

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Allan William Workman (Applicant)

AND Nigel Carroll (Respondent)

REPRESENTATIVES Allan William Workman in person
No appearance for Respondent

MEMBER OF AUTHORITY Helen Doyle

INVESTIGATION MEETING 29 November 2005

DATE OF DETERMINATION 29 November 2005

DETERMINATION OF THE AUTHORITY

The Employment Relationship Problem

[1] Allan Workman seeks unpaid wages and expenses from his period of employment with the respondent from 19 August 2005 to 28 August 2005 as a driver transporting scrap metal. Mr Workman says that there was agreement with the respondent that he would receive \$15.00 per hour *in the hand*. He had been paid that amount when he previously worked for Mr Carroll in June 2005. There was also agreement that Mr Workman would be reimbursed for accommodation and meal expenses.

[2] Mr Workman was not paid anything for his work during the August period of employment except for a \$100.00 advance from Mr Carroll.

[3] Mr Workman seeks payment for 84.5 hours work at \$15.00 net per hour or \$18.30 gross per hour at a tax rate of 22 per cent. Taking the amount already paid into account of \$100.00 this is a total claim of \$1446.35 gross for unpaid wages. Mr Workman also seeks payment of expenses incurred during his employment of \$35.00 together with the filing fee and expenses related to attending the investigation meeting.

[4] The Authority held a telephone conference with Mr Workman and Mr Carroll on 1 November 2005. Mr Carroll accepted that there was money owing to Mr Workman but said that the respondent should be his company Carroll Contractors Limited and not himself personally. Prior to this a tax declaration code had been completed by Mr Workman and forwarded to Mr Carroll by the Authority support officer to enable payment of Mr Workman to take place. Mr Carroll said that the form had been ripped in transit from the post office.

[5] It was agreed during the telephone conference on 1 November 2005 that a statement in reply would be lodged and served by the respondent by 4pm Tuesday 15 November 2005. No statement in reply was received.

[6] It was also agreed that there would be an investigation meeting held on 29 November 2005.

[7] I am satisfied that a copy of the notice of direction and investigation meeting was served on Mr Carroll at his Kaiapoi address which is also the registered office of the company Carroll Contractors Limited at 2.20 pm on 3 November 2005.

[8] There has been no further communication from Mr Carroll personally or on behalf of his company. A support officer did try to contact Mr Carroll on the day of the investigation meeting on his cell phone but was not able to make contact. The commencement of the investigation meeting was delayed for approximately 15 minutes and then I proceeded to determine the matter without Mr Carroll's participation.

Identity of Mr Workman's employer

[9] Mr Workman was telephoned by Mr Carroll just prior to 19 August 2005 about his availability to work as a driver. He said that he always understood Mr Carroll was his employer and did not understand his employer to be a limited liability company, Carroll Contractors Limited. The company name does not appear on the weigh bridge document or the police infringement notice attached to the statement of problem. Both have Mr Carroll as the owner/user of the vehicle. This is consistent, I find, with Mr Workman's understanding as to the identity of his employer. I find that the relationship between Mr Workman and his employer was quite a loose arrangement. There was nothing in writing. It appears that there was no accounting to the Inland Revenue Department for wages that had been paid to Mr Workman in June 2005. Although the wages were direct credited to Mr Workman's account in June there were no transaction particulars or name of the party making the payment recorded on Mr Workman's bank statement.

[10] It is not enough for Mr Carroll to simply claim now that Mr Workman was employed by a company when it was not made clear to Mr Workman during his employment that was the legal identity of his employer. I find that Mr Workman was employed by Mr Carroll and he is the correct respondent in this matter.

DETERMINATION

Wages

[11] Mr Workman said to me that he believed that he was worth \$15.00 per hour in the hand because of the number of licences he holds. He said that it was on that basis he asked for that amount from Mr Carroll which was agreed to. I am satisfied that Mr Workman and Mr Carroll agreed to a pay rate of \$15.00 net in August 2005 before Mr Workman undertook the work. This amount was also consistent with the payment to Mr Workman when he was previously employed by Mr Carroll.

[12] As I understand it there is no dispute about the fact that Mr Workman worked 72 hours for which he has not been paid save an advance of \$100.00. The balance of 12.5 hours claimed is in relation to travel time from Pareora to Dunedin, Dunedin to Invercargill, Bluff to Dunedin and Port Chambers to Christchurch. I have considered the timesheet with respect to 72 hours claimed and I am satisfied that the additional 12.5 hours is not a duplication of the claim already made and is reasonable. There is therefore the sum of \$1446.35 gross owing to Mr Workman.

[13] Nigel Carroll is ordered to pay to Alan Workman the sum of \$1446.35 gross as unpaid wages.

Accommodation and Meals

[14] The amount claimed with respect to accommodation and meals is \$35.00. Having questioned Mr Workman about the claim I am satisfied that both amounts relate to meals when Mr Workman was in Dunedin. Mr Workman had stayed at a private residence in Dunedin but had purchased food for an evening meal and lunch. I find that reimbursement of \$25.00 would be reasonable in the circumstances.

[15] Nigel Carroll is to pay to Allan Workman the sum of \$25.00 to reimburse Mr Workman for expenses with respect to meals.

Costs

[16] Mr Workman is entitled to reimbursement of his filing fee of \$70.00 and I so order.

[17] Mr Workman also claimed compensation for a day lost at work while attending the investigation meeting. I make no award for that but do find that Mr Workman is entitled to a small amount with respect to his diesel expenses to attend at the investigation meeting as he was required to travel about two hours from his home address. Mr Workman should be reimbursed for \$25.00 being travel costs to attend the investigation meeting and I so order.

Summary of findings and orders

- I have found that Mr Workman was employed by Mr Carroll and there was no disclosure by Mr Carroll that a limited liability company was the employer.
- I have ordered Mr Carroll to pay to Mr Workman the sum of \$1446.35 gross being unpaid wages.
- I have ordered Mr Carroll to pay to Mr Workman the sum of \$25.00 for reimbursement for meal expenses.
- I have ordered Mr Carroll to reimburse Mr Workman's filing fee of \$70.00 together with \$25.00 for diesel.

Helen Doyle
Member of Employment Relations Authority