Determination Number: AA 21/01
File Number: AEA 54/00

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE

BETWEEN	Lee John Hook (Applicant)
AND	JB's Contractors Limited (Respondent)
REPRESENTATIVES	Mr Barry Hayes, for the applicant Ms Rosalie McKenzie, for the respondent
MEMBER OF AUTHORITY	James Wilson
INVESTIGATION MEETING	27 February 2001
DATE OF DETERMINATION	22 March 2001

DETERMINATION OF THE AUTHORITY

The statement of problem.

On 18 December 2000 the Authority received an application from Mr Lee Hook. In his application Mr Hook stated that the problem he wished to the Authority to resolve was:

> *(a) whether I was an employee of the respondent;*
>
> *(b) personal grievance against respondent for unjustified dismissal on 15 November 2000 and*
>
> *(c) unpaid wages of $1,166.40.*

On 17 January 2001 the Authority received a statement in reply from the respondent, JB's Contractors Limited. In this statement the respondent set out their view in relation to the problem specified in Mr Hook's application:

> *Lee Hook was a subcontractor -- never an employee. Happy to pay outstanding invoices $1166.40 when our final payment from head contractor is received. Expected end of Jan 01.*
>
> *As a subcontractor Lee is a not entitled to holiday pay/personal grievance.*
>
> *JB's contract at that site had finished. Lee was not required to assist with the remedial work.*

[It should be noted that the outstanding wages/invoices were paid to Mr Hook by cheque on 22nd February 2001.]

Clarification of issues to be determined.

At a preliminary conference held on 26 January 2001 I advised the parties that there were clearly two distinct questions to be determined in this case.

1. Was Mr Hook an employee or an independent contractor? and

2. If he was an employee was his dismissal justified?

It was agreed that in the interests of achieving a speedy resolution I would hold a single investigation meeting at which both of these questions would be canvassed.

While the question of mediation was considered it was apparent that this could only be useful if I determined that Mr Hook was an employee. However I advised the parties that while I would hear both questions on the same day I would keep under consideration the possibility that, if I determined that Mr Hook was an employee, I refer the parties to mediation regarding his dismissal.

At the completion of the investigation meeting I again discussed the possibility of mediation with the representatives. Both parties expressed a desire that I proceed as quickly as possible to determine both Mr Hook's employment status and, if appropriate, whether his dismissal was justified. This determination therefore addresses both questions.

The law relating to employment status.

If Mr Hook was not an employee the Authority would have no jurisdiction to determine this matter. It is therefore necessary that I determine Mr Hook's employment status before turning to the question of whether his dismissal was justified.

In *Muollo v. Rotaru* [1995] 2 ERNZ 414 Judge Goddard, in the Employment Court said

> *Whether the contract between the parties is an employment contract must depend on the definitions in s 2 of the Employment Contracts Act 1991 of employee, employer, and employment contract,…*

What of course has changed since then is the enactment of the Employment Relations Act 2000. However the basic principle still applies: whether a contract between the parties is an employment contract (i.e. a **contract of service**) must now depend on the definitions in the Employment Relations Act 2000 of **employee, employer** and **employment agreement**.

Section 5 of the Employment Relations Act defines an **employer** as:

> ***Employer*** *means a person employing any employee or employees; and includes any person engaging or employing a homeworker.*

And an **employment agreement** as

> ***employment agreement*** *--*
> *(a) means a contract of service; and*
> *(b) includes a contract for services between an employer and homeworker; and*
> *(c) includes an employee's terms and conditions of employment in --*
> *(i) a collective agreement; or*

(ii) a collective agreement together with any additional terms and conditions of employment; or
(iii) an individual employment agreement.

Section 6 of the Act defines an **employee** as:

6 Meaning of employee
*(1) In this Act, unless the context otherwise requires, **employee** --*
(a) means any person of any age employed by an employer to do any work for hire or reward under a contract of service; and
(b) includes --
(i) a homeworker; or
(ii) a person intending to work; but
(c) excludes a volunteer who --
(i) does not expect to be rewarded for work to be performed as a volunteer; and
(ii) receives no reward for work performed as a volunteer.

(2) In deciding for the purposes of subsection (1)(a) whether a person is employed by another person under a contract of service, the Court or the Authority (as the case may be) must determine the real nature of the relationship between them.

(3) For the purposes of subsection (2), the Court or the Authority --
(a) must consider all relevant matters, including any matters that indicate the intention of the persons; and
(b) is not to treat as a determining matter any statement by the persons that describes the nature of the relationship.

