

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Yul Kim  
**AND** Sense Research Limited  
**REPRESENTATIVES** Applicant in person  
No appearance for respondent  
**MEMBER OF AUTHORITY** Robin Arthur  
**INVESTIGATION MEETING** 28 November 2006  
**DATE OF DETERMINATION** 28 November 2006

DETERMINATION OF THE AUTHORITY

[1] The applicant seeks enforcement of an exit agreement signed on 30 May 2006 by him and the respondent company's director Michael Curlett. Another employee signed the agreement as a witness.

[2] The terms of the agreement provided for the applicant to resign immediately and for the respondent to pay the applicant his holiday pay and a further two weeks wages. The respondent undertook to observe strict confidentiality in respect to the applicant's resignation and for the applicant not to make any unauthorised use of the respondent's intellectual property.

[3] The respondent has not defended the applicant's enforcement application. No statement in reply was lodged. In email correspondence with a Support Officer of the Authority Mr Curlett suggested that he could not respond to the application unless the applicant provided a "written release" to confidentiality obligations in the exit agreement. He stated that he had legal advice that "the agreements (sic) are enforceable". By reply email the Authority Support Officer advised Mr Curlett that an investigation meeting would be held at which the company was entitled to be represented but that orders could be made whether or not the company chose to attend.

[4] A notice of investigation meeting was issued. No representative of the Company attended at the appointed time. I had a Support Officer contact Mr Curlett by telephone. I am told that he acknowledged receiving notice of the meeting but had not put it in his diary and was enroute to Wellington. He asked to be advised of the outcome.

[5] Proceeding with the meeting I heard the applicant's sworn evidence that he had not been paid the amounts promised under the exit agreement. The agreement was prepared by the company after he offered to resign.

[6] He made repeated polite requests through June and July for the promised payments. By email in mid-July Mr Curlett apologised for the delay and said he "will get this paid shortly".

[7] The applicant filed his claim in the Authority after waiting two months for payment.

## Determination

[8] The applicant is entitled to enforce the agreement. The respondent freely entered the agreement on terms suitable to it. It is bound to honour those terms. The confidentiality term related to the circumstances or background of the applicant's resignation. By its own agreement the respondent was not able to revisit those circumstances. It was not bound by any confidentiality term from discussing why it had not honoured the terms of the agreement relating to payments to the applicant.

[9] On figures supplied to him after his resignation by a person described as the company accountant, the applicant earned \$54,999 gross in the year June 2005 to May 2006. He was entitled to three weeks holiday pay. Based on his average weekly earnings of \$1057.67 during his year of employment with the respondent, the applicant was entitled to holiday pay of \$3173.02 (gross).

[10] By the terms of his exit agreement he was also entitled to two weeks further pay. This amounts to \$2115.34 (gross).

[11] As late as 19 July 2006 Mr Curlett confirmed by email to the applicant that the money owed would be "paid shortly". No proper reason for the further delay has been provided to the applicant. In these circumstances, exercising the discretionary power to award interest provided under clause 11 of Schedule 2 of the Employment Relations Act 2000, I consider that the applicant is entitled to an award of interest on the money owed through the period 1 August to 30 November (122 days) and on an ongoing daily basis until the debt is paid. I calculate the interest on what I take to be a rate reasonable in the present market of 8.64 per cent (being the 90-day bill rate on 28 November 2006 plus one per cent).

## Order

[12] Accordingly I make the following orders. Within 14 days of the date of this determination, the respondent is to pay to the applicant the following sums:

- (i) \$3173.02 as holiday pay (less PAYE and Student Loan repayments); and
- (ii) \$2115.34 as wages (less PAYE and Student Loan repayments);
- (iii) \$152.50 as interest on the above amounts for the period 1 August to 30 November 2006.
- (iv) \$70 as reimbursement of the applicant's filing fee in the Authority.

[13] In the event that the respondent does not pay the amounts ordered within 14 days, I make the further order that from 15 December 2006 until the holiday pay and wages owed is paid in full the respondent is to also pay to the applicant daily interest of \$1.25 a day.

Robin Arthur  
Member of Employment Relations Authority