

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 250
5341176

BETWEEN STEPHEN WEBSTER
 Applicant

AND PCG GROUP LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 None for Respondent

Investigation Meeting: 10 June 2011 by telephone conference

Determination: 10 June 2011

DETERMINATION OF THE AUTHORITY

- A. Within 14 days of the date of this determination, PCG Group Limited must pay Stephen Webster the following sums:**
- (i) \$792 for outstanding wages; and**
 - (ii) Interest on the amount of \$792 at the rate of 8.4 per cent per annum calculated from 29 March 2011 until the date that the amount is paid in full.**
- B. PCG Group Limited must also reimburse Stephen Webster the sum of \$71.56 paid to lodge his application in the Authority.**

Employment Relationship Problem

[1] Stephen Webster applied to the Authority for an order requiring PCG Group Limited to pay him wages due to him and interest on the outstanding amount.

[2] PCG Group Limited did not lodge a statement in reply although Authority

records confirm copies of Mr Webster's application were served at its registered office. The Authority proceeded to set down an investigation meeting with a notice sent to the company's registered office and an address provided by Mr Webster which he understood may be the present home address of PCG Group Limited's director Aaron Po-Ching. An Authority support officer also left messages on a mobile phone number understood to be that of Mr Po-Ching.

[3] The investigation meeting was notified to be by telephone conference with the company given an opportunity to participate by telephone or seek a hearing in person. No reply was received and the Authority proceeded with the investigation. At the start of the meeting further attempts were made to contact Mr Po-Ching, without success. As no good cause was shown for the company's failure to attend or be represented I proceeded with the investigation meeting as allowed under clause 12 of Schedule 2 of the Employment Relations Act 2000.

[4] Mr Webster attended the investigation meeting by telephone. Under affirmation he confirmed PCG Group Limited employed him as a hammer hand. In his statement of problem he stated he began work on 14 February 2011 on an hourly rate of \$20 but with no written employment agreement. On 14 March 2011 Mr Po-Ching reduced Mr Webster's hourly rate to \$16 because he considered Mr Webster's work was not good enough.

[5] Mr Webster resigned following the unilateral reduction of his pay. During his employment he had filled in a timesheet and was required to provide an invoice to the company for his wages. He told me that an invoice for his hours dated 28 February 2011 had been paid but Mr Po-Ching had refused to pay the full amount due for his hours worked as recorded on Mr Webster's invoice dated 15 March 2011. The March invoice was for \$1192 but Mr Po-Ching paid only \$400 of that amount. Mr Webster said Mr Po-Ching told him the rest of the wages were withheld as "*damages*" because Mr Webster and another hammer hand had not completed their work satisfactorily.

[6] On the basis of Mr Webster's evidence I am satisfied PCG Group Limited was not entitled to withhold money due to him as wages. Mr Webster had no written employment agreement and there was no other written agreement from him for any deduction for the costs of rectifying work that PCG Group Limited considered was

substandard. Further there was no evidence Mr Webster was adequately supervised in his work and was responsible for any damage or substandard work. I find PCG Group Limited breached ss.4 and 5 of the Wages Protection Act 1983 by withholding money due to Mr Webster as he had given no written consent to the deductions made.

[7] Allowing for the \$400 paid on the amount due in his March invoice, I find Mr Webster is still owed \$792 by PCG Group Limited and order the company to pay him that amount within 14 days of the date of this determination.

[8] Mr Webster is also entitled to interest on the amount of \$792 from 29 March 2011 until the date of payment in full. The rate of interest is 8.4 per cent, being the rate applicable at the date of this determination under s.87(3) of the Judicature Act 1908. PCG Group Limited is ordered to pay Mr Webster interest at that rate on the outstanding amount. The order is made under clause 11 of Schedule 2 of the Employment Relations Act.

[9] Further PCG is ordered to reimburse Mr Webster for the fee of \$71.56 he paid to lodge his application in the Authority.

Company status

[10] A check of the on-line records of the Companies Office show the Registrar of Companies is satisfied PCG Group Limited has ceased to carry on business. The Registrar has begun action to remove the company from the register. However as PCG Group Limited remains registered as of the date of this determination and Mr Webster's application to the Authority are legal proceedings which he began by lodging a statement of problem on 15 April 2011, he may be entitled to apply for restoration of the company to the register if it is removed before the orders made in this determination are complied with and he wishes to proceed with enforcement action. That is a matter for him to attend to rather than the Authority.

Robin Arthur
Member of the Employment Relations Authority