

Determination Number: WA 48/05

File Number: WEA 465/04

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

<b>BETWEEN</b>	Mark Johnson (applicant)
<b>AND</b>	Cohasset Consultancy and Investments Limited (respondent)
<b>REPRESENTATIVES</b>	The applicant represented himself No appearance by the respondent
<b>MEMBER OF THE AUTHORITY</b>	Denis Asher
<b>INVESTIGATION</b>	Napier, 23 March 2005
<b>DATE OF DETERMINATION</b>	23 March 2005

**DETERMINATION OF AUTHORITY**

**Employment Relationship Problem**

1. Mark Johnson brings a claim against Cohasset Consultancy and Investments Limited for unpaid salary and expenses, legal costs, bank charges and for his filing fee. No statement in reply has been received from the Company.
2. The parties have not undertaken mediation.

## Background

3. By agreement with Mr Johnson and Craig Nisbet, the Company's director, a telephone conference call of the parties was scheduled for 9.30 a.m. on Wednesday 16 February. As it happened, Mr Nisbet was not available at the agreed time. Because of Mr Nisbet's non-attendance despite his earlier agreement, the fact that Mr Johnson first raised his claim in a letter from his solicitors dated 19 November 2004, the Company's failure to provide a statement in reply and to undertake mediation, and the fact that salary was still apparently owed to Mr Johnson despite advice also dated 19 November from the Company's solicitors that its client "*will meet all legal obligations in relation to payment of wages*", I was satisfied that it was timely to set this matter down for an investigation in Napier on 23 March 2005: ss. 159 & 173 of the Act applied.
4. Mr Nisbet responded to that decision with several faxed communications. They included initial advice of uncertainty as to whether he was able to attend the scheduled investigation, requests for the investigation to be held on other dates and for it to be convened in Wellington, and advice of his intention to detail alleged breaches by Mr Johnson of his employment agreement.
5. In a fax received on 20 March Mr Nisbet advised he had "*other urgent matters in relation to a project*" which meant he could not attend the investigation scheduled for 23 March.
6. In his final fax received today Mr Nisbet confirmed he would not be at the investigation. He expressed his disappointment that the Authority had "*failed to grasp the realities of running a business*". He also asserted, for the first time, that Mr Johnson's claim for unpaid salary should be offset by an earlier salary advance of \$2,000. Mr Nisbet said that until Mr Johnson acknowledged "*receipt of the salary advance, the writer will co-operate with your investigation no further and no effort you make to effect payment of salary will result in payment.*"
7. The Authority replied to all of Mr Nisbet's communications. His request for other dates was declined because of the Authority having earlier entered into commitments with other parties. The request to convene the investigation in Wellington was also

declined because the applicant's place of work was the Hawkes' Bay: Mr Nisbet did not uplift the Authority's suggestion that he pay for Mr Johnson's costs in attending a Wellington-based investigation. Mr Nisbet was reminded of the commitment given by his Company's solicitors about meeting all legal obligations to pay the applicant and the desirability of the parties settling matters on their own terms.

## **Investigation**

8. The investigation took place today in Napier. I took evidence from Mr Johnson. No one appeared for or on behalf of the Company.

## **Findings**

### **Unpaid Salary**

9. I am satisfied that Mr Johnson has not been paid his final 5-weeks' salary, a total of \$5,270.13 (nett). Support for this conclusion is found the applicant's affirmed evidence. It is also found in the Company's solicitors' implied acknowledgement (set out in the letter of 19 November 2004 from Broadmore Barnett) and Mr Nisbet's position that the claim for unpaid salary should be offset by a bonus he says was previously paid to Mr Johnson. There is no support for Mr Nisbet's argument in law or in contract. The Wages Protection Act 1983 is straightforward on this matter: section 4 provides that, "*... an employer shall, when any wages become payable to a worker, pay the entire amount without deduction*". An employer may make deductions, but only with the worker's consent (s. 5). Mr Johnson plainly does not consent to offsetting his unpaid salary. There is no evidence of any agreement between the parties to allow for an offset. Their employment agreement makes no mention of either a bonus or an offset. A reality of running a business is meeting employees' contracted salary entitlements. Mr Johnson is entitled to his unpaid salary.

### **Expenses, Legal Costs, Bank Charges & Filing Fee**

10. I am also satisfied that the Company owes Mr Johnson a total of \$703.00 expenses for portable phone costs. That is because I have no reason to reject Mr Johnson's uncontested evidence of an agreement between himself and the Company whereby

he was reimbursed for half of his portable phone costs, even though no mention of it exists in the employment agreement.

11. I also accepted the invoiced claim for \$787.50 legal costs incurred by Mr Johnson in, he says, his unsuccessful efforts to date to secure – with the help of his lawyers – his unpaid salary and expenses.
12. Mr Johnson says the failure of the Company to pay him his salary resulted in him incurring bank charges as a result of insufficient funds being in his account. He says – and I accept – that the charges totalled \$105.
13. Finally I find that the applicant is entitled to recover the \$70 filing fee incurred in filing his application in the Authority.

### **Determination**

For the reasons set out above I find in favour of Mark Johnson's claims against Cohasset Consultancy and Investments Limited. The Company is directed to pay Mr Johnson the following amounts:

- a. Unpaid salary totalling \$5,270.13 (five thousand, two hundred and seventy dollars and thirteen cents) (nett);
- b. Expenses for portable phone costs of \$703.00 (seven hundred and three dollars);
- c. Legal costs of \$787.50 (seven hundred and eighty seven dollars and fifty cents);
- d. Bank charges of \$105 (one hundred and five dollars); and
- e. The filing fee of \$70.00 (seventy dollars).

**Denis Asher**

**Member of Employment Relations Authority**