

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Graham Edward Nelson (Applicant)  
**AND** Five Star Plus Holdings Limited (Respondent)  
**REPRESENTATIVES** Applicant in person  
No attendance for Respondent  
**MEMBER OF AUTHORITY** Alastair Dumbleton  
**INVESTIGATION MEETING** 2 December 2005  
**DATE OF DETERMINATION** 5 December 2005

**DETERMINATION OF THE AUTHORITY**

[1] An employment relationship problem has arisen out of a failure by an employer to begin performing an employment agreement entered into with an employee. I find that in breach of a term of the employment agreement, work was not provided by the respondent Five Star Plus Holdings Ltd to the applicant Mr Graham Nelson. To remedy that breach and resolve the problem, Mr Nelson is entitled to recover from the company lost wages, compensation and costs. That is the determination of the Authority.

[2] I am satisfied from the evidence of Mr Nelson given at an investigation meeting (which the respondent did not attend although it had been properly served with the application and a Notice of Meeting) that on 17 March 2005 further to arrangements made by a WINZ work broker an employment interview of Mr Nelson was carried out by a director of the respondent company, Sefita Hansen. His name is listed in Companies Office records as a director of Five Star Plus Holdings Ltd.

[3] I find that Mr Nelson and Mr Sefita entered orally into an employment agreement under which Mr Nelson was to work for the respondent company as a supervisor of labourers on a city demolition site. In return he was to be paid weekly, on Thursdays, at the rate of \$12 per hour net. The work was to be full time – at least eight hours a day for five days a week – and would start on 22 March 2005. A handshake concluded the agreement.

[4] On 21 March, I find, Mr Nelson rang Mr Sefita to enquire where and when the two were to meet the following day but was told that the work could not start immediately because a particular permit needed for the demolition job had not yet been obtained. Over the next week Mr Nelson repeatedly rang Mr Sefita, only to be given the same advice. Eventually Mr Nelson accepted that the respondent company had repudiated the employment agreement and he began looking for another job.

[5] It is no requirement of the Employment Relations Act 2000 that before a person left in Mr Nelson's situation can successfully bring a claim for a remedy under the Act, actual performance of agreed work must have started. It is enough under s.6 of the Act that Mr Nelson became a person "intending" to work, on the strength of the offer made in this regard by Mr Sefita and also Mr Nelson's acceptance of it.

[6] The respondent company has not come forward with any justification for its actions, assuming it may have had any to offer. While I can readily accept that generally demolition work cannot proceed without a permit, the respondent has not presented any evidence or information about the particular job Mr Nelson was employed to supervise and the situation with regard to a permit. When was any application made for it? What was the hold-up in obtaining it? What other work did the respondent have that Mr Nelson could have been employed on until the permit was obtained? Was there really a problem over the permit, or was that just an excuse given to Mr Nelson?

[7] Accordingly I am satisfied that Mr Nelson was unjustifiably dismissed from employment by the respondent and he is entitled to the remedies of reimbursement of lost wages and compensation.

[8] About five weeks went by before Mr Nelson obtained other employment, so his loss was \$2,400 (after tax) to be reimbursed to him by the respondent. I am satisfied that he also suffered emotional stress as result of being disregarded and so casually. I assess compensation at \$2,500, which is payable by the respondent company under s.123(1)(c)(i) of the Act.

[9] Although Mr Nelson has been on legal aid he is required to repay the Agency out of any monies he successfully recovers from this claim. I therefore order the respondent company to contribute \$1,223.50 towards Mr Nelson's legal aid as invoiced by the Legal Services Agency.

[10] A certificate will be issued with this determination to enable it to be enforced, if the applicant wishes, under s.141 of the Act in the same way as a judgment of the District Court. Alternatively, the remedy of compliance is available in the Authority for this purpose, under s.137.