

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Aldo Joseph Franckin (Applicant)

**AND** Vistaita Ltd (Respondent)

**REPRESENTATIVES** Aldo Franckin in person  
No appearance for Respondent

**MEMBER OF AUTHORITY** Alastair Dumbleton

**INVESTIGATION MEETING** 14 June 2005

**DATE OF DETERMINATION** 1 July 2005

**DETERMINATION OF THE AUTHORITY**

[1] The employment relationship problem of the applicant Mr Aldo Franckin is an alleged failure by his employer the respondent Vistaita Ltd, to pay wages and holiday pay due upon termination of his employment.

[2] The respondent company has failed to participate in the Authority's investigation meeting. It attempted to divert the investigation by sending notes and letters asserting that it had not employed Mr Franckin, and it dismissed the Authority's involvement as not being appropriate for that reason.

[3] Mr Franckin's statement of problem was served at the registered address of the respondent company on 26 November 2004. However the papers were returned to the Authority a few days later with an anonymous note written on them saying that the company had not employed anyone by the name of the applicant. This level of response did not comply with the express requirement in the papers for a statement in reply to be formally completed and lodged.

[4] The papers were re-served but were once again sent back to the Authority with an anonymous note referring to the earlier service and return of the documents.

[5] The parties were formally directed by the Authority to attend mediation but the Mediation Service could not make contact with Mrs Ita Vuletic, who was apparently in control or management of the respondent, to make necessary arrangements.

[6] At this point the Authority directed the applicant to personally serve the respondent with a Notice of Investigation Meeting. For this purpose Mr Franckin engaged a licensed investigator, who served the papers at the registered office of the respondent on 19 May 2005. He also tried to serve the document on Mrs Vuletic, a listed director of the respondent, but was unsuccessful.

[7] Even although the respondent did not attend, the investigation meeting proceeded as notified

on 14 June 2005. The following day the Authority received a letter from the respondent's agent, a firm of accountants occupying the registered office of the company. The letter, which is dated 13 June, merely stated that the respondent was not registered with the IRD as an employer and owned no property on the North Shore where the applicant alleged he had been employed. The accountants said that for these reasons the respondents saw no necessity to complete a statement in reply. The author of the letter (NA Milton) may have been unaware that someone else in his office (Daniel Price) had been served several weeks earlier with a notice of hearing for 14 June 2005, as he made no mention of the pending investigation meeting.

[8] That however is not the applicant's worry. The respondent has been properly served but has chosen not to take up the opportunity of participating in the investigation. The matter has therefore proceeded on a default basis, as permitted by clause 12 of Schedule 2 of the Employment Relations Act 2000.

[9] I find from his evidence that Mr Franckin was employed as head chef by Vistaita Ltd in its bar and bistro premises at Takapuna, of which Mrs Ita Vuletic was in overall charge.

[10] Further I find that the respondent told Mr Franckin that as the kitchen was to be closed he could leave the job as soon as he had found other work. He duly gave notice on 10 October 2004 after his manager, Mr Ken Marcum, agreed that one day would be sufficient notice. In any event the kitchen was to be closed the following day, 11 October, to enable builders to convert the premises to a bar only.

[11] Despite all that it seems Mrs Vuletic instructed that he was not to be paid wages due for the final five days on which he worked, because he had given insufficient notice. In the result the wages and all holiday pay due to him for the employment were withheld or deducted from his final pay. As he had not consented to that in writing the deduction was illegal under the Wages Protection Act 1983 in any event.

[12] The respondent has not concerned itself to defend the claims against it. I am satisfied those claims are borne out by the evidence of Mr Franckin which included written pay advice he was given by his employer.

[13] Vistaita Ltd is ordered to pay to Mr Franckin five days wages (at \$20 per hour for 6 hours a day) and holiday pay due from his employment. The amounts are \$600 and \$500.

[14] The respondent is to pay interest on those sums at the rate of 9% per annum from 12 October 2004 until the total - \$1,100 – has been paid in full.

[15] The respondent is also to reimburse Mr Franckin expenses of \$70 for the lodgement fee and \$196.88 for the cost of arranging personal service.