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Beckham v Aspen Drainage Company Limited AA484/10 (Auckland) [2010] NZERA 881 (17 November 2010)

Last Updated: 29 November 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 484/10 5307707

RE:

AND

SITALIN BECKHAM (deceased)

ASPEN DRAINAGE COMPANY LIMITED

Member of Authority: Representatives:

Investigation Meeting: Determination:

R A Monaghan

M Pehi, in person as claimant

L Campbell, counsel for Aspen Drainage Company
Limited

15 November 2010 17 November 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mary Pehi says her deceased partner, Sitalin Beckham, is owed outstanding wages and holiday pay by his employer Aspen Drainage Company Limited (Aspen). Ms Pehi also seeks the return of Mr Beckham's work tools and some other items which she listed.

[2] Mr Beckham died intestate. No administrator was appointed. Aspen disputes that Ms Pehi was Mr Beckham's spouse at the time of his death, believing that the two had separated. It says Ms Pehi has no legal right (or no standing) to bring the claim she has in the Authority.

[3] Aspen says further that in any event Mr Beckham was given his final pay and holiday pay.

[4] I address that matter first.

Final pay and holiday pay

[5] Mr Beckham had been employed by Aspen for some six months when he became too ill to work. He obtained a medical certificate dated 15 March 2010 saying he was unfit to work for 5 days, but unfortunately his condition was serious and he was admitted to hospital shortly afterwards. He died on 10 April 2010.

[6] As at Mr Beckham's last day of work, 12 March 2010, Mr Beckham was owed \$513 (gross) or \$409.18 (nett) in unpaid wages. Mr Beckham was also entitled to accrued holiday pay in the sum of \$619.63 (gross) or \$487.62 (nett).

[7] Mr Beckham did not have access to a bank account of his own. Pay advice slips commencing in December 2009 show that his pay was direct credited to the bank account specified on the slip, with three different bank account numbers being recorded as the accounts for receipt of payment during that period. One of the accounts was Ms Pehi's, and it appeared hers was the last account to which any payment was made by direct credit. She said in evidence however that Mr Beckham's pay for the period ending 10 March 2010 went to his daughter's bank account.

[8] Jason Temu is a director of and shareholder in Aspen. His evidence was that he visited Mr Beckham in hospital on 18 March 2010, where at Mr Beckham's request he gave Mr Beckham his outstanding wages in cash. According to Mr Temu he did not want someone else to have his wages.

[9] Mr Temu also said he visited Mr Beckham in hospital on 6 April 2010, where again at Mr Beckham's request he gave Mr Beckham his holiday pay in cash. It was common ground that he saw Mr Beckham's mother as he was leaving, and advised her he had given Mr Beckham his holiday pay.

[10] Mr Temu said cheques for the outstanding amounts were prepared. He banked them, withdrawing corresponding amounts of the cash with which he said he paid Mr Beckham. He produced the cheque butts and a company bank statement showing the cheques were banked. He also produced the pay advice slips in respect of the unpaid pay and holiday pay, with the numbers of the cheques recorded on the slips.

[11] On the other hand no-one saw Mr Temu give any money to Mr Beckham, although Mr Temu was seen at the hospital and it was acknowledged that Mr Temu spent time alone with Mr Beckham during those visits. However none of those who attended the investigation meeting found any cash in Mr Beckham's room.

[12] It is not possible to hear from Mr Beckham about whether he was paid. Mr Temu says he was.

[13] There is far from enough information to put the matter beyond doubt, but that is not the standard required here and aspects of the evidence lead me to accept Mr Temu's evidence as more likely than not. They include: Mr Beckham's changeable requirements regarding the method of payment of his wages; the acceptance that Mr Temu visited Mr Beckham when he said he did; the acceptance that Mr Temu mentioned the payment of holiday pay to Mr Beckham's mother; and the banking of the cheques for the specified amounts, and on the specified dates, supported by some documentation. Limited though that information is, Mr Temu's account also had a consistency that would be difficult to maintain if the account was fabricated. In the absence of any denial from Mr Beckham, I find Mr Beckham was paid his outstanding wages and holiday pay.

Tools and other items

[14] During the investigation meeting Mr Temu undertook to forward to Ms Pehi the items listed in the statement of problem. The family members present at the investigation meeting agreed to that course of action.

[15] I consider that matter resolved on that basis. Again it is not necessary to pursue the question of Ms Pehi's right to seek orders for the return of the items or the Authority's power to make such orders.

Conclusion

[16] These findings resolve the employment relationship problem. There is no need for any orders.

Costs

[17] Costs are reserved.

[18] The parties are invited to agree on the matter. If they seek a determination from the Authority any party seeking an order shall have 28 days from the date of this determination in which to file and serve a memorandum setting out what is sought and why. The other party shall have a further 14 days in which to file and serve a reply.

R A Monaghan

Member of the Employment Relations Authority