

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 380/09
5157455**

BETWEEN ERIC HAMPSON
 Applicant

AND GRAHAM IRWIN
 Respondent

Member of Authority: Leon Robinson

Representatives: Applicant In Person
 No appearance for Respondent

Investigation Meeting: 15 October 2009

Further Information: 21 October 2009

Determination: 30 October 2009

DETERMINATION OF THE AUTHORITY

The problem

[1] The applicant Mr Eric Hampson ("Mr Hampson") claims he is owed various sums by his former employer Mr Graham Irwin ("Mr Irwin").

[2] This matter was set down for investigation meeting on 15 October 2009. Following receipt by him of the notice of investigation meeting, Mr Irwin advised the Authority he would be out of New Zealand on that date but asked that certain "facts" be noted. He did not ask for an adjournment. I concluded that Mr Irwin had not shown good cause to attend the notified investigation meeting and so I proceeded to act as fully in the matter as if he had attended. Mr Hampson's sworn evidence is unchallenged.

The facts

[3] In January of this year, Mr Hampson answered an advertisement on the Trademe website, placed by Mr Irwin, for painters in Queensland. He and Mr Irwin entered into an employment relationship where Mr Hampson was to be employed as a painter/decorator in Rockhampton. Mr Hampson was promised "at least eight months work" with a bonus after three months to offset Mr Hampson's airfare. He was to be paid \$25.00 per hour and "after a couple of weeks" that rate was to increase to \$27.00 per hour. It was agreed that Mr Hampson would work the hours he wished "as long as [he] did 50 or 60". The agreement also included assistance with the cost of accommodation.

[4] A few days before he was due to depart for Rockhampton, Mr Irwin phoned Mr Hampson and told him to go to Brisbane where he would be picked up from the airport. Mr Hampson was not met by anyone at that airport and had to travel by taxi to the job.

[5] Mr Hampson was accommodated at a local motel. He spent a week painting three classrooms at a school. He was eventually paid about \$1,100.00 for that work.

[6] Mr Irwin dealt with Mr Hampson by telephone. After the classroom work was completed he directed Mr Hampson to go to another motel. Mr Hampson stayed there for five days while Mr Irwin arranged a further painting job for him.

[7] After five days, Mr Irwin directed Mr Hampson to retrieve a van and told him to stay at a backpackers lodge and undertook to meet the cost. He told Mr Hampson to go to a job at Graceville. There was however no work there. Mr Irwin then directed Mr Hampson to go to a caravan park and stay there but the caravan park required payment of six weeks accommodation in advance. Mr Hampson could not meet that request. Mr Irwin said he could not pay and said that it might be best if Mr Hampson returned to New Zealand.

[8] Mr Hampson then resolved the arrangements were not satisfactory to him and decided to return to New Zealand.

[9] Mr Irwin asks the Authority to note these points:-

1. *The employment was in Queensland*
2. *No employment contract exists*
3. *Mr Hampson walked out of employment returning to NZ*
4. *Dumped his employers vehicle on the side of the road outside a hotel with the keys on the mat*
5. *This vehicle was subsequently stolen with the contents*
6. *Insurance would not pay the employer suffering a loss of \$6000 Australian*
7. *They have been attempting to contact without success*

The merits

[10] Mr Hampson now claims various sums from Mr Irwin.

[11] I accept that Mr Hampson ought to be reimbursed for the costs of taxi fares and diesel paid for by him. I am persuaded too that had Mr Irwin met his obligation to provide Mr Hampson with continuing work, Mr Irwin would have eventually gone on to qualify for a bonus to offset his airfares. I find that Mr Irwin failed to provide Mr Hampson with ongoing employment as agreed and therefore adopting an all or nothing approach, I conclude Mr Irwin is liable to Mr Hampson for the return airfare. I further find that Mr Irwin agreed to meet the costs of Mr Hampson's accommodation.

The determination

[12] I determine that Mr Irwin is liable to pay to Mr Hampson the following sums:-

| | |
|-------------------------------|--------------|
| Taxi fares | \$97.50 |
| Diesel in van | \$25.00 |
| Return flight ticket exchange | \$231.00 |
| Airport motel | \$79.00 |
| Total | \$AUS 432.50 |
| Flight to Brisbane | \$ 990.00 |
| Total | \$NZ 990.00 |

[13] **Graeme Irwin is ordered to pay to Eric Hampson \$AUS432.50 and \$NZ990.00.**

The costs

[14] Mr Hampson is entitled to be reimbursed the lodgement fee on this application.
Graeme Irwin is ordered to pay to Eric Hampson the sum of \$NZ70.00 being the lodgement fee on this application.

Leon Robinson
Member of Employment Relations Authority