

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 139/07  
5080279

BETWEEN	GILBERT BRADLEY Applicant	ANDREW
AND	JOSEPHINE MONS Respondent	

Member of Authority: Helen Doyle

Representatives: Applicant in person  
No appearance for respondent

Investigation Meeting: 2 November 2007 at Greymouth

Determination: 15 November 2007

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant, Gilbert Bradley, says in his employment relationship problem lodged with the Authority that he was not paid for work performed for the period he was employed by the respondent from December 2006.

[2] The Authority held a telephone conference with Mr Bradley and a Richard Mons and Sue Merriman on 24 September 2007. I was not the Authority member who conducted that telephone conference but it is clear from the directions notice dated 24 September 2007 that Ms Mons could not be contacted and so did not attend the directions conference. I understand that Ms Merriman is an accountant.

[3] There was an issue that was recorded in the notice of direction about the correct identity of the respondent. Mr Bradley clarified that he had dealt with Josephine Mons during his employment. Ms Mons is a director and shareholder of a company Mammon Property Holdings Limited along with Richard Mons. Mr Mons,

it is recorded in the directions notice, said that this company was not involved in the business in which Mr Bradley worked and that there are other companies owned by Mr and/or Ms Mons.

[4] To assist the Authority in clarifying who purchased the business that Mr Bradley worked in previously, the Authority member made the following directions at the telephone conference:

- Ms Merriman was to clarify who purchased David Reid's business and provide the Authority with the relevant records;
- Mr Bradley was to provide the Authority with copies of his bank statements from the beginning of November 2006 until the end of April 2007 and a copy of his personal tax summary from IRD;
- The Authority was then to make copies of these documents available to the other side.

[5] Another matter discussed during the directions conference was the venue for the hearing. It was agreed that an investigation meeting was to be held in Greymouth on 2 November 2007. I accept from reading the directions notice and Mr Bradley's evidence that this was to assist Mr Mons, who it was thought may be able to clarify the identity of the respondent by way of provision of records and such like. Mr Mons also said during the directions conference that he could not travel easily because of his requirement to care for small children.

[6] The Authority was provided with an affidavit of service from the process server, Terrence Anthony McCone. The affidavit of service was sworn on 21 October 2007 at Christchurch. Mr McCone deposed in the affidavit that he personally served Ms Mons with the notice of direction, notice of investigation meeting and the statement of problem on 16 October 2007 in Christchurch. Mr McCone also deposed that Ms Mons identified herself prior to service of the documents.

[7] There is an indication on the Authority file that Mr Mons was represented by a solicitor, but nothing further was heard from Mr Mons or his solicitor in terms of the investigation meeting. I accept that Ms Merriman left further communication to Mr Mons lawyer. A support officer attempted to clarify with Mr Mons' lawyer

whether he would be present at the investigation meeting in Greymouth on 2 November 2007 but there was no response.

[8] The Authority was therefore never advised who had purchased David Reid's business or provided with any records. Mr Bradley provided bank statements and clarified the remedies he wanted. The bank statements showed that there were some deposits made to his account in terms of work he had performed from 6 December 2006.

[9] On 1 November 2007 a support officer at the Authority received a telephone call from Ms Mons who complained about the investigation meeting venue. It was by that stage too late to change the venue to Christchurch and Ms Mons had known about the investigation meeting being held in Greymouth since 16 October 2007. During that telephone call Ms Mons indicated that she would advise the Authority how it could communicate with her further, but has failed to do so.

[10] The Authority duly held an investigation meeting in Greymouth on 2 November 2007. There was no appearance by Ms Mons or Mr Mons and the Authority proceeded to hear evidence from Mr Bradley about his employment relationship problem.

### **Issues**

[11] The issues for the Authority are:

- the identity of the respondent who employed Mr Bradley when the business he had worked in for three years as a cleaner was sold;
- what is Mr Bradley owed in terms of his employment;
- did Mr Bradley raise a personal grievance;
- what expenses is Mr Bradley entitled to with respect to lodging his claim and attending the investigation meeting.

### **The identity of the respondent**

[12] Mr Bradley explained in his evidence that he had been employed by David Reid who operated a business involved in commercial cleaning for three years until

early December 2006. Mr Bradley cleaned a supermarket in the evenings and worked for 15 hours per week. It appeared that Mr Reid traded as DDR Cleaning (2006), although Mr Bradley told me he did not think it was a company.

[13] Mr Bradley was paid \$10.50 per hour when he was employed by Mr Reid. Each fortnight there was a net sum deposited into his bank account of \$244.76. His gross payment was therefore \$315.00 per fortnight.