In deciding whether Mr Hook is an **employee** or an **independent contractor** the relevant changes in the Employment Relations Act, when compared to the Employment Contracts Act, are the addition of subsections (2) and (3) of section 6. That is, the Authority *must determine the real nature of the relationship between* Mr Hook and JB's Contractors. In making this determination the Authority *must consider all relevant matters, including any matters that indicate the intention of the persons* but *is not to treat as to a determining matter any statement by the persons that describes the nature of the relationship.*

In considering the *real nature of the relationship* it is necessary to review the legal position in respect to contracts of service (employees) v. contracts for services (independent contractors) prior to the passing of Employment Relations Act 2000. The principal precedent case in this regard is the Court of Appeal decision in *Cunningham v. TNT Express Worldwide (NZ) Ltd* [1993] 1 ERNZ 695. The Court said:

In the end, when the contract is wholly in writing, it is the true interpretation and effect of the written terms on which the case must turn.…… Many, perhaps most, of the contracts that have come before the Courts in this field have not been cases of relationships governed by comprehensive written contracts. In such cases it has been held that the question of classification is one of mixed fact and law. But the interpretation of a written contract is traditionally regarded as a question of law; and I think that the ultimate question in the present case is in that sense one of law and fully open in an appeal limited to questions of law.

In any event the approach in the Employment Court to onus has to be seen, I think, as erroneous in law. If there is no evidence before the Court other than evidence of outward

> *indicia of an employment relationship, the onus is indeed on the alleged employer to displace that inference. But when it is common ground that the relationship is governed by a comprehensive written contract and when all the truly relevant primary facts are common ground (as they are here), no question of onus arises. It is then the responsibility of the Court to reach an affirmative decision one way or the other on how the contract should be classified.*

Also in the *Cunningham* case the Court of Appeal cited the judgment of the Privy Council in *Lee Ting Sang v. Chung Chi-Keung* [1990] 2 AC 374 in which the Privy Council at p. 382 said:

> *What then is the standard to apply? This has proved to be a most elusive question and despite a plethora of authorities the courts have not been able to devise a single test that will conclusively point to the distinction in all cases. Their Lordships agree with the Court of Appeal when they said that the matter had never been better put than by Cooke J. in Market Investigations Ltd v. Minister of Social Security [1969] 2 QB 173, 184 - 185:*
>
> > *"The fundamental test to be applied is this: 'Is the person who has engaged himself to perform the services performing them as a person in business on his own account?' If the answer to that question is 'yes,' then the contract is a contract for services. If the answer is 'no,' then the contract is a contract of service. No exhaustive list has been compiled and perhaps no exhaustive list can be compiled of the considerations which are relevant in determining that question, nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases. The most that can be said is that control will no doubt always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors which may be of importance are such matters as whether the man performing the services provides his own equipment, whether he hires his own helpers, what degree of financial risk he takes, and where and how far he has an opportunity of profiting from sound management in the performance of his task."*

Subsequent to the Court of Appeal judgment in *Cunningham* (supra), Chief Judge Goddard in the Employment Court case *Muollo v. Rotaru* (supra) said:

> *It seems to me that the answer in each case is to be more reliably found not by beginning with the well-known tests of presumed intention (the control test, the organisation or integration test, the fundamental test, the true intention test, and the multiple test -- some of which overlap), but by falling back on these tests only as the last resort when the actual intention cannot be found otherwise in the evidence or deduced from it.*

The Chief Judge then went on to set out a series of issues to be considered in determining the *actual intention* of the parties.

It is also pertinent to consider what the policy intention was in enacting the changes to the definition of **employee** etc. When the Employment and Accident Insurance Legislation Committee reported the Employment Relations Bill back to Parliament, the Committee said in its commentary:

> ***Defining the position of employee or independent contractor (clause 6)***
>
> *The policy intent of clause 6 has been to stop some employers labelling individuals as "contractors" to avoid responsibility for employee rights such as holiday pay and minimum wages. The majority of submitters who opposed clause 6 did so because of the impact that it would have on existing employment relationships. These submitters considered that clause 6*

would alter mutually beneficial relationships, overrule the intention of parties, increase business costs (including compliance costs), affect the flexibility afforded to clients and contractors, and create uncertainty. Most of these submitters considered that the status quo should be maintained.…

Our intent in addressing these concerns has been to amend the clause to provide increased clarity regarding the policy intent. The amendments will ensure that volunteer workers are excluded from the effects of clause 6, and that the employment institutions, such as the Employment Relations Authority (the Authority) will continue to be directed to look at all relevant factors, including the intention of the parties, in determining the employment status of individuals. However, the label applied to the relationship by the parties cannot be a determining factor. To promote this, clause (6)(2) has been re-drafted, and new subclauses (3) to (6) inserted. As well, clause of 154 has been omitted so that only persons who consent to action being taken will be affected by any Court decision.

