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## **Borich v Multizone Recycling Limited AA367/10 (Auckland) [2010] NZERA 675 (18 August 2010)**

Last Updated: 9 November 2010

**IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND**

AA 367/10 5285768

BETWEEN ANTONY BORICH

Applicant

AND MULTIZONE RECYCLING

LIMITED

Respondent

Member of Authority: Alastair Dumbleton

Representatives: Applicant in Person

No appearance for Respondent

Investigation Meeting: 17 August 2010

Determination: 18 August 2010

### **DETERMINATION OF THE AUTHORITY**

#### **Employment relationship problem**

[1] On 4 November 2009 the applicant Mr Antony Borich lodged a statement of problem to commence an action to recover underpaid salary, annual holiday pay and expenses reasonably incurred in employment.

[2] In a reply lodged by the respondent, Multizone Recycling Limited, it was claimed that Mr Borich had been employed for one month only, instead of nine weeks as he had alleged. Also, the reply suggested that Mr Borich had been paid salary of \$4,000 but which was unearned and could be given back by him to the company in return for the arrears claimed.

[3] The subsequent history of the investigation shows a failure of participation by Multizone Recycling Limited and a failure of cooperation in having the matter resolved. This included a failure to participate in mediation, even after being directed to undertake that process not once but twice by the Authority, and ultimately a failure to take part in the investigation meeting.

[4] I am satisfied that Multizone Recycling Limited was served with a notice of investigation meeting dated 6 May 2010 advising of the 17 August 2010 meeting. The notice was served at the company's registered office of 6D Jack Conway Avenue, Manukau City, Auckland.

[5] Mr Borich confirmed to the Authority that he had been employed at the beginning of August 2009 by Multizone Recycling Limited under an individual employment agreement. A copy of the agreement he produced has on it his initials as well as those of "MW", Mark Wilson, the general manager of the company.

[6] Clause 7.1 of the agreement provides for remuneration of \$52,000 per annum to be paid to Mr Borich fortnightly. This equates to \$1,000 per week.

[7] Clause 7.2 provides that Mr Borich was entitled to reimbursement of all expenses reasonably and properly incurred in the

performance of the duties as employee, upon production of appropriate receipts.

[8] I am satisfied from bank records produced by Mr Borich that from his employment he received \$1,000 gross per week for a total of eight weeks. I am also satisfied that he was employed for a further week but has not been paid for that.

[9] Further I find Mr Borich was not paid proportionate annual holiday pay upon termination of his employment, which occurred after a period less than 12 months. During that time he took as anticipated annual leave two half days, so there must be an adjustment for this.

[10] At the end of the employment Mr Borich provided receipts to Mr Wilson to support a claim for reimbursement of mileage reasonably incurred in the course of his employment. Bank records show in September 2009 he had earlier been reimbursed \$440 for a similar claim.

[11] When Mr Borich attempted to recover payment from the company he was met with various responses. They included, that he had only been employed for one month, that (notwithstanding the existence of the signed employment agreement) he had not been an employee at all but a contractor, and that he had been overpaid.

[12] In relation to the claim for annual holiday pay, the company variously claimed that there was no entitlement until six months' employment had been worked, or that Mr Borich had been a contractor. There was also a claim that the agreed remuneration was to be \$4,000 per month, rather than \$4,000 per four weeks. All of these claims are self-contradicted by Multizone Recycling Ltd in various emails from Mr Wilson and in the employment agreement executed by Mr Wilson on behalf of the company.

### **Determination**

[13] I am satisfied that Mr Borich was not paid for his final week of employment and the company is therefore ordered to pay him \$1,000. Also, I am satisfied he was not paid for annual holiday pay accrued to him after nine weeks of employment. Allowing for the two half days of anticipated holiday leave and applying 8% to total gross earnings, I find the amount owed is \$688 which the company is also ordered to pay. As expenses to be reimbursed, the amount of \$492 is required to be paid. This is calculated as set out in an email to Mr Borich sent on 8 October 2009. The amount represents the mileage of 685kms reimbursed at 70c per km and \$12.50 for parking.

[14] Mr Borich is entitled to interest on the above amounts which total \$2,180. The company is ordered to pay interest at the rate of 4.75% per annum, from 6 October 2009 until the full amount has been paid. Mr Borich is also entitled to recover \$70 from Multizone Recycling Limited, to reimburse the fee for bringing this application to the Authority.

[15] I direct that the company is to make the above payments within 14 days of the date of this determination, by 2 September 2010.

A Dumbleton

Member of the Employment Relations Authority