

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN John Fagan (Initiating party)
AND Margaret Louise Langley (Responding party)
REPRESENTATIVES John Fagan
Margaret Langley
MEMBER OF AUTHORITY Helen Doyle
SUBMISSIONS 22 January 2004 (from initiating party)
28 January 2004 (from responding party)
DATE OF DETERMINATION 9 February 2004

DETERMINATION OF THE AUTHORITY

Application for reopening of investigation

[1] Mr Fagan applied to the Employment Relations Authority on 22 January 2004 for a reopening of the investigation to which my determination CA 114/03 relates. The application is opposed by Ms Langley. I am determining whether or not grounds exist for a reopening of the investigation on the papers I have in front of me. I want to make it quite clear that I am not determining whether what Mr Fagan says in his application is correct or incorrect.

[2] I was the Authority member who conducted the investigation originally and I consider it appropriate in the circumstances of this case that I also deal with the application to reopen the investigation.

[3] In my determination dated 20 October 2003 which followed an investigation meeting on 15 October 2003 I ordered Mr Fagan to pay Ms Langley the sum of \$229.14 gross being unpaid wages, statutory days worked with no corresponding lieu days and holiday pay. I also found that Ms Langley was entitled to interest on the sum of \$229.14 from 16 June 2003 to the date of payment at the rate of 6% per annum and \$70.00 being the filing fee for the application to the Authority.

[4] The ground Mr Fagan puts forward in his application to reopen the investigation is that he was never Ms Langley's employer and that she was employed as a cleaner by Hayes Chimney Care Limited T/A Pinnacle Property Care. Mr Fagan is essentially saying there should be a change in the name of the respondent in the original determination to Hayes Chimney Care Limited.

[5] At no time prior to the investigation did Mr Fagan suggest to either Ms Langley or to the Authority that he was not Ms Langley's employer. There was a telephone conference held with the Authority, Mr Fagan and Ms Langley on 17 September and many telephone calls took place



between the support officer who was dealing with the file at the time and Mr Fagan. Mr Fagan made an offer of payment to Ms Langley. Mr Fagan did not provide a statement in reply to the Authority nor did he attend at the investigation meeting. In respect of the statement in reply I note clause 8(3) of the Employment Relations Authority Regulations 2000 provides that a party is entitled to reply or respond to an application only with the leave of the Authority if there is failure to lodge the statement in reply within the time specified in clause 8(1) of 14 days.

[6] Ms Langley said at the investigation meeting that she considered her employer was Mr Fagan. Mr Fagan is now saying that he did not receive notification of the investigation meeting and therefore had no right of reply.

[7] With the application to reopen, Mr Fagan has provided computer printouts of records of Ms Langley's wages. At the top of the printouts is the name of the company Hayes Chimney Care Ltd T/A Pinnacle. Ms Langley signed an employment agreement but was never given a copy of the agreement despite asking for one and there is no copy of an employment agreement with the application to reopen.

Determination

[8] I am required, in exercising my discretion whether or not to reopen the investigation, to balance the importance of certainty in investigating and determining an employment relationship problem with the rights of Ms Langley to have the benefit of the determination which is in her favour. In balancing those matters I am of the view that I cannot rule out the possibility of a miscarriage of justice if the investigation is not reopened on the narrow but obviously important question of the identity of Ms Langley's employer. I do note that Mr Fagan has put Ms Langley to considerable trouble and expense through his own inaction in this matter to date.

[9] I make an order to reopen the investigation pursuant to clause 4 (1) of schedule 2 of the Employment Relations Act 2000 on the following condition that I consider to be reasonable in this particular case:

Mr Fagan is to within 14 days of the date of this determination make payment to the Employment Relations Authority of the sum of \$308.02. A cheque shall be written out to Employment Relations Service and forwarded to P O Box 13 892, Christchurch. This sum, which is the amount that I ordered in my earlier determination together with interest at the date of this determination, will be placed into the Employment Relations Service Trust Account on interest bearing deposit. The monies shall be held in this account until the investigation as reopened is determined. The monies shall then be distributed in accordance with that determination. If Mr Fagan is not found to be Ms Langley's employer then the money and accrued interest shall be reimbursed to him. If Mr Fagan is found to be Ms Langley's employer then the money and accrued interest shall be paid to Ms Langley. Aside from this payment into the Employment Relations Authority I stay the effect of the orders previously made under CA 114/03.

If the payment is not made to the Employment Relations Service within the timeframe stipulated above then the application for rehearing shall be declined and the original determination shall stand.

[10] A copy of the employment agreement that Ms Langley signed when she commenced employment is also to be provided to the Employment Relations Authority and Ms Langley within 14 days of the date of this determination.

Costs

[11] Both parties represented themselves in terms of the application for reopening. Ms Langley set out expenses she has incurred in trying to recover the monies owed from Mr Fagan after the determination was issued. In this case I think it reasonable that Mr Fagan contribute something toward those expenses particularly as there was a delay between the determination being sent to Mr Fagan and the application for reopening being filed which caused Ms Langley to incur additional expenses. I am of the view that an appropriate amount for Mr Fagan to pay toward Ms Langley's expenses would be \$50.00 and I so order.

[12] After there has been compliance with the condition that I have set out in paragraph 9 a telephone conference will be held with the parties with a view to investigating the matter as reopened as expeditiously as possible.



Helen Doyle
Member of Employment Relations Authority



ALAN
1/11/11