

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Jianye Yang (Applicant)
AND Wooding Jib Fixers (2005) Limited (Respondent)
REPRESENTATIVES Jianye Yang In person
No appearance for Respondent
MEMBER OF AUTHORITY Helen Doyle
INVESTIGATION MEETING 16 February 2006
DATE OF DETERMINATION 17 February 2006

DETERMINATION OF THE AUTHORITY

The Employment Relationship Problem

[1] The applicant Jianye Yang, lodged his employment relationship problem against Clem Wooding and said that he was owed unpaid wages in the sum of \$656.25 from Mr Wooding and wanted to be paid all the money that was due to him.

[2] Mr Wooding, despite promises to do so to the support officers at the Authority, failed to lodge a statement in reply to the problem within 14 days. I sent a notice to the parties dated 17 January 2006 advising that Mr Wooding having failed to lodge his statement in reply within 14 days was not entitled to reply or respond without the leave of the Authority. I said that I would want to hear reasons for the delay. I advised in the notice that there would be a telephone conference at 9.30am on Friday 27 January 2006 for the purpose of setting the matter down for an investigation meeting in February 2006.

[3] During the telephone conference Mr Wooding said that Mr Yang had been employed by a company Wooding Gib-Fixers Limited and that the company was shortly to be placed into liquidation. There was no suggestion from Mr Wooding that the unpaid wages claimed were not due and owing to Mr Yang. It was also clear during the telephone conference that Mr Yang was not fluent in English.

[4] Attached to the statement of problem was a business card in the name of Wooding Jib Fixers 2005 Limited. It was difficult to establish from Mr Yang during the telephone conference how that came to be attached. Mr Wooding said that there was no employment relationship between Mr Yang and that company. An investigation meeting date was arranged for 16 February during the telephone conference with Mr Yang and Mr Wooding.

[5] Given that I was unable to establish exactly who employed Mr Yang I directed that the notice of direction and notice of investigation meeting be served on Mr Wooding, Wooding Gib-Fixers Limited and Wooding Jib Fixers (2005) Limited. I made it clear in my notice of direction that I would need to confirm who employed Mr Yang at the investigation meeting. The registered office of both companies was the same. It was duly confirmed that the notice of investigation notice and the directions notice was served on Mr Wooding and the registered office of the two companies on Saturday 4 February 2006 at 1:00 pm. All three were at the same address. Clem Wooding signed for the documents.

[6] The Authority heard nothing further from Mr Wooding or any one on behalf of the companies.

[7] An interpreter for Mr Yang was arranged for the investigation meeting.

[8] I delayed the start of the investigation meeting for five minutes in the event that Mr Wooding or a representative on behalf of either company had been delayed.

[9] Given the history of the matter and in the knowledge that all parties having been served were aware of the date, time and venue of the investigation meeting I proceeded in the absence of the respondent.

[10] Mr Yang explained that he was made aware through a work broker at Work and Income New Zealand about a paid employment opportunity with Wooding Gibfixers and the contact person was Clement Wooding.

[11] Mr Yang commenced employment on Monday 22 August 2005. He worked eight hours every day Monday to Friday until Thursday 1 September 2005 when he finished work at midday.

[12] A few days after he started Mr Wooding handed Mr Yang a business card and wrote details of the payment he was making to him for working Monday 22 August and Tuesday 23 August 2005 on the reverse of the card. The business card was in the name of Wooding Jib Fixers 2005 Limited and then had Mr Wooding's name and telephone number underneath. Mr Wooding is a shareholder in the company. A search of the company reveals that 2005 is bracketed in the company name which it is not on the business card.

[13] There does not appear to have been any information given to Mr Yang about the other company for me to conclude that Mr Yang knew he was being employed by Wooding Gib-Fixers Limited. There could be the possibly Mr Wooding used the company names interchangeably but I am of the view that Mr Yang was entitled to rely on the business card as setting out the name of his employer when it was handed to him with written details of a payment made to him on the back. Particularly in circumstances where it would have been apparent that Mr Yang was not fluent in English. That was the only written document given to Mr Yang during the short period of employment. I am not satisfied that Mr Wooding personally employed Mr Yang.

[14] I am of the view that in all probability Mr Yang was employed by Wooding Jib Fixers (2005) Limited rather than Mr Wooding personally. The respondent is Wooding Jib Fixers (2005) Limited.

Determination

[15] Mr Yang worked eight hours general labouring for the respondent on each of the following days for which he did not receive payment:

Wednesday 24 August 2005
 Thursday 25 August 2005
 Friday 26 August 2005
 Monday 29 August 2005
 Tuesday 30 August 2005
 Wednesday 31 August 2005

On Thursday 1 September Mr Yang worked four and a half hours.

[16] The total number of hours for which payment is sought is 52.5 hours. Mr Yang's hourly rate was \$12.50. Mr Yang is therefore owed the sum of \$656.25 gross for unpaid wages.

I order Wooding Jib Fixers (2005) Limited to pay to Jianye Yang the sum of \$656.25 gross being unpaid wages.

[17] Mr Yang is entitled to holiday pay on the gross amount of wages whilst employed. That is calculated on the basis of 6% of the gross wages to which he was entitled. I calculate this is the sum of \$856.25 gross wages. This total takes into account the amount Mr Yang was paid of \$200.00 gross as well as the sum due and owing for wages of \$656.25 gross. $\$856.25 \times 6\% = \51.37 gross.

I order Wooding Jib Fixers (2005) Limited to pay to Jianye Yang the sum of \$51.37 gross being holiday pay.

[18] Mr Yang made several attempts to talk to Mr Wooding directly to recover what was owing to him. He did not find Mr Wooding helpful. I am of the view that Mr Yang is entitled to be paid interest at the rate of 8.5% on the unpaid wages and holiday pay amounts which total \$707.62 in accordance with clause 11 of the schedule 2 of the Employment Relations Act 2000 from 2 September 2005 until the date of payment.

I order Wooding Jib Fixers (2005) Limited to pay to Jianye Yang interest on the sum of \$707.62 at the rate of 8.5% from 2 September 2005 until the date of payment.

Costs

[19] Mr Yang was not represented but he is entitled to recovery of his filing fee of \$70.00.

I order Wooding Jib Fixers (2005) Limited to pay to Jianye Yang \$70.00 being the filing fee for lodging the statement of problem with the Employment Relations Authority.

Summary of orders

- The respondent in this case is Wooding Jib Fixers (2005) Limited.
- I have ordered Wooding Jib Fixers (2005) Limited to pay to Jianyne Yang the sum of \$656.25 being unpaid wages.
- I have ordered Wooding Jib Fixers (2005) Limited to pay to Jianyne Yang the sum of \$51.37 being holiday pay.
- I have ordered Wooding Jib Fixers (2005) Limited to pay to Jianyne Yang interest on the combined amounts of unpaid wages and holiday pay at the rate of 8.5% from 2 September 2005 until the date of payment.
- I have ordered Wooding Jib Fixers (2005) Limited to pay to Jianyne Yang the sum of \$70.00 being the filing fee for lodging the statement of problem.

Helen Doyle
Member of Employment Relations Authority