[14] In or about early December 2006 Mr Bradley came to hear that there were new owners who were to be taking over Mr Reid's business. The process of change appeared to have been quite informal. Mr Bradley received a letter dated 9 December 2006. It is on DDR Cleaning (2006) letterhead but signed by Richard and Josie as Directors. The letter advised Mr Bradley that the new owners of the business were Richard and Josie Mons. If Mr and Ms Mons were directors of a company that took over the business from David Reid it is completely unclear from the letter what company they were directors of.

[15] There was no written employment agreement entered into.

[16] I accept Mr Bradley's evidence that the only person he really had any contact with after 6 December 2006 was Josephine Mons. The Authority has given Mr Mons and Ms Mons every opportunity to provide information about Mr Bradley's employer. They have failed to do so. As Mr Bradley was not paid any money by the new owners until after he finished working for them, no assistance can be gleaned from payments.

[17] The Doctrine of Undisclosed Principal is clear. If a company director wishes to enter into an employment agreement so that the company is the employer and not the director, then that must be made plain. Sometimes the fact that a company is the employer can be clear from other matters in the employment relationship. It is not in this case. There is an absence of clear information about who employed Mr Bradley. If it was indeed a company the Authority can not simply guess which company it was.

[18] Ms Mons was one of the new owners set out in the letter of 9 December 2006. She had dealings with Mr Bradley and it was never disclosed to Mr Bradley that she was acting on behalf of a company and it was that company that would employ Mr Bradley.

[19] In those circumstances I find that the correct respondent is Josephine Mons.

**What is Mr Bradley owed?**

[20] I can establish from bank statements that Mr Bradley was paid his final pay from David Reid on 6 December 2006. An amount which appears to be holiday pay from David Reid was deposited into Mr Bradley's bank account on 7 December 2006. Mr Bradley accepts that all monies owing in terms of his employment by David Reid have been paid to him.

[21] Mr Bradley's pay was deposited into his account and available for his use on Wednesday each fortnight. Mr Bradley was therefore employed by Ms Mons from Wednesday 6 December 2006 and worked for her until mid February 2007.

[22] Mr Bradley left his employment because he was not being paid. I have put Mr Bradley's final day of employment at 14 February 2007 because Mr Bradley is claiming two weeks payment for February 2007.

[23] Mr Bradley therefore worked for ten weeks for Ms Mons. As far as he was aware his pay rate stayed the same at \$10.50 per hour and he worked the same amount of hours each week.

[24] For the ten week period Mr Bradley was owed therefore a total gross amount of \$1,575.00 on the basis of \$315.00 per fortnight. That is a net figure of \$1,223.80 on the basis of \$244.76 net per fortnight.

[25] Mr Bradley did not realise initially that his pay was not being deposited into his account after 6 December 2006 because he had other payments going into the account and he had never received pay slips.

[26] Mr Bradley did though experience embarrassment as a result of his bank card being declined on several occasions and eventually realised that he had not been paid for work performed since 6 December 2006.

[27] When Mr Bradley checked his account at a later date he was able to establish that there had been deposits into his account of \$500 on 9 March 2007 and \$624.31 on 28 March 2007. Mr Bradley accepts that those deposits were made for the time that he performed work when Ms Mons owned the business. The total net payments deposited into Mr Bradley's account by Ms Mons are \$1,124.31.

[28] I take the total net payments that Mr Bradley should have received of \$1,223.80 and deduct from this sum the payments made to Mr Bradley in March 2007. There is a balance due and owing to Mr Bradley of \$99.49 net.

[29] I order Josephine Mons to pay to Gilbert Bradley the sum of \$99.49 net being unpaid wages as calculated above.

[30] I order Josephine Mons to pay to Gilbert Bradley the sum of \$94.50 gross being holiday pay calculated on the basis of 6% of the gross wages that should have been paid to Mr Bradley of \$1,575.00.

[31] I accept that the late payment of Mr Bradley's wages caused him considerable distress and embarrassment. I am of the view that interest should be awarded under clause 11 of Schedule 2 of the Employment Relations Act 2000. The interest rate is to be 9% which does not exceed the 90 day bill rate, plus 2%. The money owing to Mr Bradley was due at different dates and there is still an amount outstanding. I have set out the sums separately therefore with the inclusion of interest.

[32] Mr Bradley is entitled to interest on the sum of \$244.76 at 9% from 20 December 2006 when that sum should have been paid to him as wages until 9 March 2007 and I so order.

[33] Mr Bradley is entitled to interest on the sum of \$244.76 at 9% from 3 January 2007 when that sum should have been paid to him as wages until 9 March 2007 and I so order.

