

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2012] NZERA Auckland 416
5381944**

BETWEEN CHRISTINE TORRENS
Applicant

AND BRUCE & DIANA TORRENS
PARTNERSHIP
Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in person
Angela Bean, Counsel for Respondent

Investigation Meeting: On the papers

Determination: 23 November 2012

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 21 April 2011 a Record of Settlement (“the Settlement”) was signed under s 149 of the Employment Relations Act 2000 (“the Act”). The parties to the Settlement were the Applicant, Ms Christine Torrens, and the Respondent, Bruce Torrens & Christine Torrens Partnership (“the Partnership). The Settlement was signed for the Respondent by Mr Bruce Torrens and Ms Diana Torrens. The Settlement was also signed by a Department of labour Mediator.

[2] The issue now brought before the Authority by Ms Torrens is that the Partnership has not complied with clause 4 of the Settlement, which states:

In reaching this agreement the parties confirm that neither has agreed to forgo minimum entitlements (monies payable under the Minimum Wage Act 1983, or the Holidays Act 2003, as defined by the Employment Relations Act 2000)

[3] The Settlement was certified under s 149 of the Act by the Mediator. That certification confirmed that before making the agreement, the parties were advised and accepted they understood that the agreed terms:

- (i) were final, binding and enforceable; and
- (ii) could not be cancelled; and
- (iii) could not be brought before the Authority or the court for review or appeal, except for the purposes of enforcing those terms.

[4] Ms Torrens claims that she has continued to work for the Partnership since the date of the Settlement and that she is thereby entitled to wages at the rate of \$13.50 per hour for the work she has carried out for the Partnership since that date.

[5] Ms Diana Torrens denies that the Partnership owes any wages to Ms Torrens and claims that the Partnership ceased to trade following partial settlement of relationship property issues between Mr Torrens and Ms Diana Torrens, and that with effect from 1 June 2011 Ms Torrens commenced trading with Mr Torrens and/or was employed by Mr Torrens and not by the Partnership.

[6] The parties agreed to the Authority determining this issue based on the Statement of Problem and the Statement in Reply, and on submissions from the parties.

Preliminary Note

[7] Although Ms Torrens has brought this matter before the Authority as an application for a compliance order with the Settlement, I do not find that this is appropriate in light of clause 5 of the Settlement which states :

This is the full and final settlement of all matters between the Applicant and Respondent arising out of their employment relationship.

[8] Ms Torrens is seeking payment of wages owed to her by the Partnership between the period 28 June 2011 to 11 September 2012. Ms Torrens is an unrepresented Applicant and having taken this fact into consideration I have determined to proceed to address the non-payment of wages claim in accordance with the power afforded to the Authority pursuant to s.160 (3) of the Act which states:

The Authority is not bound to treat a matter as being a matter of the type described by the parties, and may, in determining the matter, concentrate on resolving the employment relationship problem, however described.

Background Facts

[9] Ms Torrens commenced employment with the Partnership on 1 June 2010 and had been provided with an individual employment agreement (the Employment Agreement). The Employment Agreement had been signed by Ms Torrens, and by Mr Torrens on behalf of the Employer, the Partnership, on 7 June 2010.

[10] The Employment Agreement sets out Ms Torrens's job title as 'Operations Assistant/Administration' with itemised duties which include 'Administration', and her salary as \$52,364.00 per annum. In an attachment to the Employment Agreement entitled 'Additional Terms & Conditions of Employment Contract Agreement 1st June 2010' Ms Torrens's hours of work are noted as being: "*Average week over year Monday – Friday 9 hour days*".

[11] Ms Torrens states that during the period of her employment she worked solely under the direction of Mr Torrens.

[12] Ms Diana Torrens claims that the Partnership ceased to trade following a partial settlement of relationship property issues between Mr Torrens and Ms Diana Torrens whereby Ms Diana Torrens took one of three farms jointly owned by herself and Mr Torrens, Mr Torrens taking the other two. Ms Diana Torrens submits that with effect from 1 June 2011 Ms Torrens commenced trading in business with Mr Torrens and/or was employed by Mr Torrens and not by the Partnership.

[13] Ms Torrens claims that her employment with the Partnership has not been terminated at any time following either the Settlement or the partial settlement of relationship property issues.

[14] Ms Torrens further claims that although there had been a partial relationship property settlement on 1 June 2011, the Partnership continues to generate income and expenses requiring administrative work to be carried out, and that she continued to carry out administrative duties for the Partnership in accordance with instructions from Mr Torrens..

[15] Ms Diana Torrens claims that she had not been consulted about the employment of Ms Torrens after 1 June 2011 nor had she agreed to it, and that any work carried out by Ms Torrens after that date was at the sole direction of Mr Torrens who is thereby personally liable for any wages accrued from 1 June 2011.

