

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 137
5342977

BETWEEN IAN WALSH
Applicant
AND FATU SCANLAN
Respondent

Member of Authority: G J Wood
Representatives: Joe Richardson, for the Applicant
No appearance by or for the Respondent
Investigation Meeting: 25 August 2011 at Wellington
Determination: 25 August 2011

ORAL DETERMINATION OF THE AUTHORITY

[1] The respondent, Mr Scanlan, did not attend and was not represented at the investigation meeting, despite a delay in the commencement of the meeting. During that time a Support Officer was unable to contact him to remind him to attend. However, he was advised on a conference call of the date of the investigation meeting, and he was properly served notice of it.

[2] As no good cause for Mr Scanlan's non-attendance had been shown, I decided to act as fully in the matter as if Mr Scanlan had duly attended or been represented, pursuant to clause 12 of Schedule 2 of the Act.

[3] The following facts emerged. The applicant, Mr Walsh, was employed as a painter from 3 February 2011 by Mr Scanlan, who was a subcontractor involved in painting jobs. Although this was said to be a full-time job, the arrangements between the parties were extremely informal. For example no regular hours of work or even a pay rate were agreed, let alone a written individual employment agreement provided, as required by law.

[4] Mr Walsh worked for a month without pay, despite requests to be paid, until on 3 March, when he was told to leave by Mr Scanlan, who said he had no money to pay him. This was said to be because he was still owed money by the head contractor.

[5] Mr Scanlan claims that he owes \$1,200 to Mr Walsh based on a pay rate of \$10 per hour. However, I accept Mr Walsh's claim that he is owed for 138.5 hours work on the basis of the minimum wage, given that no wage level was agreed, of \$12.75 per hour, equating to \$1,765.88 gross.

[6] Mr Walsh claims \$1,000 in costs. Mr Richardson noted that he had to do a lot of running around to try and contact Mr Scanlan to try and get the monies owing to Mr Walsh. However, this was a very straightforward claim and an appropriate level of costs in a case like this is \$500.

[7] I therefore order the respondent, Fatu Scanlan, to pay to the applicant, Ian Walsh, the sums of \$1,765.88 gross in unpaid wages, \$500 in costs and \$71.56 for the filing fee.

G J Wood
Member of the Employment Relations Authority