

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Graeme Roberts (Applicant)  
**AND** Peter Fox (Respondent)  
**REPRESENTATIVES** John Peebles, For the Applicant  
Peter Fox, In person  
**MEMBER OF AUTHORITY** Ken Anderson  
**INVESTIGATION MEETINGS** 6 August 2004  
6 September 2004  
**DATE OF DETERMINATION** 4 February 2005

**DETERMINATION OF THE AUTHORITY**

**The Employment Relationship Problem**

- [1] Mr Roberts claims that he is owed various monies pertaining to his employment with Mr Fox. Mr Roberts says that he is owed:
- (a) Payment for three weeks' annual holiday;
  - (b) Payment for 7 weekends that he worked but should have had off;
  - (c) Payment in lieu of working on 11 public holidays; and
  - (d) The value of a cattle beast at "current prices".

While Mr Fox acknowledges that he owes Mr Roberts some wages, he further says, that for various reasons, Mr Roberts has no entitlement to the monies claimed.

**Background**

- [2] Mr Roberts was employed by Mr Fox as a farm worker for the 2000/2001 dairy season. He commenced his employment on 1 June 2000 and finished on 31 May 2001. Unfortunately, and contrary to the provisions of the Employment Relations Act 2000, there was not a written employment agreement. Furthermore, Mr Fox and Mr Roberts have different versions of what was actually agreed to in regard to what Mr Roberts would be paid.
- [3] Mr Roberts says that it was agreed that he would be paid a "basic" salary of \$32,000 per annum. The additional terms of employment were that he would have his accommodation provided and would receive free meat, that is, one cattle beast. In addition to the provisions of the Holidays Act, Mr Roberts was also to have one weekend each month off.
- [4] However, Mr Fox says that he offered Mr Roberts a salary of \$30,000 per annum but because Mr Roberts told him he was "broke" and needed the money, it was agreed that payment for 3

weeks' annual holiday, and payment for working on 11 public holidays, would be added to the salary and paid each week. Mr Fox says that with the addition of payment for the holidays, the salary became \$33,000 per annum and that is the salary that was agreed to. Hence, the gross pay paid to Mr Roberts each week was \$634.62.

- [5] In regard to the cattle beast that Mr Roberts is claiming, Mr Fox says that he told Mr Roberts before he commenced his employment that there was not an animal on the farm that could provide suitable meat. He also says that Mr Roberts never raised the question of being provided with meat during the year that he was employed. Mr Roberts says that there was an animal on the farm that was suitable for meat and that he raised the matter every fortnight.
- [6] Mr Fox also says that there was a Mr Hawkins employed on a casual basis to provide cover for Mr Roberts when he had his weekends off and that he believes that Mr Roberts had every weekend off that he was entitled to.
- [7] Finally, Mr Fox concedes that he owes Mr Roberts one weeks' final pay, that is the gross sum of \$634.62, but he retained this money because Mr Roberts never paid for any electricity while he was in the farm house and he owes the sum of \$1,265.00.  
Mr Roberts says the electric fence system for the farm was run through the switch board of the farm house, but if the electricity accounts are produced for his perusal, and it is shown what he owes, he will accept that it should be off-set against any monies owing to him.  
A time table was set for Mr Fox to provide the electricity account details to the Authority but these have not been forthcoming.

## **Analysis and Conclusions**

### **(a) *Payment for Annual and Public Holidays***

- [8] The evidence of Mr Roberts and Mr Fox is at odds in regard to what was agreed to pertaining to the payment of holiday pay. Having listened to and observed the two men, I find the evidence of Mr Fox to be generally more credible. Furthermore, the evidence of Mr Fox is supported by the Inland Revenue records and bank statements provided by Mr Roberts, in that they show that the salary was indeed \$33,000 per annum, not \$32,000 as claimed by Mr Roberts.
- [9] I accept the evidence of Mr Fox that a mutual agreement was reached that the payment for annual holidays and statutory holidays was included in the salary and that this was done at the request of Mr Roberts. He is not entitled to be paid twice<sup>1</sup> and hence I must decline his claims for holiday pay.

### **(b) *Payment for Working on Weekends***

- [10] I do not find Mr Robert's claim for payment for the weekends that he has put forward to be proven or credible. It appears that he has simply selected several consecutive weekends at random. I accept the evidence of Mr Fox that there was a person employed on a casual basis to work the weekends that Mr Roberts was entitled to take off and that there was no reason why Mr Roberts would generally be required to work on a weekend that he was entitled to have off. But even if that is not so, it seems to me, that given the nature of the working requirements of a dairy farm, some flexibility is required at certain times of the year and that

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<sup>1</sup> See findings of the Court of Appeal in *Drake Personnel (NZ) Ltd v Taylor* [1996] 1 ERNZ 324 and *Gladstone Milk Bar v Henning* [1998] 1 ERNZ 296.

had Mr Roberts been required to work on a weekend that would normally be his weekend off, it would simply have been a matter of him raising that with Mr Fox and arranging for other time off. There is no evidence that Mr Roberts conveyed to Mr Fox, during the term of his employment, that he had worked weekends that he should have had off, or that he sought to have the matter addressed. I find that odd, particularly given that Mr Roberts alleges that he worked five consecutive weekends that he should have had off.

[11] Given the lack of any tangible evidence that the claim presented by Mr Roberts has any validity, I must decline it.

(c) *The Cattle Beast*

[12] I accept the evidence of Mr Fox that there was never any agreement to provide Mr Roberts with meat and that Mr Roberts never raised the matter during his employment. I find that Mr Robert's claim to the contrary is not proven and hence, I have no option but to decline it.

(d) *Final Pay*

[13] There is one final matter. That is, the final weeks' pay that Mr Fox has withheld from Mr Roberts against the payment for electricity that he says is owed by Mr Roberts. While there maybe some economic and/or moral justification on the part of Mr Fox for withholding the sum in question, there is no legal support for adopting this stance. Indeed, section 4 of the Wages Protection Act 1983 requires that: "an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction."

[14] Mr Roberts has said that upon acceptable evidence being produced by Mr Fox, as to the proof of the electricity debt, he would agree to an off-set. The Authority sought this information from Mr Fox but it has not been provided. Therefore, I am obliged to uphold the provisions of the Wages Protection Act.

[15] Mr Fox is ordered to pay to Mr Roberts the gross sum of \$634.62 being the final weeks' pay due to Mr Roberts.

**Costs**

[16] Given the outcome of this matter, it seems appropriate that costs should lie where they fall. It is so ordered.