

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 22
5433506

BETWEEN CRAIG PAUL CARDWELL
Applicant
AND ROB GOLD BUILDERS LIMITED
trading as GOLD CONSTRUCTION
Respondent

Member of Authority: T G Tetitaha
Representatives: A E M Reid/C T Patterson, Counsel for Applicant
G Bennett, Advocate for Respondent
Investigation Meeting: 21 January 2014 at Auckland
Date of Oral
Determination: 21 January 2014
Date of Determination: 22 January 2014

INTERIM DETERMINATION OF THE AUTHORITY

- A. The Authority declines the application to extend the time limitation set out in s.142 of the Employment Relations Act 2000 to allow the recovery of wages for the period 2003 to 24 September 2007. Accordingly, the recovery of wages claims which fell due for payment more than six years prior to the filing of proceedings between 2003 and September 2007 are struck out. The Authority retains jurisdiction to hear the claims for recovery of wages for the period September 2007 to April 2012.**

Employment relationship problem

[1] Craig Paul Cardwell seeks leave to recover wage arrears for the period 2003 to 24 September 2007. The recovery of wages for this period is outside the six year time limitation imposed by s.142 Employment Relations Act 2000 for filing proceedings.

[2] Mr Caldwell submits the Authority should apply the ‘accrual plus knowledge’ test as set out in the Limitation Act 2010. He accepts the cause of action accrued on the date these wages fell due to be paid, namely, one week after the work was completed. However, he did not become aware of the shortfall in his wages until late May 2012. However it was not until April/May 2013 that he had sufficient knowledge from his accountant confirming the wages shortfall. He is within the six year time limitation if the Authority is minded to apply the knowledge and accrual test.

[3] The respondent disagrees and submits s.142 should be strictly applied. The Limitation Act does not ‘gazump’ s.142 of the Employment Relations Act. The respondent referred to the decision of the Chief Employment Court Judge in *Haig v. Edgewater Developments Ltd & Ors* [2012] NZEmpC 189.

[4] The Authority is bound to follow the decision in *Haig*. In short, there is no knowledge and accrual test. The time limitation for bringing proceedings runs from the date the cause of action arose. In these circumstances the date was one week following the work being completed. These proceedings were filed on or about 24 September 2013.

[5] The Authority declines the application to extend the time limitation set out in s.142 of the Employment Relations Act 2000 to allow the recovery of wages for the period 2003 to 24 September 2007. Accordingly, the recovery of wages claims which fell due for payment more than six years prior to the filing of proceedings between 2003 and September 2007 are struck out. The Authority retains jurisdiction to hear the claims for recovery of wages for the period September 2007 to April 2012.

T G Tetitaha
Member of the Employment Relations Authority