The *real nature of the relationship*.

How then to determine in any particular case *the real nature of the relationship* as the Authority is required to do by subsection 6 (2) of the Employment Relations Act? It seems to me appropriate to ask a series of questions in each particular case:

1. What was the *intention of parties*?

But the intention of parties is only one of the matters to be considered, so

2. What other *matters* are *relevant*? and

3. Having regard to 1. and 2., and recognising that any statements by the parties that describe the nature of the relationship are not to be treated as the determinative, what was the *real nature of the relationship*?

How to determine the *intention of parties*?

Where there is a detailed written contract this will usually go a long way to establishing the intention of parties. As noted by the Court of Appeal in the *Cunningham* case, in the vast majority of cases no such detailed written contract exists. However, as Judge Goddard said in *Muollo* (cited above); *Intention may be proved in a variety of ways* including:

- By evidence of the parties' oral declaration of their intention.
- By evidence of their conduct.
- The context of the commercial environment in which the contract is made.

As this last point is applicable in this case it requires further explanation. In *Muollo* Judge Goddard says:

As it is put in Phipson on Evidence (14th ed) para 17.09, the law readily presumes that the parties have not intended to express the whole of their meaning in words but tacitly to adopt the usages of the particular market or place. This has nothing to do with the doctrine of implied terms but is a rule of the law of evidence as to the admissibility of custom and usage as casting light on, or even furnishing direct evidence of, the likely intention of parties. If custom or practice is sufficiently well established, it may not even matter that one of the parties to the contract may be unaware of it at the time of the making the contract: Whitcombe and Tombs Ltd v. Taylor(1907) 27 NZLR 237. The rationale for this rule is that a

> *party who deals in a particular market is held bound by its reasonable usages even though ignorant of them: Forget v. Baxter [1900] AC 467,479.*

What other *matters* are *relevant?*

Having reviewed the judgments' of the Privy Council in *Lee Ting Sang*, the Court of Appeal in *Cunningham* and the Employment Court in *Muollo,* I believe that the other *relevant matters* to be considered are:

- The **control test** i.e. did the putative employer direct not only what work was to be done but the manner in which it was to be done? (See *Muollo*)
- The **fundamental test** as outlined in *Lee Ting Sang* i.e. *is the person … in business on his own account?*. Factors which may be of importance are such matters as:
  - Did the worker provide his own equipment?
  - Did he hire his own helpers?
  - What degree of financial risk did he take?
  - What degree of responsibility for investment and management did he have?
  - Did he have any opportunity for profiting from sound management in the performance of his task?

In some cases it will also be appropriate to consider the **integration** test. As stated by Judge Goddard in *Muollo* : *This poses the question whether the (worker) was his own man, or whether he was part of the business organisation of the (putative employer).* In some respects this test duplicates the **fundamental test**.

The respondent points to the fact that the applicant in this case had completed a tax code declaration indicating that he was a contractor. Tax deducted was "withholding tax", and he was responsible for making his own ACC payments. This, they say, indicates that he was not an employee. They had, they believed, received advice from the Inland Revenue Department that this was the case.

It is important to note, however, that while tax status may be an indicator of employment status, and may indicate the intention of the parties, it is not a defining factor. The *IRD Tax Information Bulletin: Volume Five, No. 1 (July 1993*), following the Court of Appeal decision in the *Cunningham* case, states:

> *Inland Revenue's policy is that a taxpayer's employment status for tax purposes is determined in the same way as under general law.*

This policy was reiterated in an *Interpretation Guideline* issued by the IRD in *Tax Information Bulletin: Volume Eleven, No.2 (February 1999)*

The appropriate statute for determining employment status is the Employment Relations Act. The question of tax status **follows** the determination of employment status in terms of that Act and **not** vice versa. Tax status is not therefore a *relevant matter* in determining employment status.

<u>The law related to Mr Hook.</u>

What was the intention of parties?