[34] Mr Bradley is entitled to interest on the sum of \$10.48 at 9% from 17 January 2007 when that sum should have been paid to him until 9 March 2007 and I so order.

[35] Mr Bradley is entitled to interest on the sum of \$234.28 at 9% from 17 January 2007 when that sum should have been paid to him as wages until 28 March 2007 and I so order.

[36] Mr Bradley is entitled to interest on the sum of \$244.76 at 9% from 31 January 2007 when that sum should have been paid to him as wages until 28 March 2007 and I so order.

[37] Mr Bradley is entitled to interest on the sum of \$145.27 at 9% from 14 February 2007 which is part of the wages he should have received at that date but did not, until 28 March 2007 and I so order.

[38] Mr Bradley is entitled to interest on the balance of the unpaid wages of \$99.49 at the rate of 9% which sum should have been paid to him on 14 February 2007 together with holiday pay of \$94.50 which should have been paid on the same day until the date of payment and I so order.

### **Has Mr Bradley raised a personal grievance?**

[39] Mr Bradley wrote to Ms Mons in or about March 2007 and advised her that he believed he had suffered a grievance because of the failure by her to pay him. I explained to Mr Bradley at the investigation meeting that I would have to carefully consider whether the letter constituted the raising of a personal grievance in terms of the Employment Relations Act 2000.

[40] A failure to pay wages is a breach of the fundamental terms of an employment agreement. I accept that Mr Bradley was aggrieved by Ms Mons' failure to pay him for work performed and that was why he stopped working in mid February. Mr Bradley did not refer to that however as the basis for his grievance.

[41] I do not consider that Mr Bradley's letter raises a personal grievance as set out in the Employment Relations Act 2000 that Ms Mons is expected to respond to, other than by making payment of unpaid wages.

[42] I do not find that Mr Bradley has raised a personal grievance in terms of the requirements of the Employment Relations Act 2000.

### **Expenses**

[43] Mr Bradley is entitled to reasonable expenses for attending the investigation meeting at Greymouth. This was a most unusual situation where despite being given every opportunity, the respondent did not advise the Authority that Mr Bradley's employer was other than herself. I understand further, although I was not the Authority member on the telephone conference, that it was for the benefit of Mr Mons that the venue for the investigation meeting was Greymouth. Ms Mons was also aware that that was to be the venue of the meeting from 16 October 2007, but made

no attempt to contact the Authority in terms of any change of venue until the day prior to the meeting.

[44] I have taken those matters into consideration when assessing whether Mr Bradley's expenses are reasonable. Mr Bradley has suffered a stroke and so he had to leave Christchurch to travel by car to the West Coast on the afternoon of 1 November 2007. The investigation meeting on 2 November commenced at midday.

[45] I find that Mr Bradley is entitled to the following expenses that in the particular circumstances of this case are reasonable. Mr Bradley in my view should not be out of pocket in this matter. Mr Bradley provided me with a receipt for his accommodation in Greymouth and food expenses for 1 November 2007. I have allowed a further \$10 for breakfast and lunch on 2 November 2007.

[46] Mr Bradley also provided evidence of what he was earning in his temporary position that he had been able to obtain at the Warehouse. He wanted to claim as an expense two days lost wages. I consider that the wages that Mr Bradley would otherwise have been able to earn if he was not required to travel to the West Coast is an expense which I am prepared to recognise as reasonable in the very unusual circumstances of this case.

[47] I set out the expenses as below:

Petrol	\$60.00
1 nights accommodation at Greymouth	128.00
Lunch – 1 November 2006	5.30
Dinner – 1 November 2006	36.00
Allowance breakfast and lunch – 2 November 2006	10.00
Lost wages as a result of attending investigation meeting at the rate of \$11.25 per hour for eight hours per day (x 2)	180.00
Bank Statements at \$5 per page (21 pages)	105.00
Filing Fees	<u>70.00</u>
<b>Total expenses</b>	<b><u>\$594.30</u></b>

[48] I order Josephine Mons to pay expenses to Gilbert Bradley in the sum of \$594.30.

**Summary of orders made**

- I have ordered Josephine Mons to pay to Gilbert Bradley unpaid wages in the sum of \$99.49 net.
- I have ordered Josephine Mons to pay to Gilbert Bradley holiday pay in the sum of \$94.50.
- I have ordered that interest is payable at the rate of 9% on wages that were not paid on time and the unpaid wages and holiday pay.
- I have ordered Josephine Mons to pay to Gilbert Bradley expenses in the sum of \$594.30.

Helen Doyle  
Member of the Employment Relations Authority