

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2014] NZERA Christchurch 132
5451003

BETWEEN FIVEASH CONTRACTING
LIMITED
Applicant

A N D PAUL WILLIAM BENNETT
Respondent

Member of Authority: M B Loftus

Representatives: Margaret Fiveash, Advocate for Applicant
No appearance on behalf of Respondent

Investigation Meeting: 28 August 2014 at Christchurch

Submissions Received: At the investigation

Date of Determination: 28 August 2014

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Fiveash Contracting Limited (Fiveash), seeks the repayment of money loaned to the applicant, Paul Bennett, and which he has failed to repay in accordance with an agreement between the parties.

[2] Mr Bennett's position is unknown as he has failed to participate in the Authority's process.

Non-appearance of the respondent

[3] Mr Bennett has proven difficult to deal with and has not addressed Fiveash's claim in good faith.

[4] He refused to provide a physical address to which documents may be sent and asked that the Authority forward all correspondence to an email address. It has and his responses confirm the documentation is being received.

[5] Mr Bennett failed to provide a Statement in Reply despite advising the Authority he was soon to do so. Similarly he failed to participate in a telephone conference to discuss administrative arrangements for the investigation meeting. When a support officer telephoned Mr Bennett on the morning of the telephone conference he advised he would not participate and the Authority should simply send a notice advising the outcome.

[6] The Authority did as Mr Bennett asked and there is no doubt he received the notice which advised an investigation meeting would be held on 28 August 2014. He replied with an email stating he wished to spend the day with his daughter and as the arrangement had been made three months previously he would not attend the investigation. He was told that was unacceptable given his refusal to participate in the telephone conference. Notwithstanding that advice he did not attend.

[7] The notice of investigation meeting advises that should a respondent not attend the investigation might proceed and a determination be issued in favour of the applicant party.

[8] Given the circumstances, Mr Bennett's failure to meaningfully participate in the process along with a weak and unsupported rationale for non-attendance I chose to proceed. Fiveash is entitled to have its claim determined.

Background

[9] Fiveash is a cartage contractor. It employed Mr Bennett as a driver.

[10] According to the company's evidence, Mr Bennett frequently had financial difficulty. He sought a number of loans which were to be made as an advance on wages and then repaid from subsequent wage payments. Fiveash agreed.

[11] On 20 March 2012 Fiveash lent \$1,760 to Mr Bennett. While not the first loan Fiveash had made, it is the first to which this claim applies.

[12] The parties both signed an agreement that confirmed Mr Bennett had received the loan and that it would be paid back via weekly deductions from Mr Bennett's wages in the amount of \$50 per week. That amount represents \$45 off the principal and \$5 in interest although it should be noted that in the interim, and until an earlier

advance had been repaid on 9 December 2012, there would be additional interest payments.

[13] In July 2012, Mr Bennett sought yet another advance. This one, of \$1,000, was paid on 24 July 2012. Again the arrangement was recorded in writing and noted further weekly wage deductions. As a result of previous advances, the amount of interest would vary over time.

[14] On 8 February 2013, Mr Bennett left Fiveash's employment. He then owed Fiveash the sum of \$2,370 in respect of principal repayments. Attempts to recoup that amount were unsuccessful and led to Fiveash initiating proceedings in the Disputes Tribunal. The Disputes Tribunal referred Fiveash to the Authority on the basis that the dispute had its foundation in an employment agreement. Mr Bennett has also avoided attempts at recollection by a debt agency and failed to attend mediation having agreed to do so.

Determination

[15] I accept the Dispute Tribunals view jurisdiction lies with the Employment Relations Authority. The debt arises as a result of an advance on wages and the deductions are being made in accordance with the provisions of the Wages Protection Act 1993. The arrangement can, in my view, be seen as an amendment to the employment agreement between the parties.

[16] Having heard the evidence offered on behalf of Fiveash and having had the ability to test that evidence, I accept its claim the amount sought remains outstanding.

[17] The correspondence suggests Mr Bennett is possibly disputing the interest and perhaps suggesting the amount paid was exorbitant. That I disregard for three reasons. First he agreed. Second he has adhered to these terms in respect to previous loans without challenging the arrangement and third, interest is now irrelevant as Fiveash no longer seeks its payment. They simply want the principal returned.

[18] The claim is accepted and Mr Bennett is therefore ordered to pay Fiveash Contracting Limited the sum of \$2,370. Payment is to be made no later than 4pm on Thursday, 11 September 2014.

[19] Mr Bennett is reminded that failure to adhere to this order may result in further action which could possibly raise the spectre of severe consequences including the sequestration of property, fines (penalties) and/or imprisonment.

Costs

[20] Fiveash has been successful with its claim and in the normal course of events would be entitled to a contribution toward the cost of doing so. However, it was represented by an officer of the company and there are no legal costs I am aware of. Recoverable costs are therefore limited to the Authority's filing fee of \$71.56. That is also payable.

Conclusion and orders

[21] For reasons outlined above, Fiveash has been successful with its claim in respect of moneys owed to it by a former employee, Mr Paul Bennett. As a result, Mr Bennett is ordered to pay to Fiveash Contracting Limited the following:

- (a) \$2,370 (two thousand, three hundred and seventy dollars), being repayment of the principal owing from two loans previously made to him by Fiveash; and
- (b) A further \$71.56 (seventy one dollars and fifty six cents), being recompense of costs incurred by Fiveash in making its claim.

M B Loftus
Member of the Employment Relations Authority