There is no detailed written contract that sets out the relationship between Mr Hook and JB's Contractors. Mr Hook did sign a document purported to set out his terms and conditions but this was headed *Terms and Conditions for* ***Subcontractors and Employees*****.** (My emphasis)**.**

There is no doubt that JB's Contractors intended to enter into a **contract for services** i.e. that Mr Hook be a subcontractor. Mr Hook has argued that he had intended to be an employee; that this was his first job in the New Zealand building industry and he did not understand the implications of the terminology ("subcontractor", "subbie" "invoice" etc.) used by JB's Contractors when they discussed the terms of his engagement.

Mr Hook had recently completed a 12 months course in the building trade. Although he had not been employed in the construction industry I have no doubt that he had come in contact with people from the industry and had some familiarity with it. Also this was not his first experience in the workforce. (He had previously had a number of jobs both in New Zealand and Australia). I believe that it is likely he knowingly, albeit passively, accepted a position as a **subcontractor**. I also believe that he had little or no choice in this matter. He was unemployed, had recently completed a 12 months training course and was keen to get back into the paid workforce as soon as possible.

Even if Mr Hook did enter into this relationship with the intention of being an employee, I am cognisant of Judge Goddard's remarks (quoted above) in the *Muollo* case. Evidence was given to the Authority during the investigation meeting that the employment of "labour only" **subcontractors** is widespread practice in the construction industry. Mr Hook may have been unaware of this practice at the time of entering into a contract with JB's Contractors but he can be *held bound by its (the construction industry's) reasonable usages even though ignorant of them.*

In answer to the question "what was the intention of parties?" therefore, I find that it was the intention of parties to enter into a **contract for services**.

Other *relevant matters.*

The first *relevant matter* to be considered is the question of **control.** In this regard the evidence is relatively clear cut. Mr Hook was expected to work specified hours. He was directed to undertake specific tasks, was given instruction in those tasks with which he was unfamiliar, and was supervised as to the standard of his workmanship. There appears to have been little room for him to use his initiative in which tasks he would undertake or how he would undertake them, other than putting into practice those skills in which he had been trained. This degree of control would suggest that Mr Hook was an employee.

The second *relevant matter* to be considered is whether or not Mr Hook was *in business on his own account*. (The **fundamental test**).

Mr Hook did provide some of his own equipment (carpenter's apron, hammer, basic tools etc.). He did not hire his own helpers, he had no responsibility for investment and management, he had no opportunity for profiting from sound management in the performance of his tasks. The only financial risk he took was that he was dependent on JB's Contractors for ongoing work.

The fact that Mr Hook provided some of his own tools and equipment may at first glance indicate his being in business on his own account. However I do not believe that this provision of his own tools is anything other than the continuation of a long-standing practice in the building industry. For many years trades "awards" contained a provision for **employees** to provide their own tools and to be paid a reimbursing tool allowance.

It is interesting to compare the circumstances in this case with those in the *Muollo* case (supra). In the Muollo case the respondent, Mr Rotaru, was a crew member on a fishing vessel. He was not paid by the hour but by a percentage of the proceeds of the sale of catch. Evidence was given that this type of arrangement was a common practice in the fishing industry. Mr Rotaru was in effect

part of a share fishing business. If the fishing went badly he received little or no reward; if the fishing went well he profited accordingly. For Mr Hook there were no such swings and roundabouts. As long as a JB's Contractors provided him with work he received the agreed hourly rate. Irrespective of the level of profit or loss that JB's made Mr Hook received the same (hourly) rate.

In answer to the question "was Mr Hook in business for himself?" the answer is clearly "he was not!" This answer in the negative would again suggest that Mr Hook was an employee.

As Mr Hook was not *in business for himself* it follows that, in terms of the **integration** test he was not *his own man.* The work he did was an integral part of the respondent's business. This test also suggests that Mr Hook was an employee.

What was *the real nature of the relationship?*

I have determined that the intention of the parties was that Mr Hook be an **independent contractor**. In order to achieve this JB's Contractors labelled Mr Hook a subcontractor and, at least at the time of his engagement, Mr Hook acquiesced in this label. However the **control test**, the **fundamental test** and the **integration test** all point to Mr Hook being an **employee.**

What then is the *real nature* of this relationship? The analysis outlined above leads me to the conclusion that Mr Hook was an employee. The intention may have been that he be a subcontractor. The label may have been "subcontractor". In every other respect he was in reality an employee. For me to determine otherwise would allow the possibility that any employer and any employee could form an intention and state that their relationship was one of **principal** and **independent contractor** for it to be so. Subsection 6(3)(b) of the Employment Relations Act 2000 clearly provides that the Authority should not treat any such statements by the parties as determining employment status.

