

- [3] This problem was not resolved at mediation.
- [4] An investigation in New Plymouth on 24 March 2009 was originally set down by direction. A faxed application by Mr Shewen for an adjournment was received on 19 March: I declined the application on the ground that, despite delay and the lack of clarity in the applicant's claim, sufficient time remained for the Company to have its case ready on the day and that the adjournment application could be put again in light of the evidence reasonably anticipated at the 24 March investigation.
- [5] As it happened, Mr Brader telephoned at 9.30 a.m. on the morning of the investigation to advise he was too ill to attend: the respondent was advised the investigation was adjourned.
- [6] By letter dated 26 March the parties were asked if they saw merit in the Authority inviting a labour inspector from the Department of Labour to examine wage records, etc so as to assist the parties in identifying whether or not there were outstanding wages payment issues, etc: neither party replied to that suggestion and it was not pursued.
- [7] By letter dated 24 April the parties were advised of a telephone conference on 22 May to set down a fresh investigation date: neither party advised of any difficulty with the proposed time but, as it happened, neither was available at the time; no explanations were received.
- [8] By direction I set the problem down for investigation on Tuesday 8 September 2009.

The Investigation

- [9] Neither party attended the investigation: neither party advised in advance they would not be attending. In the absence of good cause, I elected to proceed with the investigation: Clause 12 of Schedule 2 of the Employment Relations Act 2000 applied.
- [10] At around 10.00 a.m. I called the two telephone contact numbers provided by Mr Brader: there was no answerphone option on his landline however I was

able to leave a message on his portable phone to the fact that his urgent response was required.

- [11] Authority support staff subsequently advised that, some time later the same morning and more than an hour after the scheduled commencement of the investigation, Mr Brader telephoned. During that conversation he confirmed he had received notice of the investigation but had not realised it was scheduled for that morning and wanted the opportunity of providing additional evidence. For the reasons set out below, I had by then determined the matter.

Discussion and Findings

- [12] Mr Brader's statement of problem identifies the respondent as "*Andrew Shewen E2 Consultants*". The statement in reply records the problem as being between Mr Brader and "*Andrew Shewen t/a E2 Consultants*", hence the intituling above. I make this finding as to the identity of the respondent as the statement in reply attached an unsigned document headed "*Individual Terms for Jerry Brader*" and identifies E2 Consultants Ltd as the employer. I also note here that Mr Shewen has at no time taken issue with his being identified as the respondent.
- [13] Mr Brader has provided a precise recovery figure (see the copy of the "*Letter of Demand*" dated 8 July 2008 to the Company, attached to the statement of problem). However, the figure is not particularised, i.e. it is not clear how Mr Brader derived the sum claimed.
- [14] The Company's statement in reply rejects the claim and says instead that the applicant was "*provided with regular advances to asst with financial difficulties This was offered as the applicant was struggling to fulfil employment obligations*". The statement in reply also makes reference to speeding and parking fines.
- [15] A letter dated 8 August 2008 and attached to the statement in reply expands the Company's position: it claims, amongst other things, that: Mr Brader's personal circumstances resulted in late attendance and/or absences without notice; he made unauthorised use of the Company vehicle and fuel card and similar use of Company property for personal gain; spoke inappropriately with

customers and other staff members; made a fraudulent application for a sick day; and failed to return Company property.

[16] As required by the Authority (albeit out of time) and during the lead up to the first investigation, Mr Brader forwarded a witness statement and various documents including work and time sheets. In his witness statement Mr Brader repeats claims of wages shortfalls, particularly in the period leading up to his resignation from the Company by letter dated 11 June 2008.

[17] However, the evidence provided by Mr Brader does not make out the basis of his claim, nor does it particularise the amount he claims. Mr Brader has not correlated the work and time sheets and, on their face, it is not possible to do so or measure any shortfall.

[18] On the basis of the evidence before me, and – at that time – in the absence of any explanation by Mr Brader for his failure to attend, and as my contemporaneous record makes clear, I determined to dismiss his application.

Determination

[19] Mr Brader's claim does not succeed.

[20] While I am reserving costs I note here that the Company has not engaged legal representation and did not attend the investigation or account for its failure to do so. Subject to the respondent's submissions, it is difficult at this point to measure any basis for a costs claim.

Denis Asher

Member of the Employment Relations Authority