

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 209/10
5311421

BETWEEN	DWAYNE PHILLIP BONIFACE Applicant
A N D	MACKENZIE CONTRACTING LIMITED Respondent

Member of Authority: Helen Doyle
Investigation Meeting: On the papers
Date of Determination: 17 November 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Dwayne Boniface lodged a problem with the Authority wanting wages, holiday pay and a bonus that he said were owing to him and have not been paid. I am satisfied that his employer Mackenzie Contracting Limited (Mackenzie Contracting) was served with the statement of problem but took no steps in relation to the same and has not lodged a statement in reply.

[2] Mr Boniface and Mackenzie Contracting were written to by a support officer and advised that there would be a telephone conference with the Authority on 25 August 2010.

[3] Mr Boniface attended the telephone conference with the Authority on 25 August 2010 but there was no attendance on behalf of the respondent company.

[4] Following the telephone conference, the Authority issued a Minute to both Mr Boniface and McKenzie Contracting setting out the nature of the problem, being that Mr Boniface claimed he was owed unpaid wages in the sum of \$5,680.82 gross and holiday pay. The Authority attached Mr Boniface's working sheets and also referred

to the bonus issue. The Authority gave Mackenzie Contracting until 4 pm 20 September 2010 to make any comment on the amounts claimed by Mr Boniface.

[5] In response to that Minute, the Authority received a letter from Parkers Business Solutions Limited (Parkers) whose offices are the registered office and the address for service for Mackenzie Contracting Limited. From the documents attached to Mr Boniface's problem it is clear that Parkers provided business support for the company particularly in relation to payments of wages and holiday pay.

[6] Parkers asked for the an extension to the timeframe set by the Authority as they were having difficulty obtaining instructions from one of the directors of Mackenzie Contracting, Peter Mr Mackenzie. The Authority granted an extension to 30 September 2010.

[7] On 29 September 2010 Parkers by further letter advised that notwithstanding attending twice at the company's place of business and trying to contact Mr Mackenzie by cell phone they had been unable to obtain instructions.

[8] Parkers then indicated in a facsimile dated 29 September 2010 that it was their understanding that Mackenzie Contracting had discharged any obligation it had to Mr Boniface by transferring to him a car, a leveller and other tools. Parkers asked that the time frame be extended further and they would continue to track Mr Mackenzie down and would advise when further information was to hand.

[9] The Authority forwarded a copy of that letter to Mr Boniface who did not accept that he had been offered a deal such as that in Parkers letter. Mr Boniface said that he had a car from Mr Mackenzie on which he had spent \$800 but that he would be prepared to accept on an agreed valuation the vehicle in part payment of any debt. He did not accept that he had any tools of value.

[10] On 18 October 2010 the Authority issued a further Minute in which it indicated that it was of the view that it should determine the amounts owing for holiday pay and wages although the issue as to the \$2,000 bonus would require a hearing.

[11] The Authority indicated in its Minute dated 18 October 2010 that it would after 31 October 2010 issue a determination subject to any further information that Mr

Boniface is owed unpaid wages in the sun of \$5680.82 gross (including a statutory day) and holiday pay in the sum of \$3148.00 gross.

[12] A response was received from Parkers to the effect that future correspondence in relation to the matter be addressed to Mackenzie Contracting, care of Mr Mackenzie.

Determination

[13] I am satisfied that Mackenzie Contracting has been given every opportunity to respond to the claim for Mr Boniface. Mr Boniface also records in correspondence forwarded to the Authority that he has attempted on many occasions, by talking directly to Mr Mackenzie to arrange payment but that notwithstanding promises were made, no such payment had been forthcoming.

[14] I find that Dwayne Phillip Boniface is owed wages in the sum of \$5,680.82 gross and that these remain unpaid.

[15] I do make a slight alteration to the holiday pay but not the method of calculation to take into account the 22.5 hours worked by Mr Boniface in April 2010 for which is he is owed \$495 gross.

[16] I had calculated 8% on gross earnings from Mr Boniface's anniversary date on 17 March 2009 to 28 February 2010, \$39,350 in the sum of \$3,148 gross. I simply add the sum of \$495 gross to \$39,350 which is \$39845 gross and multiply that by 8% to arrive at the sum of \$3187.60 gross that I find is owing for holiday pay.

[17] Mr Boniface is entitled to be reimbursed for his filing fee of \$70.

[18] Mr Boniface is entitled to interest on \$8868.42 being amounts owing for wages and holiday pay from 1 June 2010 until the date of payment at the rate of 5% under Schedule 2 of the Employment Relations Act 2000, such rate not exceeding the 90 day bill rate plus 2%.

[19] If Mr Boniface wishes to pursue the matter of a promised bonus, then he is to advise the Authority within 10 days from the date of this determination and the matter will be given an investigation date.

Summary of Orders Made

- Mackenzie Contracting Limited is to pay Dwayne Boniface the sum of \$5680.82 gross being wages owed.
- Mackenzie Contracting Limited is to pay Dwayne Boniface the sum of \$3187.60 gross being holiday pay.
- Interest is payable on these amounts at the rate of 5% from 1 June 2010 until the date of payment.
- Mackenzie Contracting Limited is to pay to Dwayne Boniface the sum of \$70 being reimbursement of the filing fee.
- If Mr Boniface wishes to pursue the matter of the bonus he is to advise the Authority within 10 days from the date of this determination and the matter will be set down for an investigation meeting.

Helen Doyle
Member of the Employment Relations Authority