

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 166/09  
5151234

BETWEEN	DARREN BRADLEY Applicant	WILLIAM
AND	ADEN LIMITED Respondent	ELECTRICAL

Member of Authority: Paul Montgomery

Representatives: Darren Bradley in person  
Greg Froude, Advocate for Respondent

Investigation Meeting: 22 September 2009 at Dunedin

Submissions received: On the day

Determination: 2 October 2009

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**DETERMINATION OF THE AUTHORITY**

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[1] The applicant, a former employee, seeks recovery of the cost of personal trade tools stolen from a company van while parked overnight at the respondent's Dunedin premises. The monetary value of replacing the tools is \$5,830.67.

[2] The respondent declined to meet Mr Bradley's claim as the company's policy requires staff who were allocated a company van to secure the vehicle overnight at their home address. Further, the respondent says it is not possible for it to insure, under its own insurance policy, equipment which does not belong to it.

[3] The parties attempted to resolve their differences in mediation but were unable to do so.

### **The essential facts**

[4] On 13 October 2008, Mr Bradley used his personal vehicle to drive from work to his home as he was picking up his children at 4.30 that afternoon. The van has only two seatbelts and is not to be used for private purposes.

[5] He parked the van in the company's secured yard behind the offices. The van was locked and the alarm was set. It was parked in the yard proper, not under the open vehicle bay which is monitored by CCTV cameras. Nonetheless, the cameras did record the burglary. However, the Police were unable to identify the culprits nor could they retrieve the stolen tools.

[6] Mr Bradley contacted his South Island manager in Christchurch to advise him of the incident. Mr Grant Wengler told him to have the tools priced and send the information to him. Mr Bradley said Mr Wengler told him the company policy would cover the loss. Mr Froud, the respondent's managing director, later received the documents and consulted the company's insurance broker.

[7] The broker advised Mr Froud the company's insurance policy was not able to cover Mr Bradley's loss as the tools were Mr Bradley's personal property, not that of the company. Mr Froud advised Mr Bradley the company would be unable to cover the loss and advised him to claim it under his own personal home and contents policy.

[8] Mr Bradley attempted this through Westpac. His claim was declined on the basis that tools of trade are covered by the policy only when they are taken from the policy holder's home.

### **Discussion and analysis**

[9] In this case, there is no need of much of either. The employment agreement is quite clear. At clause 9.2 it states:

9.2 *Use of a vehicle for work purposes only* The employee may be allocated a vehicle for work purposes and that purpose only. The employee shall store the vehicle in a safe place at their place of residence. The employer will meet all maintenance, insurance and running costs. ... You are required to drive the vehicle straight from your place of residence to the site(s) of your daily work.

[10] The vehicle holding the applicant's tools was not at his place of residence when broken into. I accept Mr Bradley had reason to believe he had left the vehicle

locked in the secured company-owned yard with security cameras in operation and he did so because he needed his own car to transport his children safely.

[11] Regrettably, and certainly ironically, Mr Bradley had taken responsible action in the genuine belief both the company van and his equipment were securely housed at the company's premises.

[12] The bitter reality is that his tools were not covered under the company's policy nor under his own home and contents policy. Mr Bradley has had to replace his tools by taking out a second mortgage on his home, a course of action which is as expensive as it was unanticipated.

[13] The claim is one of recovery. The respondent rejects liability for the loss on the basis of its own employment agreement and because it is legally unable to insure goods it does not own.

[14] The attitude of both parties at the investigation meeting was genial, open and friendly, in spite of their different views of the matter in hand. I commend them both on their mature approach.

### **Determination**

[15] Mr Bradley's claim is dismissed and the Authority is unable to assist him further.

### **Costs**

[16] In the circumstances, I am of the view costs are best left to lie where they fall. Each party represented itself and appears to have incurred no significant legal costs.

Paul Montgomery  
Member of the Employment Relations Authority