

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 30  
5395500

BETWEEN                      PAUL SCHOLLITT  
   Applicant  
  
A N D                              ECOCOVER (NZ) LIMITED  
   Respondent

Member of Authority:        James Crichton

Representatives:             Applicant in person  
   Scott Milne, Advocate for Respondent

Investigation Meeting:      On the papers

Date of Determination:      29 January 2013

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant (Mr Schollitt) alleges that he is owed a total of \$5,700 by way of unpaid wages, expenses and commission from his employment with the respondent (EcoCover). In addition, Mr Schollitt alleges that during the employment, EcoCover failed to account to the Inland Revenue Department (IRD) for income tax through the PAYE system and that a significant amount is still owing in that regard. He seeks to recover the amount outstanding from EcoCover on the footing that IRD is now pursuing him for the shortfall.

[2]     EcoCover does not resist the essential claim of unpaid wages, expenses and commission but calculates the figure differently. It says that EcoCover owes Mr Schollitt the sum of \$5,612. EcoCover contends that PAYE income tax for Mr Schollitt is “up-to-date”.

## **Determination**

[3] In respect of the fundamental issue, it is common ground that EcoCover owes Mr Schollitt a significant sum in respect of unpaid wages, expenses and commission. Although the amount claimed by Mr Schollitt is different from the amount conceded by EcoCover, there is little in it and for the avoidance of doubt, given the acceptance by EcoCover of the debt owed to Mr Schollitt in the sum of \$5,612, the Authority determines that that is the sum owed by EcoCover to Mr Schollitt and that is the sum which EcoCover is to pay to Mr Schollitt.

[4] EcoCover is also directed to provide to Mr Schollitt a breakdown of the payments so ordered. There is no reason why this information cannot be made available immediately. EcoCover accept liability for that sum and therefore, for their own accounting purposes, they will have those calculations.

[5] The question of income tax on Mr Schollitt's wages remains an issue. It is plain from the material provided to the Authority by Mr Schollitt, that the IRD has no record of any tax being paid after January 2012 because "...income information beyond January 2012 has not been received from the employer..." Furthermore, Mr Schollitt maintains ( and the Authority accepts ) that earlier periods of the employment were not adequately accounted for either. The Authority accepts this conclusion because it has little confidence in the conviction of Mr Milne, that payments were "...up to date ..." when the IRD itself is satisfied that no information has been supplied from the employer for fully five months of the employment. With that backdrop, it seems more rather than less likely that the earlier period of the employment is not up to date either.

[6] That being the position, the Authority makes a further order that EcoCover is to pay to Mr Schollitt the further sum of \$3, 119. 94 being the sum that Mr Schollitt calculates remains owing in respect of wages earned by him where EcoCover have failed to account to the IRD for the income tax on those sums under the PAYE system.

[7] Because of the failures of this employer in meeting its obligations under the relevant tax statutes, the Authority directs that a copy of this determination is to be made available to the Commissioner of Inland Revenue in order that the IRD may take whatever steps it deems appropriate.

[8] Leave is reserved for either party to revert to the Authority for further orders should that be necessary.

[9] A Certificate of Determination is to issue with this determination.

James Crichton  
Member of the Employment Relations Authority