

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
OFFICE**

**BETWEEN** Kay Pringle (Applicant)  
**AND** Active Planet Limited (Respondent)  
**REPRESENTATIVES** Kay Pringle in person  
No appearance for respondent  
**MEMBER OF AUTHORITY** James Crichton  
**INVESTIGATION MEETING** Queenstown, 8 March 2007  
**DATE OF DETERMINATION** 12 April 2007

**DETERMINATION OF THE AUTHORITY**

***Employment relationship problem***

[1] By statement of problem filed in the Authority on 3 July 2006, the applicant (Ms Pringle) sought to recover unpaid wages from the respondent company Active Planet Limited (the company).

[2] In response, the company alleged that Ms Pringle's debt was with a predecessor company which had gone into receivership, that the amount owed was in fact a lesser amount than the amount Ms Pringle was claiming, that Ms Pringle was a sub-contractor and not an employee but that notwithstanding all of the above, the company would pay the sum it considered was owed being \$2,380.00 (as against the sum claimed by Ms Pringle of \$3,080.00).

[3] There was a telephone conference that I convened between the parties on 30 January 2007 at which the company was represented by Mr Abele, a director. Mr Abele reiterated his intention to meet the debt when funds allowed, notwithstanding that he considered there was no legal basis on which he do that. Ms Pringle sought a deadline for this to happen and none was forthcoming during the telephone conference.

[4] I indicated to the parties that I wished to set the matter down for an investigation meeting but I encouraged them to meet informally with each other to see if the matter could be resolved by agreement. Despite promising signs during the telephone conference, it appeared there were no discussions between the parties from the date of the telephone conference to the date of the investigation meeting.

[5] At the investigation meeting, there was no appearance on behalf of the company. At my request, the Senior Support Officer telephoned Mr Abele to see if he intended attending the investigation meeting. The investigation meeting was in Queenstown, as the parties had previously been advised, but when contact was established with Mr Abele on his cell phone, it transpired that Mr Abele was in Te Anau and was not able to be physically present at the investigation meeting. He represented to the Senior Support Officer in the telephone discussion that he understood that the investigation meeting was to be held on 11 March (a Sunday).

[6] I am satisfied that the company received proper notification of the investigation meeting and indeed agreed to the date at the telephone conference I refer to above. The notice of hearing formally sent to the company correctly identifies the date and the place at which the investigation meeting was to take place in Queenstown. That being the position, I decided that it would be unreasonably prejudicial to the applicant Ms Pringle to vacate the arrangements for the investigation meeting without hearing her evidence. I considered that the company had received proper notification of the arrangements for the investigation meeting and indeed had agreed to the date, time and place, but had simply chosen not to attend.

[7] Ms Pringle gave her evidence on oath and explained to me how the employment relationship had begun. She indicated that she had been driving a bus for another entity and that the arrangements in place with that employer were simply that she faxed her work sheets to the operational headquarters and was paid on the basis of that information. Ms Pringle said that she met with Mr Abele on 28 January 2005 to discuss employment with him and that she offered to work for him on the same basis and that he agreed.

[8] The basis on which the employment was conducted, both in respect to the arrangement with the other employer and in respect of the employer in the present case was effectively on the basis of piece work. Each journey had a cost attached to it and that cost was previously agreed between the parties and then simply applied to each journey actually worked. It follows that the schedule by which Ms Pringle claims her unpaid wages is simply a long list of dates, log book numbers, journey amounts and a cumulative total.

[9] The journey amounts are round numbers, typically \$200. This raised the question in my mind as to the incidence of income tax. Ms Pringle was adamant that the arrangement she negotiated with Mr Abele, which was in exactly similar terms to the one that she had previously had in place with her original employer, was that she was paid the piece rate for the journey and the employer was responsible for the PAYE on top of that piece rate.

[10] I asked Ms Pringle to explain to me if she could why there was a difference between the amount referred to by Mr Abele in his statement in reply on behalf of the company and the amount she claimed. She was unable to offer any explanation for the differing amounts and stood by her figure which was simply the sum of her schedule. I have checked the arithmetic in Ms Pringle's schedule and find it to be accurate.

[11] I was particularly interested that, despite Ms Pringle readily conceding that the original debt was owed by a predecessor company, in fact all of the payments on page 2 of the schedule that was filed in the Authority came from the company and not the predecessor company.

[12] On this fundamental issue, Ms Pringle readily concedes that the monies she is seeking to claim were owed to her by a predecessor company and not by Active Planet Limited, the company named in the present proceedings. I explained to her carefully the effect of that concession but she nonetheless was clear that that was the position.

[13] However, she then went on to say in her evidence that Mr Abele had committed himself to taking over the debt of the predecessor company and to making good on that indebtedness. She further indicated that Mr Abele's ex wife who was also involved with the predecessor company had confirmed that Mr Abele would indeed make good on the debt because he had undertaken to take over the debt of the predecessor company.