I therefore **determine** that the applicant, Mr Lee Hook was an **employee** in terms of section 6 of the Employment Relations Act 2000.

Was Mr Hook's dismissal justified?

The incident which lead to Mr Hook's dismissal was a complaint that he had been observed urinating in view of a number of other employees and the girlfriend of one of those employees at an after work drinks function. The woman concerned had arrived at the building site to pick up her partner and had observed two or three employees urinating against a wall on the perimeter of the building site and in full view of those present. She had expressed her disgust to her partner and asked that he pass on her complaint to JB Contractors.

JB's Contractors foreman, Mr Richard Urwin, received this complaint by telephone on Saturday 11 November 2000. On Monday 13 November Mr Urwin spoke to Mr Hook who denied the allegations. However Mr Urwin did not accept these denials and immediately terminated Mr Hook's contract.

In answer to questions from the Authority at the investigation meeting Mr Urwin accepted that his investigation of the complaint would have been much more thorough, and the process more formal if he had considered Mr Hook to be an employee. He also said that he had had previous reservations about Mr Hook's standard of workmanship and general behaviour on the work site. He

did agree however that, if this particular complaint had not arisen, Mr Hook would almost certainly have been offered further work at a subsequent work site.

As it turns out Mr Urwin's assumption in respect to Mr Hook's employment status is somewhat unfortunate. If he had carried out a more detailed formal investigation he would have discovered that there was a great deal of uncertainty regarding the details of the alleged incident. The questions I was able to ask various witnesses, including the original complainant, indicate that there was some confusion not only about dates and times but also about the identities of those observed urinating. I am unable to determine from the evidence I have heard whether or not Mr Hook was one of those observed. I have no doubt that had Mr Urwin conducted a full and thorough investigation at the time he would have been able to establish the truth of the matter.

I accept that Mr Urwin acted in good faith in the mistaken assumption that Mr Hook was not an employee. However, because of this assumption, he did not undertake a thorough investigation, Mr Hook was not given an opportunity to be properly represented, nor was his version of events properly considered.

The law relating to the quality of an inquiry to be carried out when dismissal is being considered is well-known. A quote from the Labour Court in *NZ (with exceptions) Food Processing etc. IUOW v. Unilever New Zealand Ltd* [1990] 1 NZILR 35 concisely illustrates these requirements:

> *What the procedure should be in any particular case is a question of fact and degree depending on the circumstances of the case, the kind and length of employment, its history and the nature of the allegation of misconduct relied on including the gravity of consequences which may flow from it, if established.*
>
> *The minimum requirements can be said to be:*
>
> *(1) notice to the worker of the specific allegation of misconduct to which the worker must answer and the likely consequences if the allegation is established;*
>
> *(2) an opportunity, which must be real as opposed to a nominal one, for the worker to attempt to refute the allegation or to explain or mitigate his or her conduct; and*
>
> *(3) an unbiased consideration of the worker's explanation in the sense that that consideration must be free from predetermination and uninfluenced by irrelevant considerations.*
>
> *Failure to observe any one of these requirements will generally render the disciplinary action unjustified. That is not to say that the employer's conduct of the disciplinary process is to be put under a microscope and subjected to pedantic scrutiny, nor that unreasonably stringent procedural requirements are to be imposed. Slight or immaterial deviations from the ideal are not to be visited with consequences for the employer wholly out of proportion to the gravity, viewed in real terms, of the departure from procedural perfection. What is looked at is substantial fairness and substantial reasonableness according to the standards of a fair-minded but not over indulgent person.*

Mr Urwin did not carry out a disciplinary investigation that met these minimum standards. This failure must render Mr Hook's dismissal unjustified.

Remedies.

In his application, in addition to the payment of the unpaid wages that have since been paid, Mr Hook requested:

> *Unpaid holiday pay at 6% of total wages of $3,244 which equals $194.64.*
>
> *Three months ordinary time remuneration at $14 per hour (section 128 Employment Relations Act 2000) less wages earned at Cytworx Ltd where I commenced work on 4 December 2000.*
>
> *The sum of $2000.00 for humiliation, loss of dignity and injury to feelings (section 123 (c) Employment Relations Act).*
> (Note: this amount was increased at the investigation meeting to $3000)

Holiday pay.

