



New Zealand Employment Relations Authority Decisions

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Fuster v Brownie CA156A/10 (Christchurch) [2010] NZERA 887 (19 November 2010)

Last Updated: 29 November 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

CA 156A/10 5306785

BETWEEN

AND

PASCAL FUSTER Applicant

TIM BROWNIE Respondent

Member of Authority: Investigation Meeting: Determination:

M B Loftus

On the papers

18 November 2010

DETERMINATION OF THE AUTHORITY

[1] On 24 May 2010 Mr Fuster lodged a claim in the Authority. He claimed that he had been employed by Mr Brownie between mid November 2008 and 18 January 2009 but not paid for his work.

[2] On 3 August I issued a determination upholding Mr Fuster's claim and ordering that Mr Brownie pay various sums totalling \$9,145.21.

[3] Mr Brownie subsequently sent a letter to the Employment Court expressing dissatisfaction with my finding and stating that he wished to "appeal". The letter was not accompanied by a proper application and even if it had, the application would have required leave to proceed given it was received by the Court after the expiry of the 28 day period specified for challenges as of right in [section 179\(2\)](#) of the [Employment Relations Act 2000](#).

[4] The Court, having advised Mr Brownie of the situation, received further documents on 17 September. Included therein was advice from Mr Brownie that:

"In April last year I was Adjudicated Bankrupt. The Debt to Pascal Fuster, is covered in my Bankruptcy".

[5] Judge Couch investigated this claim and confirmed that Mr Brownie was, indeed, an undischarged bankrupt.

[6] [Section 76\(1\)](#) of the [Insolvency Act 2006](#) provides:

76 Effect of adjudication on court proceedings

(1) On adjudication, all proceedings to recover any debt provable in the bankruptcy are halted.

[7] As Judge Couch records in his Judgement on the matter (*Brownie v Fuster* (unreported) 22 September 2010, Couch J, NZEMPC [127](#), CRC [40/10](#)):

Because Mr Brownie's debt to Mr Fuster for arrears of wages was incurred prior to the adjudication on 8 April 2009, the debt was provable in the bankruptcy. The effect of [s76\(1\)](#), therefore, is that Mr Fuster was not entitled to commence his proceedings in

[8] The Judge went on to suggest that in the circumstances I reopen my investigation and set aside the orders made. He also suggested that Mr Fuster may wish to take the steps necessary to prove his debt in Mr Brownie's bankruptcy.

[9] In the circumstances I must revisit my earlier conclusion and, as Judge Couch observed, the outcome is an inevitable consequence of statutory provisions being applied to undisputed facts.

[10] Given the inevitability of the outcome I have issued this determination without input from either party. There is little point.

[11] The law require that I put aside the orders made in my earlier determination and state that they no longer have effect.

[12] That said, I also comment that while I am required by law to cancel the orders made, I do not resile from my conclusion that the monies previously ordered are owing. Indeed, and as said in the earlier determination, there were a number of emails from Mr Brownie which acknowledge the debt. I also note his statement to the

Court that the debt owing to Mr Fuster is covered by the bankruptcy (paragraph 5 of Judge Couch's decision). Again, the fact of the debt is not denied.

[13] I also note passages in the first determination discussing Mr Brownie's uncooperative response to the Authority's process and some of the spurious and unbelievable excuses he offered. He never once, however, mentioned the fact that would have determined the matter; namely his bankruptcy. A lot of trouble may have been avoided had Mr Brownie been honest.

[14] In closing I note Judge Couch's comment that Mr Fuster may wish to take the necessary steps to prove his debt in Mr Brownie's bankruptcy. Given my comments in 12 above, and in order that it may assist any claim he may make, I order that a copy of this determination, along with a copy of the original dated 3 August, be forwarded the Official Assignee handling Mr Brownie's bankruptcy.

Mike Loftus

Member of the Employment Relations Authority