

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Paul Anthony McCarthy (Applicant)  
**AND** Kiwi Horse Transport Limited (Respondent)  
**REPRESENTATIVES** Paul McCarthy In person  
No appearance for Respondent  
**MEMBER OF AUTHORITY** James Crichton  
**INVESTIGATION MEETING** 22 September 2005  
**DATE OF DETERMINATION** 27 September 2005

DETERMINATION OF THE AUTHORITY

***Employment Relationship Problem***

- [1] The applicant (Mr McCarthy) was employed by Kiwi Horse Transport Limited (Kiwi) in a variety of capacities over a period of four years working principally in Cambridge in the Waikato and Christchurch in the South Island.
- [2] Mr McCarthy filed his statement of problem on the 28 January 2005 and despite extensive efforts from the Authority's Christchurch support staff, no statement in reply was ever filed. Indeed, the Authority's support staff had considerable difficulty in finding the respondent Kiwi at all and needed to go to considerable lengths in order to serve the necessary documentation on the respondent.
- [3] Mr McCarthy described to me a reasonably normal working environment until towards the end of calendar 2004.
- [4] His evidence was that he came down from Cambridge to manage the South Island operation and he started in the new role in Christchurch on the 4<sup>th</sup> June 2004.
- [5] He said that this period of employment continued in a perfectly normal fashion (as had his earlier work with Kiwi) until September 2004 when in his words *wages started to come through sporadically*.
- [6] He described how wages' cheques were dishonoured (not always but from time to time) and then how the fuel card which he used to buy fuel for the company's horse transporter vehicle was cancelled without advice to him.

[7] His evidence was that he used the cash that came into the business from time to time for meeting fuel costs in particular and other running costs associated with the business, but eventually the cash ran out or was insufficient to meet the operating needs of the business.

[8] Then, in a decision which no doubt he now regrets, Mr McCarthy started to use his own money to meet the operational costs of the business and when Kiwi failed to reimburse him for those costs met out of his personal resources, he made the decision to resign.

[9] His resignation letter, which I have sighted, is dated the 14<sup>th</sup> October 2004 and makes his resignation effective from the 31<sup>st</sup> October 2004. Mr McCarthy described how immediately on receipt of the letter of resignation, Kiwi management indicated that they would come to Christchurch to discuss matters with him but nothing ever came of that and in the result he finished his employment on 31 October.

[10] After leaving the firm and from that point down till the point at which he filed his statement of problem in the Authority, Mr McCarthy indicates that he has tried without success to obtain payment of his outstanding wages, holiday pay and the costs that he met on behalf of the business, all without success. Indeed, he says that he has never actually spoken to the individual Martin John Groenestein who he regards as the principal of Kiwi.

[11] Mr McCarthy's evidence was that the respondent Kiwi had sold the assets of the business and were simply disinclined to deal with his issues. The Authority is satisfied that Kiwi continues to exist as a legal entity.

[12] Having been completely unsuccessful at getting his former employer to address the outstanding matters, Mr McCarthy filed his statement of problem in the Authority. By virtue of the difficulty in even obtaining contact with the person who appears to be the governing director of Kiwi, mediation was not attempted nor was it ordered by me in all the circumstances.

***No appearance by respondent.***

[13] As I have already indicated, not only did the applicant in this matter have significant difficulty in contacting the respondent Kiwi but the Authority also found that exercise challenging. No contact was ever achieved with Kiwi although the Authority support staff went to considerable lengths to ensure that Kiwi were aware of the statement of problem having been filed, aware that the Authority had determined that it wished the matter to proceed to an investigation meeting and aware of the various telephone conferences which had preceded the decision that I made to proceed to have an investigation into Mr McCarthy's claim.

[14] In all the circumstances then, I am satisfied that all proper steps were taken to notify the respondent of the claim, to give the respondent a proper opportunity to be involved in the determination of that claim and a proper opportunity to be heard in relation to the claim.

[15] Notwithstanding those efforts, the respondent made no effort whatever to engage with either the Authority or Mr McCarthy in the resolution of the employment relationship problem and in the face of that comprehensive refusal to address the issue, I decided that the justice of the case required that I proceed to conduct my investigation in the absence of the respondent, pursuant to Clause 12 of Schedule 2 of the Employment Relations Act.

***The Applicant's Claim***

[16] The applicant's claim falls under a number of different heads:

- a. Compensation for the disadvantage occasioned by the respondent's cavalier treatment of his wages and reimbursement claim.

- b. Payment of wages.
- c. Payment of holiday pay.
- d. Reimbursement of costs met by the applicant on behalf of the respondent.

[17] I am satisfied that the respondent's treatment of the applicant was not the action of a fair and reasonable employer imbued with the good faith principle the Employment Relations Act requires. Failure to address in any way a claim by a worker that wages remain unpaid is a serious breach of an employer's obligation. The breach is made more serious in this particular case by the failure of the employer to ensure that the employee had the appropriate funds or credit lines in order to perform his duties and subsequently, the employer's failure to reimburse the employee when, the employer's credit having failed, the employee used his own.

[18] I am satisfied that it is appropriate to award a compensatory sum to Mr McCarthy for the hurt, humiliation and injury to his feelings which Kiwi's action (or inaction) subjected him to. I award him the sum of \$5000.00 pursuant Section 123 (1) (c) (i) of the Act.

[19] Mr McCarthy claims unpaid wages in the sum of \$1052.85 gross. His evidence is that this figure is arrived at by calculating the sum of the various occasions when a wages cheque due to him for his work, was dishonoured. He further says that the figure was calculated by Kiwi's former wages clerk to whom he provided the information that he had at his disposal. For her part, Kiwi's former wages clerk had access to Kiwi's wage records in doing the calculation. I accept Mr McCarthy's unchallenged evidence in this regard.

[20] It follows that I declare that Mr McCarthy is due the sum of \$1052.85 gross from Kiwi in respect to unpaid wages owed to him down to the 31<sup>st</sup> October 2004 being the date that his resignation took effect.

[21] Similarly, Mr McCarthy claims unpaid holiday pay in the sum of \$4820.00 gross which again has been calculated for him by Kiwi's former wages clerk who has been provided with the appropriate information by Mr McCarthy to augment the information from Kiwi's own records. I accept Mr McCarthy's unchallenged evidence in this regard also.

[22] Mr McCarthy is owed \$4820.00 in unpaid holiday pay.

[23] Finally, Mr McCarthy submits a schedule of receipts for purchases that he made from his own money on behalf of the employer. Principally these purchases are for diesel to run Kiwi's vehicles but there are other purchases as well. The total amount sought by way of reimbursement is \$1118.66. I am satisfied from the evidence before me that that sum is due and owing to Mr McCarthy by Kiwi and I order accordingly.

#### ***Determination***

[24] Kiwi will pay Mr McCarthy the following sums:

- a. *Compensation pursuant Section 123 (1) (c) (i) of the Employment Relations Act in the sum of \$5000.00.*
- b. *Unpaid wages in the sum of \$1052.85 gross.*
- c. *Unpaid holiday pay in the sum of \$4820.00 gross.*
- d. *Reimbursement of purchases in the sum of \$1118.66.*

e. \$70.00 by way of the *Employment Relation Authority's filing fee.*

**Costs**

[25] Mr McCarthy having acted for himself and the respondent having chosen not to be involved in the Authority's investigation meeting, I make no order for costs.

James Crichton  
Member of Employment Relations Authority