

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Paea Fakahau Taufu
AND Lo Contractors Limited
REPRESENTATIVES Paea Taufu, in person
No appearance for the respondent
MEMBER OF AUTHORITY Marija Urlich
INVESTIGATION MEETING 7 November 2006
DATE OF DETERMINATION 28 November 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mr Taufu was employed by Lo Contractors Limited from late April 2005 until his dismissal on 23 September 2005. He was employed as part of a building demolition team. Mr Taufu says his dismissal was unjustified, that his working hours were reduced without his agreement and that his working conditions were unsafe. He seeks arrears of wages, payment for public holidays, reimbursement of lost wages, compensation for hurt and humiliation consequent to his dismissal and payment of holiday pay entitlements.

[2] Lo Contractors Limited was not represented at the investigation meeting. I am satisfied that the notice of investigation meeting was served on the registered office of the respondent company, which is the address for service provided on the statement of reply. After the scheduled start of the investigation meeting I requested an Authority support officer contact a representative of the respondent to inquire as to their whereabouts. She advised me that she telephoned the number provided by the respondent on the statement of reply, that that number was no longer allocated to a telephone and that the respondent had not provided another number. The investigation meeting proceeded at 10.45am.

[3] I record that during the investigation meeting I was assisted by an interpreter of the Tongan language. I also record that it appears Mr Taufu's personal grievance was first raised with the respondent when it was served with his statement of problem. The requirements of section 114 of the Employment Relations Act 2000 have been satisfied.

[4] Mr Taufu's evidence was unchallenged. I found him to be a sincere and truthful witness. I accept his evidence in its entirety.

Unjustified dismissal

[5] Mr Taufu was contacted by Paulo Lo, the owner of the respondent company, in early 2005 and offered employment. He accepted the offer and left his full time employment with a company on the North Shore. Mr Taufu said he did not anticipate that there would be any problems working for Mr Lo. He said he believed this because Mr Lo was a friend of his younger brother and it was his brother who had put Mr Lo in contact with him.

[6] Mr Taufa was not given a written employment agreement. He said the only terms of employment agreed with Mr Lo were that he would receive \$10 per hour, that the start time would be 7am and that he would work Monday to Saturday. Mr Taufa said his finishing times varied from 5pm through to 9pm and this is supported by documents referred to below. Mr Taufa was always paid cash and did not receive a pay slip.

[7] Mr Taufa said his pay was often short and paid irregularly and that he queried this repeatedly with Mr Lo. Mr Taufa did not keep a record of his hours or what pay he received. He has pages from the foreman's diary from late May to early July 2005 recording his hours of work. Mr Taufa said he removed these diary pages after repeatedly requesting pay slips from Mr Lo without success. Mr Taufa retains these documents. Mr Taufa said he took the pages because he was desperate for some information about his pay. Mr Taufa said he has doubts as to the accuracy of this record but was unable to be specific about those concerns.

[8] On 23 September 2005 Mr Taufa asked Mr Lo for his pay. It had been two weeks since he had last received a pay. Mr Lo reached into his pocket, counted out \$400 and gave it to Mr Taufa. Mr Taufa queried the amount. There was then an exchange as to when Mr Taufa had worked. Mr Lo checked with the foreman who confirmed Mr Taufa had worked during the disputed time. Mr Lo then told Mr Taufa "from today you are out of here." Mr Taufa understood he was dismissed. Mr Taufa said Mr Lo was angry and thought this was because he had asked for his pay.

[9] I find Mr Taufa was unjustifiably dismissed. I accept his evidence that he was dismissed following an exchange with Mr Lo about wages owed and hours worked. Such a dismissal falls woefully short of the expected standards of a fair and reasonable employer in such circumstances. There is no evidence that Mr Taufa was dismissed for a justifiable reason following a fair inquiry.

[10] In relation to Mr Taufa's health and safety concerns; he said his working conditions were unsafe because he was not provided with appropriate safety gear or rigging for working at height in a dusty construction site. Lo Contractors Limited has not had an opportunity to respond to these concerns however given their a copy of this determination should be referred to Occupational Safety and Health.

Remedies

[11] Mr Taufa seeks arrears of wages for short pay received during his employment, payment of public holidays and holiday pay entitlements. He was not provided with pay slips and does not have a record of the hours he worked or the pay he received. I do not have enough information to determine these claims. **These matters are referred to the Labour Inspectorate to investigate under the Minimum Wage Act 1983 and Holidays Act 2003. In the meantime the Authority's investigation into these issues is suspended. Mr Taufa has leave to put further information before the Authority to enable these issues to be determined.**

[12] Mr Taufa seeks to be reimbursed for wages lost as a consequence of his dismissal. Following his dismissal he made inquiry of his former employer but was told his old job was no longer available. Mrs Taufa then returned to full time employment and Mr Taufa took over responsibility for the care of their three children and their home. He has recently secured a job as a commercial cleaner.

[13] Mr Taufa has made some effort to mitigate his lost wages. Given his particular circumstances I am satisfied that these efforts were reasonable. He is entitled to be reimbursed for three months lost wages and I so order. The calculation of Mr Taufa's wage arrears entitlement is suspended pending the outcome of the Labour Inspectorate's investigation into the matters referred to above.

[14] Mr Taufa also seeks compensation for hurt and humiliation caused as a consequence of his dismissal. In support of this claim Mr Taufa spoke of his shame at not being able to

provide for his children and his feeling that they had turned away from him as a consequence. Mrs Taufa said her husband had been used and abused by Mr Lo. She said Mr Taufa had felt he had let his family down, that he experienced difficulty sleeping and eating and always put his head down in shame.

[15] Mr Taufa is entitled to an award pursuant to section 123(c)(i) of the Act and I set that award at \$6000.

Marija Urlich
Member of Employment Relations Authority