

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 73  
5534192

BETWEEN PRATAP TRANSPORT  
LIMITED  
Applicant

A N D CLAYTON RENNIE  
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Amit Pratap, Director of the Applicant  
No appearance for the Respondent

Investigation Meeting: 10 March 2015 at Auckland

Date of Determination: 13 March 2015

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**DETERMINATION OF THE AUTHORITY**

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- A. The respondent, Mr Clayton Rennie is ordered to pay the applicant, Pratap Transport Limited, within 21 days of the date of this determination, the sum of \$4336.20 in respect of breaches of his employment agreement.**
- B. Mr Rennie is to pay Pratap Transport Limited the filing fee of \$71.56 within 21 days of the date of this determination.**

**Employment relationship problem**

[1] The applicant, Pratap Transport Limited (Pratap Transport) alleges that it is owed the sum of \$6,369 by the respondent, Mr Rennie for alleged breaches of his employment agreement with it which has resulted in losses to it.

**Non appearance of Mr Rennie**

[2] Mr Rennie has not engaged with the Authority's process at any point, he failed to file a statement in reply and failed to attend the Authority's investigation meeting.

[3] Because of the absence of engagement from Mr Rennie, attempts were made to personally serve the statement of problem on him. The statement of problem was delivered on 12 December 2014 by Courier Post and signed for by "*D Nanson*". I understand from Mr Pratap that "*D Nanson*" is Ms Dorothy Nanson, Mr Rennie's partner. Mr Pratap has met Ms Nanson on several occasions at the house she shared with Mr Rennie.

[4] Mr Rennie took no steps to file a statement in reply. On 29 January 2015, the Statement in Reply was again sent to Mr Rennie, this time by email. There is no evidence that the email was not received by Mr Rennie. On 16 February, the Notice of Investigation Meeting was emailed to Mr Rennie. There is no evidence that the email was not received by Mr Rennie.

[5] The investigation meeting was set down for 10 March 2015 but there was no appearance by Mr Rennie. I am satisfied that the Authority has done everything it can reasonably do to inform Mr Rennie of the claim against him and to give him a proper opportunity to be heard in relation to the claims that Pratap Transport makes against him.

**The Issues**

[6] The issues for determination by the Authority are:

- (a) Did Mr Rennie breach his employment agreement with Pratap Transport?
- (b) If so, what were the breaches?
- (c) If breaches are established, did they result in losses to Pratap Transport?

**First Issue*****Did Mr Rennie breach his employment agreement with Pratap Transport?***

[7] Mr Amit Pratap is the sole director and shareholder of Pratap Transport. Pratap Transport contracts its services to Mainfreight, a large delivery services company which operates internationally and in New Zealand. At the relevant time, Pratap Transport contracted its truck and driver to Mainfreight.

[8] Mr Rennie was employed by Pratap Transport as its Driver for the Mainfreight contract pursuant to an individual employment agreement (employment agreement). The employment agreement was signed respectively by Mr Pratap on 4 December 2012 and by Mr Rennie on 3 March 2013. Under clause 3.1 of the employment agreement, Mr Rennie commenced employment with Pratap Transport on 18 July 2012.

[9] Mr Pratap says in mid May 2014, Mr Rennie abandoned his employment.

[10] Mr Pratap says Mr Rennie's actions caused Pratap Transport to suffer a loss of income. Mr Pratap says that Mainfreight requires Pratap Transport to provide a truck and driver. In the event Pratap Transport fails to do so, it loses income as a result and Mainfreight contracts with other trucking companies in order to perform its delivery services. There are also charges incurred by Pratap Transport for each day it cannot perform services under the contract with Mainfreight.

[11] In May 2014, Mr Pratap was notified by Mainfreight that Mr Rennie had failed to report to its depot to drive the truck that day. This was the third occasion during his employment by Pratap Transport that Mr Rennie had failed to report to Mainfreight's depot to drive the truck. On the other two occasions Mr Pratap was able to make contact with Mr Rennie who then returned to work.

