

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Navdeep Kumar (Applicant)  
**AND** Cool Units Limited (Respondent)  
**REPRESENTATIVES** Navdeep Kumar In person  
No appearance for the respondent  
**MEMBER OF AUTHORITY** Y S Oldfield  
**INVESTIGATION MEETING** 19 January 2006  
**DATE OF DETERMINATION** 20 January 2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] This matter concerns a claim for arrears of wages. When Mr Kumar lodged the matter he named Mr William Peard as the respondent however both he and Mr Peard later agreed that Mr Peard's company, Cool Units Limited, employed him and so I have amended the intituling accordingly.
- [2] Mr Peard provided a reply to the statement of problem but did not attend the investigation meeting. At 10.05 am on the day of the meeting I called and left a message for him on his mobile phone. I received no reply and at 10.15 I commenced taking Mr Kumar's evidence. Later that morning, after I had concluded my meeting with Mr Kumar I received a call from Mr Peard who apologised for failing to let the Authority know that he would not be attending the meeting. He explained that the company was about to be placed in voluntary liquidation and had no assets and for this reason, he saw no purpose in attending.
- [3] Since the liquidation has not yet taken place, I proceed to determine the matter, having regard to the statements of problem and reply and to Mr Kumar's evidence.
- [4] There is no dispute that Mr Kumar worked for Cool Units Ltd and no dispute that he is owed payment. The issues which are in dispute and which fall to me for determination are as follows:
- Whether Mr Kumar was an employee;
  - What rate of pay was agreed, and
  - Whether he has received part payment of the money owed to him.

*Was Mr Kumar an employee?*

- [5] Mr Kumar first went to work for Cool Units Ltd in mid 2002. His task was to construct fish tanks. He was there for approximately two years until mid 2004 when he left to take up work in the kiwifruit industry.
- [6] Mr Kumar told me there was never any doubt that he was an employee during that time. This is borne out in a letter Mr Peard wrote in January 2004 (attached to the statement of problem) which describes Mr Kumar as being “*employed with Coolunits.*”
- [7] Mr Kumar told me that in April 2005, during a seasonal lull in the kiwifruit industry, Mr Peard approached him and asked him to come back and work for him again. Mr Kumar agreed and worked one week (45 hours.) However he was not paid for the first week’s work and so did not continue after that.
- [8] In his reply to the problem, Mr Peard confirmed that Mr Kumar worked for him for 45 hours but said that he took him on as a contractor. He did not provide any further information to back up this statement, although he said that an hourly rate was agreed “plus GST.”
- [9] For his part, Mr Kumar said that a rate was struck without reference to GST and there was nothing in the discussions between him and Mr Peard to indicate that the nature of the working arrangement was any different from what it had been before. He said that the week’s work in 2005 was done in the same way and on the same basis as previously. He said that he had been GST registered at one stage some seven years before but had ceased filing returns as he was no longer self employed.
- [10] I am satisfied that Mr Kumar was an employee during his first period of work for the respondent. There is insufficient evidence to establish on balance that it was agreed that his status would be different when he went back in 2005. I conclude that Mr Kumar was also employed by the respondent for one week in 2005.

*What rate of pay was agreed?*

- [11] Mr Kumar said he was promised \$18.00 per hour. Mr Kumar told me that he had been on \$16.00 per hour when he left in 2004 and would not have returned without an increase. Mr Peard said in his reply that they agreed on \$17.00 plus GST.
- [12] A straight \$18.00 per hour is consistent with my finding that Mr Kumar was an employee. I conclude that this was the rate of pay agreed between the parties.

*Has part payment been made?*

- [13] In his reply, Mr Peard stated that the parties agreed that payment would be partly in cash, so as to avoid tax. He says he paid Mr Kumar \$200.00 cash as part payment of the \$860.00 he says was owed in total for the week’s work.
- [14] I had no opportunity to test this assertion as Mr Peard did not attend my meeting. However I put it to Mr Kumar that it had a ring of truth about it since it seemed unlikely that Mr Peard would fabricate this part payment after being prepared to admit the debt. Mr Kumar told me that he had no recollection at all of receiving such a payment, and suggested that Mr Peard could have been mistakenly thinking of some other payment to someone else.

[15] In the absence of further evidence on the issue, I have accepted what Mr Kumar has had to say. I find that there has been no part payment of the wages owed.

*Summary*

[16] I am satisfied that Mr Kumar was employed by Cool Units Ltd and it is within my jurisdiction to deal with his claim for arrears of wages. He entitled to payment for 45 hours at \$18.00 per hour, which is \$810.00 in total.

**[17] The respondent is ordered to pay to Mr Kumar the sum of \$810.00.**

Y S Oldfield  
Member of Employment Relations Authority