[14] These statements in evidence are consistent with the material filed by Mr Abele on behalf of the company in the instant proceedings. Mr Abele says quite categorically: *I proposed (sic) to pay the outstanding amount of \$2,380.00 to Kay Pringle whenever our new company can afford it. The last few months we had no surplus to pay money to her.* I take this statement to mean that Mr Abele intends that he will honour the obligation of the predecessor company in respect of its indebtedness to Ms Pringle, at least to the extent of the figure he considers is owed of \$2,380.00.

[15] As I noted above, the fact that a portion of the indebtedness owed by the predecessor company to Ms Pringle has already been met by the company in these proceedings (notwithstanding the clear evidence that Ms Pringle was not employed by that company) acts as confirmation that the company does intend to meet the obligations of its predecessor company in relation to the debt to Ms Pringle.

[16] At the conclusion of the investigation meeting and having indicated to Ms Pringle my wish to do so, I contacted Mr Abele by telephone and was able to speak with him. He maintained his position that this was not an employment relationship and therefore there was no obligation on him to meet a PAYE payment. He said that Ms Pringle had the nature of the relationship *all wrong* and he indicated he would refer the matter to the Inland Revenue Department himself.

### ***Issues***

[17] It will be helpful to analyse the issues under a number of questions. These are:

- Was this employment?
- What about tax?
- What amount is owed?
- Who is the employer?

### ***Was this employment?***

[18] I am satisfied on the evidence available to me from Ms Pringle that this was piece work, a particular kind of employment where there is in effect a rate fixed not for a portion of time, but for the delivery of a particular product or service.

[19] I am satisfied that this is an example of piece work because of Ms Pringle's evidence that the concept was in effect borrowed by her and suggested to the predecessor company after her experience in a similar role with another company using the piece work basis.

[20] Mr Pringle did not furnish tax invoices; she provided a schedule of journeys completed and the employer was to pay against that. That was the arrangement with her previous employer and this was the arrangement she proposed to Mr Abele and which she says he accepted.

[21] I note that Mr Abele in his telephone discussion with me, maintained his stance that this was not an employment relationship. On balance I prefer Ms Pringle's evidence.

### ***What about tax?***

[22] Ms Pringle is equally clear in her evidence that tax was to be paid on top of the piece work payment and that tax was to be paid by the employer and not by her.

[23] She also made clear in her evidence that such an arrangement applied in respect to her previous employment as well. Mr Abele said in his telephone discussion with me that because this was not an employment relationship he had not responsibility in this matter. Again I prefer Ms Pringle's evidence.

***What amount is owed?***

[24] There is no credible evidence that the figure used by Mr Abele is accurate. Ms Pringle says that her figure is accurate and as I have already made clear, the schedule that she has filed in the Authority is arithmetically correct. I am satisfied that it is safe for me to accept her figure as the figure that is owed.

***Who is the employer?***

[25] There is no doubt at all that the employer of Ms Pringle is not the respondent in these proceedings but is in fact the predecessor company. In the normal course of events, that might preclude Ms Pringle from being successful in her claim, but in the particular circumstances of this case, I am disposed to a different conclusion.

[26] I am satisfied on the evidence I heard, supported as it is by the material filed in the Authority by the company, that the company through its director Mr Abele has committed itself to meeting the debt obligations of the predecessor company to Ms Pringle.

[27] Ms Pringle's evidence on this point is very clear and it is, as I say, confirmed to some extent by the company's own filing in the Employment Relations Authority, when, by letter dated 11 July 2007, Mr Abele signing on behalf of Active Planet Limited says: *I proposed (sic) to pay the outstanding amount of \$2,380.00 to Kay Pringle whenever our new company can afford it.* This seems to me to be more than sufficient evidence of an intention to take over the debt albeit at a lesser figure. I note that I have already found that there is no basis for the lower figure cited by Mr Abele in his letter and the Authority prefers the evidence of Ms Pringle as to the correct amount.

***Determination***

[28] In the particular circumstances of this case, I am satisfied that Ms Pringle has made out her claim for payment of her outstanding wages by the company Active Planet Limited notwithstanding that she was not then and has never been an employee of Active Planet Limited. I have reached this conclusion for a number of reasons, but particularly because of the strong evidence from Active Planet Limited that they intend to meet the obligations of their predecessor company to Ms Pringle and because as a matter of fact, Active Planet Limited has paid some of its predecessor company's indebtedness to Ms Pringle already.

[29] It follows that I direct that Active Planet Limited is to pay to Ms Pringle the sum of \$3,080.00 net in arrears of wages and that Active Planet Limited is to account to the Inland Revenue Department for the appropriate calculation of PAYE on this sum. In the event, as Ms Pringle alleges, that the predecessor company has omitted to account to the Inland Revenue Department for PAYE in respect to her already paid earnings, then I remind Active Planet Limited of its obligation to account to the Inland Revenue Department for any unaccounted PAYE sums as well.

[30] If, as Mr Abele claimed in his telephone discussion with me, there is evidence to support his view of the matter, then it certainly would have been helpful to the Authority, and no doubt to Ms Pringle, if that material had been given in evidence at the investigation meeting. If such material is available the matter may need to be reopened.

***Costs***

[31] Costs are to lie where they fall.

James Crichton  
Member of Employment Relations Authority