[12] On the third occasion in May 2014, Mr Pratap attempted to make contact with Mr Rennie by ringing his work cellphone on a number of occasions, but was unable to do so. Mr Pratap was concerned to fulfil the Mainfreight contract and so attempted to find Mr Rennie. Mr Pratap went to Mr Rennie's house and noticed that the family car appeared to be full of items as if the family had just returned from a holiday. Ms Dorothy Nanson came out of the house and Mr Pratap asked her if Mr Rennie was home. Ms Nanson informed him that Mr Rennie was not home and that she had just

dropped him off at his cousin's house. Mr Pratap asked Ms Nanson for the address of Mr Rennie's cousin so that he could go and talk to Mr Rennie. Ms Nanson said that she could not remember where she had dropped him off. Mr Pratap believed that Mr Rennie was inside the house but did not want to speak with him.

[13] Mr Pratap asked Ms Nanson to get the fuel card, the truck key and access card for him from Mr Rennie. Ms Nanson went back into the house and obtained the fuel card, key and access card and gave it to Mr Pratap. Mr Pratap says he believed from these actions that Mr Rennie had abandoned his employment at that time.

[14] Mr Pratap prepared Mr Rennie's final pay including holiday pay, which was paid to him on 29 May 2014.

### **Alleged losses by Pratap Transport**

#### ***Mr Pratap's loss of salary***

[15] After Mr Rennie's failure to return to work, Mr Pratap tried to find a driver for the truck without success. Mr Pratap was employed at that time by DataCom Employer Services. Mr Pratap says he had to take leave without pay from his employment in order to drive the truck for Pratap Transport in order to prevent losses and fines which would result if Pratap Transport could not fulfil its contract with Mainfreight.

[16] Mr Pratap took a total of 67.5 hours of unpaid leave from his own employment in order to drive the truck. The loss of income to Mr Pratap was \$2010 gross. That was not Pratap Transport's loss. I do not consider Mr Pratap can recover his own loss of salary from Mr Rennie. The claim is by Pratap Transport and there is no evidence it suffered a loss of \$2010 as a result of Mr Rennie's abandonment of employment. This claim is declined.

#### ***Loss of income from Mainfreight contract***

[17] As a result of Mr Rennie's failure to report to work, Pratap Transport did not receive income under its contract with Mainfreight totalling \$368.00. This is a loss suffered as a direct result of Mr Rennie's actions and is payable by him to Pratap Transport.

***Mainfreight's Truck hireage***

[18] Mr Pratap says that when Mr Rennie abandoned his employment, Mainfreight contracted the services of a truck and driver from Crane and Cartage Limited to perform the work that Pratap Transport was contracted to do for it. Pratap Transport incurred a charge for that hireage in the sum of \$534.06. Mr Pratap himself then undertook the driving duties for Pratap Transport in order to fulfil the contract with Mainfreight.

[19] I find that the hireage charge is a justifiable charge for which Mr Rennie is responsible. Mr Rennie gave no notice under his employment agreement with Pratap Transport and would have been aware of the charges that would have been incurred by Pratap Transport in the event he failed to perform the services he was employed to do and for which Pratap Transport was contracted to do.

[20] Following Mr Rennie's abandonment of employment, Mr Pratap discovered that Mr Rennie was in breach of a number of provisions of his employment agreement which resulted in further losses to Pratap Transport.

***Fuel charges***

[21] Under clause 2.6 of his employment agreement, Mr Rennie was provided with a fuel card. This was specifically expressed to be solely for the use of the truck with the registration number specified. It was also expressed it was not to be used for personal use or for fueling any other vehicle – unless authorised by Mr Pratap.

[22] Mr Pratap says that on one or two occasions during the course of his employment, Mr Rennie contacted him and asked for the cost of petrol that he had charged to his fuel card to be deducted from his wages, which Mr Pratap agreed to do. However, during May 2014, Mr Rennie incurred a number of fuel card charges which were subsequently discovered by Mr Pratap. Mr Pratap provided the Authority with details of the fuel card used by Mr Rennie which shows diesel purchased for the truck, the odometer reading on the truck and the cost of each transaction. The fuel card record also shows the charges made by Mr Rennie in respect of his own personal vehicle for petrol and lubricants. The fuel charges incurred by Mr Rennie to Pratap Transport for his personal vehicle and not approved by Mr Pratap totalled \$1,111.98.

[23] I find that Mr Rennie was in breach of the terms of his employment agreement by charging fuel for his personal vehicle to Pratap Transport without the authority of Mr Pratap. Mr Rennie owes Pratap Transport the sum of \$1,111.98 in respect of such unauthorised purchases.

