

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

5288252
CA 38/10

5288252

BETWEEN

RUSSELL GRANT
ARMSTRONG
Applicant

AND

ALPINA AUDIO LTD
Respondent

Member of Authority: James Crichton
Representatives: Applicant in person
No appearance for Respondent
Investigation Meeting: 19 February 2010 at Christchurch
Determination: 23 February 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Armstrong) alleges that he is owed unpaid salary and holiday pay from his period of employment with the respondent (Alpina) and also claims that Alpina owes him monies loaned to Alpina to enable to Alpina to buy stock.

[2] At a telephone conference I convened between the parties, I indicated to the parties that I was not persuaded that the monies loaned to Alpina by Mr Armstrong were within the jurisdiction of the Authority notwithstanding the documentary evidence submitted by Mr Armstrong in the nature of a deed of acknowledgement of debt between himself and Alpina but guaranteed by Mr Francis personally. Mr Francis I note is the sole director of Alpina.

[3] It is certainly disappointing to record that Alpina and/or Mr Francis have made no proper attempt to engage with Mr Armstrong with respect to this debt and all Mr Armstrong can do is pursue his remedies in the ordinary Courts.

[4] As to the allegation of unpaid salary and holiday pay, this issue was also discussed at the telephone conference between the parties and the essence of Mr Francis's response on behalf of Alpina was that Alpina had failed commercially and that there was in consequence, no money to met any of Alpina's obligations including its obligation to Mr Armstrong.

[5] That may or may not be the factual position but Mr Armstrong has brought evidence before the Authority to indicate that Mr Francis is still selling stock at one of the Christchurch markets. That stock must be either owned by Alpina (in which case Mr Francis could potentially have funds to clear any unpaid wages with Mr Armstrong) or, as Mr Francis alleges, the stock belongs to himself in which case it could only be used to satisfy the company debt if Mr Francis agreed.

[6] In any event, by agreement between the parties I set the matter down for an investigation meeting which proceeded at the appointed date and time but in the absence of Mr Francis. As I noted above, Mr Francis participated in the telephone conference between the parties on behalf of Alpina and gave no intimation at that time that he would not participate in the investigation meeting. Indeed, he seemed keen to have confirmation of the debt issue being outside the aegis of the Authority's process but in the result, he did not appear. I am satisfied from my discussions with the very experienced Senior Support Officer who managed this file that Mr Francis knew perfectly well when the investigation meeting was scheduled and had been appropriately advised of the date and time and that his failure to attend at the appointed time was a deliberate decision not to participate rather than any failure to be notified.

[7] Mr Armstrong told me that he had his employment with Alpina terminated on 30 January 2009 allegedly as a consequence of the economic recession. He makes no claim about having been unjustifiably dismissed (he accepts Alpina's ostensible position that the dismissal was a consequence of economic circumstances) but the dismissal left him short paid both in terms of salary and in terms of holiday pay which he never received.

[8] Mr Armstrong's own records (which I accept in the absence of records from the employer) disclose that he is owed three weeks salary for the weeks 12-16 Jan 2008, 19-23 January 2009, and 26-30 January 2009. There was certainly no dispute from Alpina at the telephone conference that monies were owed but the failure to

provide any payslips during the employment and the failure of Mr Francis to properly engage with the Authority's process makes it impossible for the Authority to reach any conclusion other than that suggested by Mr Armstrong's own records.

[9] In this general regard, I should note that I thought Mr Armstrong was a straightforward and trustworthy man and I accepted his evidence at face value.

[10] On the matter of holiday pay, again there is no evidence available from Alpina. Mr Armstrong considers that he has six weeks holiday pay owing to him and in the absence of any alternative evidence, I accept that claim as well. Mr Armstrong's own records disclose that he took no time off in 2008 and two weeks off in 2007, the two years of the employment.

Determination

[11] I am satisfied on the evidence before the Authority that the following sums are due and owing by Alpina to Mr Armstrong:

- (a) Three weeks salary totalling \$3288 gross;
- (b) Six weeks holiday pay totalling \$6577 gross;
- (c) Reimbursement of the Authority's filing fee of \$70.00.

Costs

[12] Costs are to lie where they fall.

James Crichton
Member of the Employment Relations Authority