

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN David Kerr (Applicant)
AND Innovatory Technologies (NZ) Company Limited (Respondent)
REPRESENTATIVES Applicant in person
No appearance for Respondent
MEMBER OF AUTHORITY Alastair Dumbleton
INVESTIGATION MEETING 15 April 2005
DATE OF DETERMINATION 18 April 2005

DETERMINATION OF THE AUTHORITY

[1] The applicant Mr David Kerr lodged a statement of problem in the Authority in February 2005. In it he complained that the respondent Innovatory Technologies (NZ) Company Limited (known as "ITEK") had dismissed him unjustifiably and, before that happened, had failed to pay salary and commission due to him under his employment agreement with the company.

[2] Although directed by the Authority to respond to Mr Kerr's claims, ITEK failed to take any steps as required under the Employment Relations Act 2000 and Regulations to assist in the investigation and determination of the employment relationship problem. I am satisfied that ITEK was properly served at its registered office with all notices and other documentation in relation to this claim and its disposal.

[3] In the absence of the respondent or its representative at an investigation meeting that ITEK had been notified of, the Authority exercised its power under clause 12 of Schedule 2 of the Act by proceeding to examine Mr Kerr about his claims.

[4] From what I was told by Mr Kerr and from the various documents he gave me I find as follows.

[5] Mr Kerr was employed by ITEK in September 2004 as a Sales Account Manager. He was dismissed by Feng Lee a director of ITEK on 27 January 2005. Notice of the dismissal was given to him by email sent to his home address and received by him in the early evening. Up to then Mr Kerr had had no word or hint that this would happen or was even under consideration.

[6] The dismissal was unjustified procedurally and also, I find, substantively.

[7] At the date of dismissal Mr Kerr had not been paid his salary for a month and he was also owed commissions under his employment agreement for sales he had generated for ITEK. These

monies have been kept from him unlawfully by ITEK.

[8] Mr Kerr found a new job two weeks after his dismissal. However his life had been disrupted for six weeks while he went without pay. Xmas/New year holiday plans were cancelled, bank charges were incurred on dishonoured cheques, he had to borrow money from his son and had other creditors pressing him for payment.

Determination

[9] Mr Kerr is entitled to the following payments which ITEK is ordered by the Authority to make;

- **\$3,100 wages due as at the date of dismissal;**
- **\$3,166.19 commissions due on sales;**
- **\$1,538.46 wages lost in two weeks between dismissal and finding new employment;**
- **Interest at 9% on each of the above payments, calculated from 27 January 2005 until they are paid in full;**
- **\$5,500 compensation for hurt feelings and similar harm suffered by Mr Kerr from the unjustified dismissal, in particular for the consequential financial inability to manage his personal life in a self sufficient and normal way.**
- **\$70 to reimburse the fee paid by Mr Kerr to lodge this application in the Authority.**

A Dumbleton
Member of Employment Relations Authority