I have determined that Mr Hook was an employee. As an employee he is entitled, in terms of the Holidays Act 1981, to the amount he has claimed i.e. 6% of gross wages earned.

Loss of wages.

Mr Hook was dismissed by JB's Contractors on 13 November 2000. On 4 December 2000 he commenced work with a company called Cytworx Ltd but was laid off after 1 week when that Company lost its building contract. He was paid $366.80 for the weeks' work. While working for Cytworx he had an accident and at the time of the investigation meeting had not undertaken other employment.

On behalf of the respondent Ms McKenzie argues that, if Mr Hook was not a subcontractor then he was a temporary employee, engaged on a "job to job" basis. In support of this argument she submits that:

- There was no set pattern or consistency to the projects undertaken or guarantee of further work. JB's had produced evidence that of the 30 or so persons engaged on the Wakefield side, some twenty or so no longer work for them.
- Mr Hook was not engaged for a set number of hours per week which would mean that he was entitled to be paid for that week even if there was no work. There was no guarantee of any work from one week to the next. He was, at best, on call if the respondent needed him.
- Even in the brief period that Mr Hook was engaged by JB's Contractors he worked at two different sites; Whangamata and Wakefield Street Auckland. Between these two jobs there were several days on which Mr Hook was not required to work and was not paid.

Evidence was also given that work on the Wakefield Street site was nearing completion and that Mr Hook's engagement on that site would have finished *about 1 week later.*

On behalf of Mr Hook Mr Hayes has argued that Mr Hook was told, on at least two occasions, that JB's Contractors had large amounts ("shit loads") of ongoing work. He (Mr Hook) was given the distinct impression that he would continue to be offered work with the Company.

Evidence was given to the Authority that the common practice in the construction industry is that workers are engaged on a "job to job" basis. That is, the construction company engages the workers on the understanding that they will work on a particular construction site until work on that

site is complete. If the company concerned has a new construction contract then the workers may be offered the opportunity to work on the new site. At this point the workers have the option of transferring to the new site or moving to alternative "employment". If there is a time lag between the completion of one contract and commencement of the next, the workers concerned are free to seek alternative employment or to take an unpaid break. There is no expectation of continued payment between construction contracts.

This practice (engagement on a "job to job" basis) was of course applied to Mr Hook on the assumption that he was a subcontractor. However, regardless of a particular individual's employment status, this is the commonly accepted practice. I believe that the principles set out by the Employment Court in the *Muollo* case (supra), regarding the acceptance of a well-established practice as evidence of the likely intention of the parties, is applicable in this case. The commonly accepted practice is engagement "job to job". Whether Mr Hook was aware of this or not this was the basis of his engagement. It follows that as an employee he was employed on the same basis.

Mr Hook was in effect a temporary employee. His employer has stated that , if not for the alleged incident which led to Mr Hook's dismissal, he would probably have been offered further work. On the other hand three weeks following his dismissal he commenced work with a new employer. The fact that this new position was short-lived and that he was unable to secure further employment because of injury cannot be said to be a consequence of his dismissal.

The appropriate reimbursement for lost wages is three weeks. This should be calculated at 45 hours per week and $14 per hour i.e. $630.00 per week or a total of $1890.00 gross plus 6% holiday pay on this amount ($113.40)

Compensation for humiliation, loss of dignity etc.

Mr Hook was employed by JB's Construction Ltd for a total period of only six weeks. He was dismissed by his employer without the benefit of due process on the mistaken belief that he was on a **contract for services**. While I have found that this dismissal was unjustified I am convinced that the respondent truly believed that Mr Hook was not an employee. Nevertheless Mr Hook has suffered the humiliation etc. of being dismissed from his position without being given the basic considerations which are the entitlement of all employees. He is therefore entitled to compensation.

Taking into account the length of his employment and all of the other circumstances I believe the appropriate level of this compensation is $1000.00.

Summary of remedies.

In summary, the respondent, JB's Contractors, is ordered to pay the applicant, Mr Lee Hook,

- Holiday pay @ 6% of gross earnings ($194.64).
- 3 weeks earnings at $14.00 per hour calculated at 45 hours per week ($1890.00) plus 6% of this amount as holiday pay ($113.40).
- Compensation for humiliation etc of $1000.00.

Costs.

Costs are reserved meantime in the hope that the parties may be able to come to an agreement**.** If this is not possible the applicant may file an application for costs by 6 April 2001. The respondent will then be given 2 weeks to file a statement in reply.

James Wilson
Member of Employment Relations Authority