

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Donald Brendon John Newman (Applicant)

AND Aaron Transport Limited (Respondent)

REPRESENTATIVES Donald Newman, in person
Clyde McLeod, for the respondent

MEMBER OF AUTHORITY R A Monaghan

INVESTIGATION MEETING 29 September 2005

DATE OF DETERMINATION 3 October 2005

DETERMINATION OF THE AUTHORITY

[1] Aaron Transport Limited employed Donald Newman as a driver. On 13 August 2005 it dismissed him summarily after he had been stopped by the Police and found to be driving a heavy truck while disqualified from driving that class of vehicle. The Police impounded the truck, which was a company vehicle.

[2] Mr Newman did not receive his final pay. Accordingly he seeks payment of:

- (a) wages owed for the period 7 – 12 August 2005;
- (b) one week's pay in lieu of notice; and
- (c) holiday pay covering the period 7 July – 12 August 2005.

[3] During the course of a conference call on 29 September 2005 between the Authority and the parties in respect of this matter, Mr Newman acknowledged he had been dismissed summarily and withdrew his claim for payment of a week's pay in lieu of notice.

[4] During the same conference call Clyde McLeod, a director of Aaron Transport Limited, did not deny that the money was owed, but pointed out that unlawful actions of Mr Newman's had put the company to considerable expense. In support he filed an invoice from a motel where Mr Newman stayed after his truck was impounded, despite being told he was not authorised to incur that cost, and an invoice setting out legal costs of the recovery of the impounded truck. The amounts came to more than Mr Newman was owed, and Mr McLeod was withholding payment as a set off against those expenses.

[5] The Wages Protection Act 1983 obliges employers to pay the entire amount of wages due to an employee, when the wages become due (s 4). There are exceptions which do not apply here.

[6] Since there are no applicable exceptions, there is no doubt that Aaron Transport Limited has no right to unilaterally withhold the wages due and owing to Mr Newman. Mr McLeod does not

accept that because Mr Newman caused the company to incur significant costs, and he does not accept that Aaron Transport should have to make payment. Nor does he accept that, even if its withholding of wages is unlawful, Aaron Transport should have to make any payment to Mr Newman when Mr Newman's own unlawful actions have caused the problem. I told Mr McLeod the remedy was to make a claim against Mr Newman to recover monies the company says he owes it, but Mr McLeod did not think there was any point in doing so.

[7] I gave Mr McLeod time to consider the company's position and make any further response in respect of its obligations. I have not heard from him in the timeframe I gave. He said that would be the case.

[8] Mr Newman's final pay had already been calculated, and a copy of the calculation was filed. The calculation shows Mr Newman is owed a total gross payment of \$946.73, plus a meal and clothing allowance of \$154.22.

[9] Aaron Transport Limited is ordered to pay Mr Newman those amounts, subject to the necessary adjustments for tax.

[10] There will be no order for costs.

R A Monaghan
Member, Employment Relations Authority