

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN NZ Copper Granulating Limited (Applicant)
AND David Ross (Respondent)
REPRESENTATIVES Suzanne Billsborough, Advocate for Applicant
No appearance for Respondent
MEMBER OF AUTHORITY Paul Montgomery
INVESTIGATION MEETING 21 September 2005
DATE OF DETERMINATION 23 September 2005

DETERMINATION OF THE AUTHORITY

The Problem

[1] The applicant and respondent are signatories to an individual employment agreement the relevant section of which is that requiring a departing employee to give reasonable notice and in the absence of mutual agreement as to notice, should the employee leave without working out notice, he is to forfeit two weeks wages.

[2] Mr Ross, who was employed as a labourer by the applicant at an hourly rate of \$11.50 per hour, worked a forty (40) hour week.

[3] On Monday 14 February 2005 Mr Ross was absent from work. He attended on 15 February 2005 and advised the applicant he was giving his notice and starting a new job on Wednesday 16 February 2005. The applicant's office manager, Ms Billsborough, advised the respondent that he was required to give two weeks notice. Mr Ross told her that he would speak to his new employer about starting the new job later and would get back to her. Nothing more was heard from Mr Ross.

[4] On 2 March 2005 Ms Billsborough wrote to Mr Ross;

Dear David

Termination of Employment

On Tuesday afternoon of 15 February 2005, you advised that you had another job which you would be starting on 16 February 2005. I advised you that you were required to provide two weeks' notice. You said you would talk to your new employer about starting at a later date and would refer back to me. I did not hear from you, nor did you return to work on Wednesday 16 February or thereafter.

We are therefore seeking two weeks' pay in lieu of notice not having been given or worked out.

Would you therefore please remit payment of \$920.00 (\$11.50 x 80 hours) so as to avoid further action.

Yours sincerely

*Suzanne Billsborough
Office Manager*

[5] Having heard nothing the applicant lodged its application with the Authority on 13 May 2005. A copy of the statement of problem was couriered to the respondent and proof of delivery establishes he received this at 1.28pm on 13 July 2005.

[6] The support officer's attempts to contact the respondent to arrange a teleconference were not successful and Mr Ross was not a party to the teleconference held on Wednesday 20 July 2005. The Authority recommended that Ms Billsborough write to Mr Ross suggesting he meet his obligations by way of a weekly automatic payment. This was done and again there was no response from Mr Ross.

[7] Advised of Mr Ross' non response, the investigation meeting was set down for Wednesday 21 September 2005 and both parties were advised of this on 16 August 2005.

The Investigation Meeting

[8] The meeting was very brief. I was satisfied that Mr Ross had been fully made aware of the claim and of the time, date and place of the meeting but chose not to attend.

[9] Ms Billsborough produced a copy of the respondent's wage records which I found helpful in confirming the basis of the claim. I enquired as to whether Mr Ross had been paid his holiday pay and was advised that the company had paid out what Mr Ross was due up until Christmas 2004. His entitlement was thus reduced to 6% of \$2058.00 he had earned since his first pay in the New Year. The sum due to the respondent but unpaid is \$123.53.

The Determination

[10] As a party to an individual employment agreement containing a forfeiture clause entitling the applicant company to two weeks payment in the event notice was not given, I order Mr Ross to pay the applicant the sum of \$796.47, being the \$920.00 claimed, less holiday pay of \$123.53.

[11] This sum is to be paid to the company within twenty eight (28) days of the issue of this determination.

Costs

[12] As the company chose to represent itself through its office manager, Ms Billsborough, I make no award of costs in this case.

Paul Montgomery
Member of Employment Relations Authority