***Phone charges***

[24] Pursuant to clause 2.5 of his employment agreement, Mr Rennie was to use the truck for business purposes only and it was not to be used for personal use.

[25] Under clause 2.7 the use of the truck's radio transmitter (RT) was solely for communication with dispatch. Pratap Transport paid \$20 plus GST each month for the RT system called "Team Talk".

[26] During May 2014, Mr Rennie used the RT to make personal phone calls including to mobile phones which were not authorised. The total of these unauthorised calls for May 2014 amounted to \$177.16.

[27] It is my finding that Mr Rennie was in breach of his employment agreement and owes Pratap Transport the sum of \$177.16 in respect of the unauthorised telephone calls made by him.

***Police Infringement notice and fine***

[28] On 23 May 2014, the New Zealand Police issued an infringement notice to Pratap Transport in respect of the use of the truck by Mr Rennie. Mr Rennie drove the truck on a restricted roading area, without the current road user charge label displayed and with four occupants in the vehicle which exceeded the total number of three occupants stipulated on the truck's certificate of loading.

[29] Mr Pratap says Mr Rennie was well aware that he was required to ensure that the current road user charge label was displayed and in order to assist with that Mr Pratap provided the current road user label to Mr Rennie at least a week before it was due to expire. Mr Rennie failed to display the current label. The fine issued in respect of the offence was a total of \$800.

[30] I find that Mr Rennie was in breach of the terms of his employment agreement by failing to use the truck for business purposes as specified. Mr Rennie owes Pratap Transport the sum of \$800.

***Repair bill for Mr Rennie's Mitsubishi vehicle***

[31] Mr Pratap says that in early May 2014, Mr Rennie rang him to ask whether he was able to recommend a mechanic. Mr Pratap suggested the mechanic that he used, Wiri Automotive 2014 Limited. Mr Rennie had various repairs to his vehicle undertaken at a cost of \$980. When Mr Rennie went to collect the vehicle he had insufficient funds to pay for the repairs. Mr Rennie contacted Mr Pratap and asked whether the cost of the repairs could be deducted from his wages. Mr Pratap agreed but was not reimbursed by Mr Rennie prior to abandoning his employment. Mr Pratap was therefore unable to deduct the cost of the repairs from Mr Rennie's salary. Mr Rennie is responsible for the payment of the repairs to his vehicle. The amount owing by Mr Rennie to Pratap Transport is \$980.

***Personal Accommodation charges***

[32] Mr Pratap says that due to personal issues, Mr Rennie spent some time at the 540 Motel on Great South Road prior to abandoning his employment.

[33] According to Mr Pratap, Mr Rennie on leaving the motel, told the motel owner to charge Mainfreight for the week's accommodation totalling \$365. The motel accordingly charged Mainfreight for Mr Rennie's accommodation. Mr Pratap was contacted by a representative of Mainfreight about the matter and as a result Pratap Transport paid Mr Rennie's accommodation costs.

[34] Mr Rennie owes Pratap Transport the sum of \$365 for unpaid accommodation.

**Determination**

[35] It is my finding that Mr Rennie breached his employment agreement in a number of respects with Pratap Transport. Mr Rennie failed to comply with the terms of his employment agreement in relation to the use of his fuel card, use of the RT phone system, use of truck and incurred personal motel accommodation costs and personal vehicle costs without authority which resulted in Pratap Transport suffering loss.

[36] I order Mr Rennie to reimburse Pratap Transport the following sums which it has lost as a result of Mr Rennie's abandonment of employment:

- Loss of income from Mainfreight contract of \$368.00

- Mainfreight's truck hire charge of \$534.06
- Personal fuel charges of \$1,111.98
- Personal telephone charges of \$177.16
- Police fine for failures in relation to personal use of the truck of \$800
- Personal car repairs of \$980
- Personal accommodation costs of \$365

[37] The total owed by Mr Rennie to Pratap Transport amounts to \$4,336.20. I order Mr Rennie to pay Pratap Transport the sum of \$4,336.20 within 21 days of the date of this determination. I further order reimbursement by Mr Rennie of the filing fee of \$71.56 within 21 days of the date of this determination.

[38] To facilitate enforcement, a Certificate of Determination is to issue with this determination.

**Anna Fitzgibbon**  
**Member Employment Relations Authority**