

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2015] NZERA Wellington 60
5530616

BETWEEN ANDREAS MIK
 Applicant

A N D ENTERPRISE7 LIMITED
 Respondent

Member of Authority: M B Loftus

Representatives: Applicant in Person
 No appearance for Respondent

Investigation Meeting: 19 June 2015 at Wellington

Submissions Received: At the investigation meeting

Date of Determination: 19 June 2015

ORAL DETERMINATION OF THE AUTHORITY

[1] The applicant, Andreas Mik, seeks the payment of outstanding wages.

[2] Enterprise7's position, as enunciated in its statement in reply, is confused and contradictory. Its first assertion is any shortfall in pay is due to the use of an incorrect IRD code and it is for Mr Mik to resolve the issue with the Inland Revenue. That is followed by an assertion Mr Mik abandoned his employment though the implications are not identified. There are then various performance allegations and comment about the fact Mr Mik failed to return Enterprises7's property. Finally there is an assertion the documentary evidence appended to Mr Mik's claim has been edited and is, as a result, incomplete and misleading.

[3] Enterprises7 was neither present nor represented at the investigation meeting. That was not a surprise but it did raise the question of whether or not I proceed in its absence.

[4] Michelle Spooner, Enterprises7's sole director and shareholder, is known to the Authority. Equally known is her predilection for failing to participate in the Authority's process either meaningfully or in good faith. We now expect such a failure.

[5] There is then the fact the notice of hearing was served on both Enterprises7's registered office and that of her advocate, Joe Richardson. Mr Richardson's address was notified as that for service in accordance with regulation 15(2) of the Employment Relations Regulations 2000.

[6] Mr Richardson has now asked to withdraw as he is unable to elicit instructions from Ms Spooner. He has, however, confirmed he has been in contact with her and told her of the investigation meeting and consequences of non-attendance.

[7] As is advised in the notice of investigation meeting those consequences include the possibility the investigation will proceed in the respondent's absence and a determination issued in favour of the applicant.

[8] In the circumstances, and given the lack of an explanation for the absence, I consider it appropriate to continue.

[9] Enterprise7 is in the business of software development.

[10] Mr Mik was engaged to perform work for various clients and commenced in June 2014. From the outset there were problems with his first pay being late. The payments ceased altogether in late August, though Mr Mik continued to work given promises payment would be forthcoming. They weren't and as he could no longer sustain himself and his family without an income he sought other work in early October. That said, and despite the factual scenario lending itself to a constructive dismissal claim that has not been alleged.

[11] Mr Mik says he is owed \$13,901.93.

[12] His claim is supported with various records including a plethora of texts which passed between himself and Ms Spooner. A number of those address the sourcing of work but there are also inquiries from Mr Mik regarding the payment of his salary. These are initially answered with promises the money would be forthcoming when Enterprise7 was paid by the clients for whom Mr Mik had performed work. These

exchanges continued till early November when Mr Mik discovered Ms Spooner had had the money in question for some time. The tone of the exchanges then deteriorated and according to Mr Mik the amount claimed remains outstanding.

[13] As already said Enterprise7's response is confused and contradictory. It is unclear what the defence is and, for the following reasons, it fails to convince me I should dismiss Mr Mik's claim.

[14] First I have had an opportunity to test Mr Mik's claim by questioning him and reviewing the documentary evidence which includes a written employment agreement and pay slips. He passed the test.

[15] Second I conclude the assertions in Enterprise7's statement in reply carry no weight. Aside from the fact Enterprise7's absence means there is no evidence its assertions have validity I note their content renders them irrelevant. They appear designed to portray Mr Mik as undeserving but at no point does Enterprise7 deny he is owed the money he claims.

[16] Third Mr Mik has tried to decipher the response and replied to the assertions as best he can. He denies Enterprise7's assertions have validity and having had an opportunity to test his responses I accept those denials.

[17] There is then section 132 of the Employment Relations Act 2000. A time and wage record has not been provided by Enterprise7 yet Mr Mik tells me he asked for one. As there is no evidence to disprove Mr Mik's claim the section allows me to accept it.

[18] For the above reasons I conclude Mr Mik is owed the money he claims. I therefore order that the respondent, Enterprise7 Limited, pay him \$13,901.93 (thirteen thousand, nine hundred and one dollars and ninety three cents) gross. PAYE may be deducted prior to payment of the balance but the tax is to be forwarded to the Inland Revenue Department.

[19] Payment is to be made no later than 4.00pm on Thursday 2 July 2015.

[20] Turning to costs. Mr Mik has not sought professional assistance so recompensible costs are limited to reimbursement of the filing fee (\$71.56). Given his total success I consider it appropriate he be reimbursed and order that Enterprise7

Limited pay Mr Mik a further \$71.56 (seventy one dollars and fifty six cents). Payment shall be added to that already ordered.

[21] Finally I note Enterprise7's claim Mr Mik is in possession of its property and refusing to return it. He willingly accepts he has said property. He says he wants to return it but is incapable of doing so. I accept that.

[22] Despite contact with both Mr Richardson and the Authority Ms Spooner refuses to advise her whereabouts. Similarly the professional company who serves as her official address for service in accordance with the Companies Act 1993 faces similar problems. It has no idea where she is and is incapable of solving the conundrum. Mr Mik cannot return the property given his inability to ascertain a method of delivery.

M B Loftus
Member of the Employment Relations Authority