

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2014] NZERA Christchurch 140  
5441655

BETWEEN            DAANNA TOMLIN  
Applicant

A N D                PHILLIP TASKER  
Respondent

Member of Authority:    M B Loftus

Representatives:        Applicant in person  
No appearance for Respondent

Investigation Meeting:    5 September 2014 at Dunedin

Submissions Received:    At the investigation meeting

Date of Determination:    9 September 2014

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]    The applicant, Daanna Tomlin, seeks outstanding holiday pay (\$255) and possession of a laptop computer. The latter claim is based on what she says was her employer's promise she could keep the said laptop.

[2]    Phillip Tasker's response is he is not, and never has been, Ms Tomlin's employer. He adds she was most likely employed by his late father, James Tasker (Mr Tasker), or a company he established, Source Employment Limited (Source). He advised he would not appear at the investigation meeting but assisted by providing relevant documents he acquired from his father's estate. For that he must be thanked.

**Background**

[3] Source was a short-lived recruitment agency. Mr Tasker was its sole director and shareholder. It was incorporated in late May 2013 and Ms Tomlin was employed the following month. She worked limited hours (10am to 3pm, Tuesday and Thursday) and performed a range of administrative and office tasks.

[4] The evidence would suggest Mr Tasker was already unwell at the time he established Source and his condition clearly worsened as time passed. Source was not a success and in early November Mr Tasker decided to cease operating as he had to go to Auckland for medical treatment. He advised Ms Tomlin her services were no longer required and it was then the dispute over the laptop arose.

[5] Ms Tomlin says Mr Tasker told her the laptop was hers to use in August and in October he said she could have it if she looked after it. She says Mr Tasker resiled from the promise she could keep the laptop when she introduced Mark Quinn. She wanted Source to engage Mr Quinn so she and he could continue to operate it.

[6] Ms Tomlin bases her claim the laptop was hers on the alleged promise and the fact she was its only user. She also claims it held what she contends was private data and was necessary if she were to continue operating the business.

[7] Ms Tomlin's angst was such she approached Balclutha Police on 11 November 2013. The Police say she complained Mr Tasker had her property (the laptop) and advised she was going to retain keys to the workplace until he gave it to her. She also had a cover for the laptop.

[8] When questioned about the Police involvement Ms Tomlin initially attributed her approach to concerns about threatening texts she says she received from Mr Tasker. When pushed as to why there was no mention of this in the report I received from the Police she conceded she raised Mr Tasker's possession of the laptop before airing various criticisms of the Police and their competence.

[9] The Police investigated the matter with the outcome being Ms Tomlin returned the property in her possession while Mr Tasker retained the laptop.

[10] Ms Tomlin still wants the laptop, and that underlies this application.

**Determination**

[11] The first issue to be determined is the identity of the employer. As already said Ms Tomlin cites Phillip Tasker as the respondent. He denies responsibility and suggests Ms Tomlin was employed by either his father or Source. In doing so he accepts he was aware there was an employee and concedes it was most likely Ms Tomlin.

[12] Attached to the statements filed in the Authority are various documents which identify Source the employer. Two were written by Ms Tomlin.

[13] When asked about this Ms Tomlin said she was employed by Source. When asked why she filed against Phillip Tasker, she said it was because he told her to write to him when she approached him with her claims at his father's funeral. She says he also promised to pay her holiday pay and give her the laptop.

[14] Documents Phillip Tasker provided the Authority suggest a contrary view. They consistently deny responsibility and express distaste at the fact the claims were raised at his father's funeral.

[15] Ms Tomlin accepts Source was the employer yet she chose to file against another entity (Phillip Tasker). Given other inconsistencies in her evidence I do not, in the face of his contrary assertions, accept Ms Tomlin's suggestion that Phillip Tasker accepted responsibility and note she failed to cover the risk of citing a respondent who was not her employer by adding either Phillip Tasker or James' estate to the proceedings.

[16] Source still exists. It has been neither liquidated nor placed in receivership. It should, therefore, have been identified as the respondent and I find myself unable to amend the citation by agreement given the absence of the company or a person capable of agreeing to the amendment.

[17] In the circumstances I conclude the incorrect citation of the respondent is fatal to the claim. It will therefore be dismissed.

[18] Even if that were not the case, the claim would be unlikely to succeed. While it is highly probable holiday pay is owing the claim faces two impediments. The first is Ms Tomlin's evidence as to how she calculated the amount claimed shows it is

inflated. She bases it on six months employment yet the evidence is clear – she was only there for five months. When questioned about this she dismissed the issue as an irrelevant technicality.

[19] The second problem is the impossibility of acquiring money from a source that has none and futility of making an order requiring payment in such circumstances. Documents provided by Phillip Tasker show that other than the laptop, Source has neither assets nor funds. There is an overdrawn bank account, a number of outstanding debts, and the remaining assets which were limited to a few items of furniture were taken by the Balclutha Licensing Trust in accordance with its agreement with Source for the lease of the property the company occupied.

[20] With respect to the laptop, I note receipts that show it was purchased by Source. It is Source's property and remains so in the absence of unequivocal evidence of the alleged promise Ms Tomlin could retain it. Here I note the Police involvement and the fact the outcome would strongly suggest they were satisfied the laptop remained Source's property. Having observed Ms Tomlin and considered her frequently inconsistent answers I must say I prefer the Police's summary regarding what occurred in respect of her complaint.

[21] I also note Ms Tomlin's answers when asked about the claim the laptop contained *private data*. They confirm said data related to Source's clients. How that could be considered Ms Tomlin's private data eludes me given she was an employee and the data relates to the performance of her paid duties.

[22] There were then other answers Ms Tomlin gave when trying to justify why the laptop should be hers. In essence she contends she should have been allowed to continue the business and the laptop was essential if she was to do so. That is nonsense. The business was Mr Tasker's and I have no evidence Ms Tomlin was entitled to inherit or continue it.

[23] Finally I note Phillip Tasker's comment the laptop contained information relating to his father which will be required for resolution of the estate.

[24] I will not, given the evidence, order the laptop be passed to Ms Tomlin.

[25] For the above reasons, Ms Tomlin's claim would fail if it had not already been dismissed.

**Costs**

[26] Ms Tomlin's claim has been unsuccessful but the respondent was not represented at the investigation meeting and there are no identifiable legal costs of which I am aware. Costs shall therefore lie where they fall.

M B Loftus  
Member of the Employment Relations Authority