

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2019] NZERA 288
3030974

BETWEEN CHARLOTTE WOOD
Applicant

AND MERO BUSINESS LIMITED
Respondent

Member of Authority: Andrew Dallas

Representatives: Applicant in person
John Wilkinson for the Respondent

Investigation Meeting On the papers

Date of the Determination 15 May 2019

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Charlotte Wood says she was employed by Mero Business Limited (Mero) as an ICT Analyst in February 2017. While Ms Wood worked “remotely” from the United Kingdom, she had previously worked for the company in Christchurch. Ms Wood says she was not paid for the work she performed. Mero denied Ms Wood’s claim for unpaid wages and said she was never employed.

The Authority's investigation

[2] Mero initially engaged with the Authority's processes. Through director, John Wilkinson, the company lodged a statement in reply and participated in a case management conference (CMC). It also provided some information and commented on aspects of Ms Wood's claim. However Mero then, for reasons unknown, abruptly stopped engaging.

[3] During the CMC, the parties agreed the matter would be heard "on the papers" under s 174D of the Employment Relations Act 2000 (the Act).

[4] Having regard to s 174E of the Act, I do not refer to all the material received from the parties or the submissions advanced. However, I record that I have fully considered all relevant material lodged in the Authority.

Issues

[5] The issues that arose for determination before the Authority are whether Ms Wood is owed wages by Mero and, if so, in what quantum.

What happened?

Ms Wood's position

[6] Ms Wood said the parties entered in an individual employment agreement on 10 February 2017. The agreement which was provided by Ms Wood contained the following relevant characteristics:

- (i) it contained "electronic" signatures for both Mr Wood and Mr Wilkinson on behalf of Mero;
- (ii) stated Ms Wood's salary to be \$52,000 per annum;
- (iii) identified Ms Wood's main place of work as a property in Sussex, United Kingdom; and
- (iv) stated the agreement was subject to New Zealand law and specifically acknowledged the jurisdiction of the Authority.

[7] Ms Wood received approximately \$11,000 in wages and then the company ceased paying her. She was paid her wages via electronic banking with funds being deposited onto a bank card. On 18 May 2018 Ms Wood received a letter from Mr Wilkinson on Mero letterhead advising her that the company was unable to pay her wages due to “an issue with the Inland Revenue Department” and “frozen funds”.

[8] In June 2018, Ms Wood wrote to Mr Wilkinson in accordance with her employment agreement and tendered her resignation with effect from 29 June 2018. The letter made clear the reason why she was resigning was because she was not being paid.

[9] Ms Wood’s post-employment attempts to be paid her wages, including seeking assistance from the Mediation Service, were unsuccessful. Subsequently, she filed a statement of problem in the Authority seeking recovery of the same.

[10] In the absence of any wage and time records, Ms Wood was asked by the Authority to quantify her claim for wages arrears. She calculated this as \$42,100 and provided evidence in support of her calculations.

Mero’s position

[11] Mero denied Ms Wood’s claim for wages arrears. The case Mero put against Ms Wood centred on the status of the employment agreement. Indeed, Mero advanced four arguments about the status of the employment agreement.

[12] First, it said the agreement was not properly executed by Ms Wood and/or Mero and was a “draft” for immigration purposes. Second, presumably in the alternative, Mero said as Ms Wood had not signed or returned it, the offer of employment was withdrawn. Third, again presumably in the alternative, Mero claimed the agreement was not “the original” and Ms Wood had added the location details of her employment.

[13] Mero further said, presumably notwithstanding any of the above, that as the agreement required Ms Wood to hold a valid work visa, which on the facts she did not, the agreement was unenforceable.

[14] When asked to comment on further information provided by Ms Wood at the request of the Authority, Mr Wilkinson emailed the Authority Officer and advised: “I have been told not to respond as we are doing something else”. It was, and is, not clear what the “something else” might be and no further communication has been received.

The Authority’s view of Ms Wood’s employment relationship problem

[15] On the balance of probabilities, I am satisfied that an employment relationship governed by New Zealand law existed between Ms Wood and Mero. I am further satisfied that this relationship was reduced to writing in the form of an employment agreement and Ms Wood performed work for Mero as required under that agreement. Consequently, I specifically reject as less likely than not, Mero’s arguments about the validity of the agreement. Even if the employment relationship was not reduced to writing in the form of an employment agreement, I would be satisfied on the evidence that such a relationship existed, Ms Wood performed work for Mero for which she was not paid and, as a consequence, has a wages arrears claim.

[16] To the extent the agreement required Ms Wood to acknowledge she had a valid New Zealand work visa, I believe this is appropriately read down on two bases. First, the agreement was specifically identified as a “non-resident employment agreement”. Second, as part of its operational manual, the Immigration Service promulgates “definitions” of various relevant matters. Such definitions include defining “New Zealand” for work purposes as follows:

- (i) A person is considered to be undertaking work in New Zealand if at any time they are working: on or in relation to any craft, artificial island, installation, or structure anywhere within the territorial sea of New Zealand; or

- (ii) on or in relation to any artificial island, installation, or structure anywhere within the exclusive economic zone of New Zealand or on or above the continental shelf of New Zealand; or
- (iii) on board any craft that is registered in New Zealand and is engaged in activities anywhere:
 - within the New Zealand exclusive economic zone; or
 - on or above the New Zealand continental shelf.

[17] Consequently, Ms Wood was not required to actually hold a visa as she was not working within the territorial definition of “New Zealand” which clearly does not include Sussex, United Kingdom.

[18] Mero failed to produce wage and time records to assist Ms Wood in the calculation of the claim for wages. In the absence of any information from Mero disproving the claim, other than blanket denial, and in reliance on s 132(2) of the Act, I accept Ms Wood’s claims for unpaid wages.

[19] Mero must pay Ms Wood \$42,100 gross as wages arrears within 28 days of the date of this determination. Ms Wood will need to make the necessary arrangements to pay any applicable tax on this amount.

[20] I direct the Authority Officer to issue a Certificate of Determination setting out the award of wages arrears to Ms Wood contained in paragraph [19] above.

Costs

[21] As neither party was represented before the Authority, there is no issue as to costs.

Andrew Dallas
Member of the Employment Relations Authority