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Khodabandeh v TC Painting Ltd AA 317/07 (Auckland) [2007] NZERA 747 (12 October 2007)

Last Updated: 22 November 2021

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 317/07 5096621

BETWEEN HAMID KHODABANDEH

Applicant

AND TC PAINTING LIMITED

First Respondent

Member of Authority: Vicki Campbell

Representatives: Hamid Khodabandeh in Person
No appearance for Respondent

Investigation Meeting 8 October 2007 at Tauranga Determination: 12 October 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This employment relationship problem concerns the recovery of unpaid wages. Mr Khodabandeh filed a statement of problem in the Employment Relations Authority on 13 August 2007.

[2] The initial statement of problem cited as the respondent, Dimensional Painting Limited, as Mr Khodabandeh believed it was this company that he worked for. However, following the receipt of a statement in reply from Dimensional Painting Ltd denying Mr Khodabandeh had worked for that company, the respondent name was amended to TC Painting Ltd.

[3] In his statement in reply on behalf of TC Painting Ltd, Mr Chris Nye (whose name is Christopher Mallite but he prefers to go by the surname of Nye), the sole shareholder and director of TC Painting Ltd, confirmed his company was the correct respondent.

[4] The Authority was notified that Mr Nye had moved from Tauranga to Taupo and that the address for service, as stated on the Companies Register was now being used by a new, unrelated company. However, I am satisfied that the Notice of Investigation Meeting was served on the address for service as listed in both the statement in reply and on the Companies Register.

[5] Mr Khodabandeh does not have English as a first language. The Authority was greatly assisted in its investigation by a Farsi interpreter.

[6] The investigation meeting commenced at 1.00pm on 8 October 2007. The respondent did not make an appearance at that time. The notice setting down the investigation meeting sets out the consequences of non-attendance.

[7] Just prior to the commencement of the investigation meeting I had contacted Ms Mary Howlett, Employment Relations Authority Support Officer, and asked her to try and make contact with the respondent on one of two telephone numbers provided to the Authority.

[8] Ms Howlett reports that she telephoned Mr Nye at 12.55pm at which time he indicated that he had no intention of attending the proceedings and he doubted the veracity of Mr Khodabandeh's claim. Mr Nye also advised Ms Howlett that TC Painting Ltd would be going into liquidation as it owed money to suppliers and was unable to pay. I checked the Companies Register before commencing the investigation meeting and noted that the company continues to be a registered company.

[9] I considered the advice from the respondent in terms of Clause 12 of Schedule 2 of the [Employment Relations Act 2000](#) which empowers the Authority to proceed to act fully in a matter if a party fails to attend or be represented without good cause.

[10] I did not consider that the respondent had shown "good cause" for its failure to attend the investigation meeting. Accordingly, I proceeded to act as fully in the matter as if the respondent had attended.

[11] Mr Khodabandeh together with support from Mr Stewart Morrison, his current employer, attended the investigation meeting and produced copies of completed timesheets in support of Mr Khodabandeh's claim. Mr Khodabandeh also produced a statement which shows that during his employment, the respondent had paid him a total of \$4,754.00. Mr Khodabandeh left the respondent's employment in or about December 2006.

[12] Mr Morrison told me that he met with Mr Nye on 2 May 2007 with Mr Khodabandeh to discuss the outstanding wages claim and says it was agreed that the respondent owed Mr Khodabandeh the sum of \$6,900 net (this sum also includes an amount for interest).

[13] Mr Morrison produced a document signed by Mr Nye on 2 May 2007 agreeing to the following payment schedule:

May 20th	\$900
June 20th	\$3,000
July 20th	\$3,000

[14] The evidence of both Mr Khodabandeh and Mr Morrison was that none of the promised payments have been received by Mr Khodabandeh.

TC Painting Ltd is ordered, pursuant to [section 131](#) of the [Employment Relations Act 2000](#), to pay to Mr Khodabandeh the sum of \$6,900 without deduction. This amount is to be paid within 14 days of the date of this determination.

Costs

[15] This application required a filing fee of \$70.00. It is appropriate that the respondent reimburse the fee.

TC Painting Ltd is ordered to pay to Mr Khodabandeh the sum of \$70.00 within 14 days of the date of this determination.

Comment

[16] At the investigation meeting Mr Khodabandeh appeared extremely angry and frustrated over the failure of the respondent to pay him the wages due to him. He was also under the misapprehension that the Authority will pursue Mr Nye personally to collect the money he is owed. As explained at the investigation meeting, this is not the role of the Authority. I took the opportunity to outline to Mr Khodabandeh the steps that he can take to enforce this determination, should the respondent fail to comply with my orders.

Vicki Campbell

Member of Employment Relations Authority

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