadcaster as being full time for 40 hours per week. The job description is signed by Mr Warwick Gowland who is listed as a shareholder of G Media Group Limited. Ms Emma McCarthy of the same address as Mr Gowland is also listed as a shareholder, and she is a director of the company.

[4] Mr Fogarty signed an individual employment agreement on 21 February 2007. The agreement states that the respondent company is a party to it and that Mr Fogarty, who is stated to be the employee party, shall report to Mr Gowland and/or Ms McCarthy. Mr Fogarty's hours of work are stated to be 40 hours per week, Monday to Sunday, between the hours of 5am and 12am. His wages are stated to be \$200 per week, "which shall be paid in arrears fortnightly on Wednesday into the bank account nominated by the employee."

[5] The termination clause of the employment agreement required the employer to give three weeks notice in writing to the employee.

[6] On 3 April 2007 Mr Gowland wrote to Mr Fogarty advising that the respondent no longer had the ability to employ him and was making his position at GFM redundant effective immediately. Mr Gowland referred in his letter to major financial restraints facing the company and said:

We appreciate that you have looked at this with open eyes to enable the company to keep going, still working whilst waiting to be paid.

[7] Further Mr Gowland said in his letter:

As agreed previously all outstanding wages will be paid to you as soon as financially viable and the company has enough funds to do so.

[8] Mr Fogarty was given four days to vacate the accommodation in Gisborne he had been provided with as part of his remuneration.

[9] Mr Gowland and Mr Fogarty have asked for this claim to be determined on the papers for their convenience, as they now live in different parts of New Zealand, Taupo and Lower Hutt respectively.

[10] From the information provided, the Authority is satisfied that Mr Fogarty is entitled to an order for payment of wages against G Media Group Limited.

[11] Mr Fogarty commenced work on Monday 12 February 2007 and finished on Tuesday 3 April 2007. In addition to pay for that period of 7.2 weeks he is entitled to a further three weeks pay in lieu of notice under clause 13.1 of the employment agreement.

[12] The total due as arrears of wages therefore is \$2,040. G Media Group Limited is ordered to pay that sum to Mr Charles Fogarty. The respondent company is also ordered to pay Mr Fogarty \$70.00 in reimbursement of the Authority filing fee he paid to commence this claim.

A Dumbleton

Member of the Employment Relations Authority

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