

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Kevin Michael Coltrane (Applicant)
AND Phoenix Flight Ltd (T/A Antigravity Aerotowing) (Respondent)
REPRESENTATIVES Kevin Coltrane In person
No appearance for Respondent
MEMBER OF AUTHORITY Helen Doyle
INVESTIGATION MEETING 21 March 2006
DATE OF DETERMINATION 23 March 2006

DETERMINATION OF THE AUTHORITY

The Employment Relationship Problem

[1] The applicant Kevin Coltrane, was an employee of the respondent company, Phoenix Flight Limited (“Phoenix Flight”), from 1 October 2005 until 7 December 2005.

[2] Mr Coltrane worked for Phoenix Flight as a Hang Glider Tandem Pilot in Queenstown and was a party to a fixed term employment agreement with the company for a period from 1 October 2005 until 30 April 2006.

[3] Mr Coltrane was paid at the rate of \$45,000.00 per annum and the employment agreement provided that he would be paid monthly on the last business day of the month for work up to the 20th of the month.

[4] Mr Coltrane lodged a statement of problem with the Employment Relations Authority in which he sought to recover unpaid wages and holiday pay from Phoenix Flight and his filing fee of \$70.00. The statement of problem was recorded as having been received by the Authority on 4 January 2006.

[5] The statement of problem was served at the registered office of Phoenix Flight and signed for by the director of that company, Danna Burton on 5 January 2006. The statement of problem was accompanied by a letter from an Authority support officer that advised the respondent of the requirement to file a statement in reply with the Employment Relations Authority within 14 days after the date of receipt of the statement of problem and letter.

[6] No statement in reply was received from Phoenix Flight and attempts to make contact with Ms Burton by telephone were unsuccessful.

[7] A telephone conference was then arranged to be held with the Authority on 3 February 2006 with a view to scheduling the matter for an investigation meeting. A support officer wrote to Ms Burton, as director of Phoenix Flight, on 24 January 2006. The letter advised of the date, time and purpose of the telephone conference. The letter advised that a call would be made to the cell phone number provided by Mr Coltrane on which he had called Ms Burton previously. Ms Burton was also advised that she could provide an alternative number.

[8] No-one on behalf of the company made any contact with the Authority before 3 February 2006.

[9] On 3 February 2006 at the arranged time unsuccessful attempts were made to call Ms Burton's cell phone. The telephone conference then proceeded with the applicant.

[10] Mr Coltrane advised the Authority that he had to leave New Zealand in May 2006. A date for an investigation meeting was set for 21 March 2006 in Queenstown. The parties were directed to mediation which was to take place before the investigation meeting.

[11] The mediation service was not able to make contact with Ms Burton to arrange mediation.

[12] The investigation meeting therefore took place on 21 March 2006.

[13] Ms Burton has not throughout the process made any attempt to contact the Authority or participate as director of Phoenix Flight in the Authority processes. She did not attend at the investigation meeting. She did however send a text to Mr Coltrane and some other employees to the effect that they would be paid on Friday 17 March 2006. A further text after that date suggested that there was a problem with payment.

[14] I am satisfied that Phoenix Flight was served with the notice of direction dated 3 February and notice of investigation meeting. There is an affidavit of service from a process server on the Authority file confirming that the documents were served on Ms Burton a director of Phoenix Flight on Monday 20 February 2006.

[15] On that basis I proceeded to hear evidence from Mr Coltrane about his unpaid wages and holiday pay.

Background to the claim for unpaid wages

[16] Mr Coltrane was paid for the first period of his work from 1 October to 20 October 2005 in full, although not on the last business day of the month as specified in the employment agreement but on 4 November 2005. Mr Coltrane received a pay slip from Phoenix Flight which set out a gross payment of \$2596.14. PAYE had been deducted from the gross amount to arrive at a net sum of \$2067.30 which Mr Coltrane received.

[17] Mr Coltrane provided Ms Burton with his IRD number shortly after commencement of his employment. It is clear from the only pay slip he was provided with that PAYE had been deducted. I am satisfied that Mr Coltrane did what he could to enable Phoenix Flight to properly account for him as an employee and for PAYE.

[18] For the second period of his employment from 21 October 2005 to 20 November 2005 Mr Coltrane received \$1100.00 net. He claims that he is owed a balance of \$1795.60 net from the gross amount owing to him for that second period of employment of \$3750.00. I find that Phoenix Flight must have accepted that Mr Coltrane is entitled to this sum. The company paid into

Mr Coltrane's bank account in late December 2005 a cheque for the sum of \$1795.60. The cheque from Phoenix Flight was subsequently dishonoured. Mr Coltrane is entitled to payment of \$1795.60 net for the second period of his employment.

[19] Mr Coltrane worked a third period for Phoenix Flight from 21 November 2005 to 7 December 2005 for which he says he is owed \$2125 gross or \$1701.16 net. I am satisfied that Mr Coltrane has not been paid for this period and I accept his method of calculation of the unpaid wages for this period. Mr Coltrane is entitled to payment of \$1701.16 for the third period of his employment.

[20] Mr Coltrane attempted on many occasions to obtain payment of his wages. There were a number of promises which did not come to fruition. Another company, Antigravity Hang Gliding Limited, of which Ms Burton was also a director was placed in liquidation on 30 November 2005.

[21] I accept Mr Coltrane's evidence that Ms Burton never denied that he was owed wages and that she did not dispute the amount claimed.

[22] Mr Coltrane is also entitled to holiday pay of 6% of the gross amount he was paid and/or was entitled to be paid.

[23] The failure by Phoenix Flight to pay wages to Mr Coltrane caused him financial difficulty. It is appropriate in my view that I order interest be paid on the unpaid wages and holiday pay from 8 December 2005 when Mr Coltrane ceased employment with Phoenix Flight.

Determination

[24] Mr Coltrane is owed unpaid wages by Phoenix Flight Limited. He is owed the sum of \$1795.60 net for his second period of employment and \$1701.16 net for his third period of employment. That is a total of \$3496.76 net.

[25] I order Phoenix Flight Limited to pay to Kevin Coltrane the sum of \$3496.76 net being unpaid wages.

[26] Mr Coltrane is entitled to 6% holiday pay on the gross amount of wages he was paid and/or entitled to be paid. The gross wages for the period of his employment were \$8471.00. $\$8471.00 \times 6\% = \508.26 gross or \$406.25 net.

[27] I order Phoenix Flight Limited to pay to Kevin Coltrane the sum of \$406.25 net being holiday pay.

[28] I am of the view that Mr Coltrane is entitled to be paid interest, at the rate of 9% on the unpaid wages and holiday pay amounts which total \$3903.01 net, in accordance with clause 11 of schedule 2 of the Employment Relations Act 2000 from 8 December 2005 until the date of payment.

[29] I order Phoenix Flight Limited to pay to Kevin Coltrane interest on the sum of \$3903.01 at the rate of 9% from 8 December 2005 until the date of payment.

Costs

[30] Mr Coltrane is entitled to recover his filing fee of \$70.00.

[31] I order Phoenix Flight Limited to pay to Kevin Coltrane the sum of \$70.00 being the filing fee for lodging the statement of problem with the Employment Relations Authority.

Helen Doyle
Member of Employment Relations Authority