

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2011] NZERA Auckland 537
5349215

BETWEEN MUL CHAND
 Applicant

AND MOTORING EFI 4000
 LIMITED
 Respondent

Member of Authority: Dzintra King

Representatives: Nyra Marshall, Counsel for Applicant
 No appearance for Respondent

Investigation Meeting: 12 December 2011

Determination: 16 December 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Mr Mul Chand, filed a Statement of Problem alleging he had been unjustifiably disadvantaged by the respondent, Motoring EFI 4000 Limited (“the company”). Mr Chand was asked by Mr Ashok Kumar, the director of the company, to make a payment of a \$5,000 bond. This bond was said to be for the purposes of covering damage “*incurred by the employee to workshop equipment and assets including company vehicles*” and to be “*for the duration of the employee’s work permit.*”

[2] In the Statement in Reply Mr Kumar asserted that Mr Chand had never worked for him. Mr Chand deposed that he had commenced employment on 14 January 2011. I accept that evidence.

[3] Mr Kumar has not denied that he took the sum of \$5,000 from Mr Chand and that the money has not been returned.

[4] Mr Chand said he started work on 17 January 2011. On 21 January 2011 Mr Kumar gave him an employment agreement with the wages section left blank. Mr Kumar had told Mr Chand he would be on a rate between \$18 and \$20 an hour for a 46 hour week.

[5] On 23 January Mr Chand and his wife went to the office to discuss the agreement with Mr Kumar. Mr Kumar reiterated that the rate would be between \$18 and \$20 per hour.

[6] On 24 January Mr Chand signed the employment agreement with the wages section blank.

[7] On 24 January Mr Kumar asked him to provide a bond of \$5,000. Mr Kumar gave Mr Chand a deposit slip so he could deposit the \$5,000 into a bank account. Mr Chand deposited \$5,000 into an account in the name of S Kumar. At that stage Shanta Kumar was a director of the respondent.

[8] On 24 January Mr Chand returned to work after making the deposit. He gave confirmation of the deposit to Mr Kumar and was then given a copy of his employment agreement, which now had the space previously left blank for wages filled in with the amount of \$500 per week. This rate is below the minimum wage, which at that time was \$12.75 per hour.

[9] On 25 January Mr and Mrs Chand saw Mr Kumar, gave him the original agreement and Mr Chand said he did not agree with the amended agreement and asked for his money to be returned.

[10] Mr Chand seeks repayment of the \$5,000 and compensation for humiliation and distress.

[11] Despite requests, the \$5,000 has not been returned.

[12] Section 12A Wages Protection Act 1983 provides that no employer shall seek or receive any premium in respect of the employment of any person and that any such premium may be recovered from the employer as a debt.

[13] In *Sears v Attorney-General* [1994] 2 ERNZ 39 Goddard CJ stated at p 61 that “*In the normal understanding of the term a premium imports some consideration paid or demanded as the price of a contract.*”

[14] The \$5,000 sought and obtained from Mr Chand falls within the category of a premium.

[15] Even if it did not, Mr Chand would still be entitled to repayment of the money.

[16] Mr Chand has been disadvantaged both by respondent’s requirement that he pay a bond and by the failure to return the money. In addition to returning the bond of \$5,000 the respondent is to pay the applicant the sum of \$3,000 pursuant to s 123 (1) (c) (i) Employment Relations Act 2000.

[17] The applicant seeks costs. Ms Marshall provided information showing she had spent 8 hours in total on the matter at a charge-out rate of \$150 an hour. Part of the costs incurred relate to mediation, which took half a day and for which the Authority cannot award costs. I therefore deduct 3 hours being \$450 from the amount sought. Ms Marshall has also claimed \$54.40 in disbursements.

[18] The respondent is to pay the applicant the sum of \$750 in costs, \$54.40 in disbursements and the filing fee of \$71.56.

Dzintra King

Member of the Employment Relations Authority