

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Jeffery Wayne Dunstan (Applicant)
AND Dependable Storage Limited (Respondent)
REPRESENTATIVES Jeffery Wayne Dunstan In Person
No appearance by respondent
MEMBER OF AUTHORITY Leon Robinson
INVESTIGATION MEETING 26 April 2006
FURTHER EVIDENCE RECEIVED 21 June 2006
DATE OF DETERMINATION 22 June 2006

DETERMINATION OF THE AUTHORITY

The problem

[1] The applicant Mr Jeffery Wayne Dunstan ("Mr Dunstan") applies to the Authority to recover arrears of wages from his former employer Dependable Storage Limited ("Dependable").

[2] Dependable did not attend the investigation meeting. At a previously adjourned investigation meeting on 30 March 2006, a "business associate" Mr Douglas Williams ("Mr Williams") of a director of Dependable Mr Colin Godfrey, attended. Mr Williams informed me that Dependable had received a notice of investigation meeting but it had no knowledge of Mr Dunstan's employment relationship problem. I provided Mr Williams with a copy of Mr Dunstan's statement of problem and with Mr Williams agreement, rescheduled the investigation meeting to 26 April 2006. Mr Williams undertook to inform Dependable of the rescheduled date.

[3] In any case, I asked Mr Dunstan to arrange service of his statement of problem and the amended notice of investigation meeting on Dependable. Mr Dunstan gave sworn evidence that he had attended to the same at 2.00 pm on 20 April 2006. That date of service is one day short of the period required by the Authority's regulations. I directed that the matter proceed as I was satisfied that Dependable was aware of the problem and the rescheduled date of investigated meeting. It has raised no objection and taken no steps. Mr Williams did not attend the rescheduled investigation meeting.

[4] In the absence of any attendance by Dependable, I proceeded to investigate and Mr Dunstan's evidence is unchallenged.

The facts

[5] Mr Dunstan commenced employment with Dependable on or about 12 April 2004 as its operations manager.

[6] He gives evidence that the terms of his employment were recorded in a written individual employment agreement which he provided to the Authority on 21 June 2006 ("the Agreement"). The Agreement is dated 12 April 2004 and is signed by one "Joe Faiumu" on behalf of Dependable. The Agreement is not signed by Mr Dunstan. I accept however, that it records the terms of the employment.

[7] Mr Dunstan says that he was not paid for his service during the period from November 2005 until February 2006 when he left the employment. He now claims salary, bonuses and holiday pay.

[8] Mr Dunstan says that he has made demand for the sums due to him but payment was never forthcoming despite promises from Mr Godfrey.

The merits

[9] I accept Mr Dunstan's unchallenged evidence.

[10] He is entitled to salary he was not paid for one week in December 2005 and all of January 2006. That is six weeks wages on his annual salary of \$40,000.00. I calculate the salary due to him in the gross sum of \$4,615.38.

[11] Mr Dunstan says he was entitled to a bonus of \$10.00 in respect of each full storage container at month end. I calculate his entitlement as the sum of \$4,380.00 as follows:-

November 2005	\$1,220.00
December 2005	\$1,990.00
January 2006	\$1,170.00
Total	\$4,380.00

[12] Mr Dunstan says he was not allowed his annual leave entitlements during the time of his service. I calculate his entitlement on the basis of his salary and prorated over the period of service as the gross sum of \$4,230.77 (5.5 weeks x \$40,000.00/52).

Determination

[13] **I order Dependable Storage Limited to pay to Jeffrey Wayne Dunstan the total gross sum of \$13,226.15, as arrears of wages.**

[14] As Mr Dunstan has not had the use of the sums due to him, I think it fit that he have interest on the total judgment sum. **I order Dependable Storage Limited to pay to Jeffrey Wayne Dunstan interest on the total gross sum of \$13,226.15 at the rate of 9% per annum from 1 February 2006 until the date of payment.**

[15] As Mr Dunstan was not represented by professional advocate, there will be no order for Costs.

