

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 400  
5389594

BETWEEN CASEY CHEUK YUEN NG  
Applicant

A N D PAUL MICHAEL MIN t/a  
TOPRANK.CO.NZ  
Respondent

Member of Authority: T G Tetitaha  
Representatives: Applicant in person  
No appearance by Respondent  
Investigation Meeting: 24 October 2012 at Auckland  
Date of Determination: 14 November 2012

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**DETERMINATION OF THE AUTHORITY**

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**Orders**

- A. An order pursuant to s.131 of the Act requiring Paul to pay Casey the sum of \$1,315 being wage arrears.**
- B. An order pursuant to clause 11 Schedule 2 of the Act for interest on the judgment sum set out in paragraph A at the rate of 5% per annum calculated from 17 June 2012 until payment.**
- C. An order pursuant to clause 15 Schedule 2 of the Act for the respondent to pay \$126.64 towards Casey's filing fee and expenses.**

### **Employment relationship problem**

[1] The applicant, Casey Cheuk Yeun Ng (“Casey”) was employed as a designer to provide design and IT assistance to the respondent, Paul Min trading as Toprank.co.nz (“Paul”).

[2] Paul’s business is in communications including in particular the creation of web pages and use of Google analytics to promote client businesses.

[3] Casey terminated his employment with Paul on or about 14 June 2012. He seeks payment for wages owed for that period totalling \$1,315 and his costs in bringing this application.

### **Issues**

[4] There is a preliminary issue regarding the absence of the respondent at the investigation hearing. The Authority has the power to proceed if a party fails to attend a hearing pursuant to clause 12 of Schedule 2 of the Act:

**12. Power to proceed if any party fails to attend**

*If, without good cause shown, any party to a matter before the Authority fails to attend or be represented, the Authority may act as fully in the matter before it as if that party had duly attended or been represented.*

[5] No good cause has been shown for the failure of Paul to attend this hearing. Paul has not contacted the Authority to explain its absence.

[6] The statement of problem was served upon Paul on or about 20 July 2012 at his last known address of 109 Cook Street, Auckland.

[7] No further documentation has been filed.

[8] On or about 12 October 2012, notification of a telephone conference on 19 October 2012 was sent to Paul at the same address.

[9] The notice of this investigation meeting and the directions following the telephone conference were emailed to Paul on 19 October 2012 and hard copies sent by registered mail to his last known address at 109 Cook Street, Auckland.

[10] Given the above efforts to contact Paul, I am satisfied that the Authority may continue to hear this matter today.

[11] The single issue for determination is whether an order pursuant to s.131 of the Employment Relations Act 2000 (“Act”) should be made requiring Paul to pay Casey the sum of \$1,315.00.

### **Facts**

[12] Casey is a 24 year old graduate with a Bachelor of Design majoring in product design and a Diploma in Graphic Communications from Auckland University of Technology. This employment was his first job.

[13] Casey stated he was led to believe by Paul he was an employee. He does not know what self-employment or contracting would involve.

[14] Paul is the Managing Director of the business trading as Top.rank.co.nz. Paul’s core business is communications.

[15] Casey was employed as a designer. He provided design and IT assistance creating “splash pages” and to control Google analytics for better client communication with their respective target markets. He created entry web pages which linked to the company’s main website known as “splash pages” where a customer could click on a button/link which would take them to the company’s website. His work controlling Google analytics involved entering ‘tags’ or search parameters to ensure a client company’s website link would be appear on the first page of any Google search related to the tag. He was the only designer employed by Paul to do this work.

[16] An employment agreement was given to Casey to sign and return to Paul. The agreement recorded Paul as his employer and a salary of \$38,000.00 paid monthly. After signing the contract, he was not given a copy to keep. He recalls his annual salary was not dependent upon results or a set fee.

[17] Casey attended training on Queen’s Birthday June 2012 prior to starting the job the following day.

[18] Casey was provided with a desk in an open office space at Paul's offices. He had to use his own computer but Paul supplied an internet connection, power and stationery.

[19] There were set hours of work between 8.30am and 5.30pm, five days per week with a one hour for lunch.

[20] Casey reported to Paul and Mr Nidal Fouani, the Director of Operations. His work tasks were set each day by either Mr Fouani or Paul.

[21] On or about 14 June 2012, Casey found a better job. Accordingly he gave Paul notice he wished to leave. After discussing matters with Mr Fouani, he was told to provide an invoice for his 10 days of work based on the annual salary of \$38,000. An invoice for \$1,315 was duly rendered.

[22] The invoice provided did not allow for either PAYE or GST. Casey stated he did not understand PAYE or GST but assumed Paul was taking care of any taxation. He did not understand there was any significance in rendering an invoice upon his employment status.

[23] Casey's last day of work was to be 17 June 2012. On or about 25 June 2012, he was asked by Paul to come back in and assist with further work but was not paid for the additional time.

[24] Despite repeated requests for payment, Casey received no remuneration for the work he undertook during his employment with Paul.

[25] Accordingly the Authority determines on the evidence before it there has been default in payment to Casey of wage arrears totalling \$1,315.00 by Paul.

[26] The Authority further determines Casey is entitled to interest on the judgment sum from the date of termination being 17 June 2012 until payment of 5%.

### **Costs**

[27] Casey was self-represented but incurred the cost of the Authority filing fee of \$71.56.

[28] He also sought to recover his personal out of pocket expenses in bringing this application of \$55.08. These comprise landline calls to Paul (\$11.50); two bus rides to attend the Authority (\$10.08); and estimated cost of mobile calls to Paul (\$23.50).

[29] The Authority determines these expenses are reasonable expenses for Casey to recover and an order for costs of \$126.64 shall issue accordingly.

### **Orders**

[30] In light of the above determination, the Authority makes the following orders:

- (a) An order pursuant to s.131 of the Act requiring Paul to pay Casey the sum of \$1,315 being wage arrears.
- (b) An order pursuant to clause 11 Schedule 2 of the Act for interest on the judgment sum set out in paragraph A at the rate of 5% per annum calculated from 17 June 2012 until payment.
- (c) An order pursuant to clause 15 Schedule 2 of the Act for the respondent to pay \$126.64 towards Casey's filing fee and expenses.

Tania Tetitaha  
Member of the Employment Relations Authority