[16] Ms Diana Torrens in an amended Statement of Reply filed on 21 September 2012 states that a partnership accountant was empowered to complete any transactions on behalf of the Partnership, As a consequence, any administrative work Ms Torrens was required to perform for the Partnership had ceased from that point.

[17] Ms Torrens set out in the description of the work provided to the Authority that she carried out administration work during the period 28 June 2011 until 11 September 2011 including writing up bank statements, photocopying, and collating invoices and GST forms for submission to the partnership accountant

[18] Mr Torrens filed evidence in support of the administrative work undertaken by Ms Torrens in relation to the Partnership post-1 June 2011, which he explained had been necessitated by farm income payments from Fonterra until October 2011, stock cull payments outstanding, and ongoing expenses payments requiring payment.

Determination

[19] Ms Torrens was employed by the Partnership and commenced work on 1 June 2010. The Employment Agreement with the Partnership supplied to Ms Torrens had been signed on behalf of the Partnership by Mr Torrens. Ms Torrens's evidence was that she worked under the direction of Mr Torrens.

[20] Ms Diana Torrens's evidence was to the effect that she had not been consulted about the employment of Ms Torrens in 2010, and had not been aware of her terms and conditions of employment. I consider that this does not negate the validity of the Employment Agreement between Ms Torrens and the Partnership.

[21] Further, the Settlement dated 21 April 2011 had been signed on behalf of the Partnership not only by Mr Torrens, but also by Ms Diana Torrens. The Settlement at clause 5 states:

This is the full and final settlement of all matters between the Applicant and Respondent arising out of their employment relationship.

[22] I find that Ms Torrens was cognizant of, and acceded to, the employment of Ms Torrens by the Partnership.

[23] Although there had been the Settlement (of employment relationship problems) on 21 April 2011 and the partial settlement of relationship property issues on 1 June 2011, there is no evidence that Ms Torrens's employment by the Partnership was terminated either prior to the Settlement, on the dates of the Settlement or the partial settlement of relationship property issues, or thereafter, other than a letter addressed to Ms Torrens dated 31 May 2012 from Ms Diana Torren's solicitors and lawyers, Bush Forbes, which states:

As you are aware the Bruce and Diana Torrens Partnership ceased trading on 1 June 2011. From that date your employment and commercial arrangements were with Bruce Torrens and not with the Bruce and Diana Torrens Partnership.

This correspondence is to formally record that position albeit that you are well aware of the situation having commenced your new arrangements with Bruce Torrens from 1 June 2011.

[24] In the event that Ms Torrens's employment was to be terminated by the Partnership, in accordance with clause 22.1 of the Employment Agreement Ms Torrens was entitled to: "4 week's notice of termination". I find that the letter from Bush Forbes did not terminate Ms Torrens's employment in accordance with the contractual provisions relating to termination contained in the Employment Agreement.

[25] Moreover, Mr Torrens had been the member of the Partnership who had directed Ms Torrens work since the commencement of her employment and I consider that in the absence of any valid notification that her employment had ceased, Ms Torrens was entitled to consider herself still an employee and to continue to accept direction in the performance of her duties from Mr Torrens.

[26] There has been no evidence submitted to the Authority confirming Ms Diana's claim that the Partnership ceased to trade on 1 June 2011. Irrespective of this, I accept that even if the Partnership had ceased to trade from 1 June 2010, there clearly would have remained some administrative work to be undertaken as evinced by the appointment of a partnership accountant.

[27] The work carried out by Ms Torrens under the direction of Mr Torrens consisted of administrative work related to ongoing receipts and payments on behalf of the Partnership, and prepared for submission to the partnership accountant. I determine that this was work carried out in the performance of her administrative duties in accordance with her employment by the Partnership.

Statutory entitlement to wages

[28] The Wages Protection Act 1983 governs the payment of wages between an employer and an employee. In accordance with s 4: *an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.*

[29] Ms Torrens's claim was supported by documentation substantiating the dates for which she was claiming non-payment of wages

[30] I find that Ms Torrens is entitled to payment of wages for the hours which she has worked.

[31] In these circumstances I find that Ms Torrens is entitled to payment of wages for the hours which she has worked for the Partnership between 28 June 2011 and 11 September 2012, a total of 36.25 hours.

Remedies

[32] The Partnership is to pay Ms Torrens the sum of \$811.28 gross in respect of unpaid wages for the period 28 June 2011 until 11 September 2012, a total of 36.25 hours, calculated by utilising an hourly rate of \$22.38 based on an annual salary (\$52,364.00) and hours of work (45 hours) as defined in the Employment Agreement..

[33] Ms Torrens is to be reimbursed the filing fee of \$71.50.

Costs

[34] While costs are reserved, I note here that, subject to her submissions, Ms Torrens was not legally represented and, unless she incurred legal costs in relation to this matter, it is therefore unlikely she will have grounds to claim a contribution to any fair and reasonable costs.

Eleanor Robinson
Member of the Employment Relations Authority