

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Matthue Leslie Gera (Applicant)  
**AND** World-Net Limited (Respondent)  
**REPRESENTATIVES** Matthue Leslie Gera in person  
Kerry Convery, for Respondent  
**MEMBER OF AUTHORITY** Y S Oldfield  
**INVESTIGATION MEETING** 23 March 2005  
**DATE OF DETERMINATION** 30 March 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] This determination deals with a claim that World Net Limited failed to pay Mr Gera wages and holiday pay when his employment ended in early 2000. Mr Gera originally requested that the Authority consider two additional matters: whether to award a penalty for those alleged breaches and whether Mr Gera was dismissed unjustifiably and without notice. However, because he did not lodge the employment relationship problem until June of 2004 both the personal grievance and penalty claim are out of time and it is too late for me to investigate them.
- [2] Mr Gera's final payment from the company was a cheque for a month's salary in late March 2004. He says he worked until he was dismissed at the end of April and is owed wages for the month of April, and holiday pay at 6% of his total earnings.
- [3] Mr Convery, who has been employed by World Net since Mr Gera was there, told me that Mr Gera was dismissed at the end of February 2000 and did not work at all during March and April of that year. Mr Convery says the March payment was in part to cover holiday pay and was made up to a full month's pay as a gesture of goodwill. He says therefore that the company does not owe Mr Gera anything more.
- [4] The issues for me to determine are simply whether Mr Gera did work for World-Net in March and April 2000.

Determination

- [5] Mr Gera's responsibilities included technical support and some software development. At no time did Mr Gera receive a written employment agreement or payslips. I requested World-Net to supply me with wage and time records but it was unable to do so. However there is

no dispute that Mr Gera was on a salary of \$26,000.00 per annum and that his wages were correct up until the end of February, with his total earnings (inclusive of the March payment) amounting to \$10,837.00 gross plus a payment "in kind" of a laptop. He did not take any annual leave during his employment.

- [6] Mr Coveny told me that he does not recall Mr Gera working at all during March and April 2000. Even though he was not Mr Gera's manager at the time he believes that Mr Gera's employment had already ended by then. However, he had no personal involvement in Mr Gera's dismissal and concedes that he had no direct knowledge of the circumstances of it.
- [7] Mr Gera told me that during March he worked at the office as normal. In support of this assertion he showed me his bank statements which recorded four visits during March to a lunch bar very near the premises of World-Net. Since the office was nowhere near his home Mr Gera says that this indicates that he was at work during this time.
- [8] Working during March is consistent with the March salary payment which was at the usual time and for the usual amount. If this were a severance payment I would have expected it to come nearer the time World-Net says it dismissed Mr Gera (the end of February.) In light of this, and in the absence of any first hand evidence from the respondent to contradict Mr Gera's evidence, I accept that Mr Gera was at work during March.
- [9] Mr Gera says he spent April working at home on a software development project which he presented to Mr Lee at the end of the month. According to him, Mr Lee's dissatisfaction with the quality of this work was the trigger for the dismissal. Mr Lee did not attend the Authority's investigation meeting but Mr Gera's evidence of the reason for the dismissal is borne out by the Statement in Reply which cites a failure to complete a project on time as background to the termination of Mr Gera's employment.
- [10] Mr Convery argued that Mr Gera's assertion that he worked from home during April was not credible because:
- Mr Gera would not have been able to complete his technical support duties from home, so it would not have been practicable for him to be allowed to do development work there;
  - if the company's accounting needs were the focus of the project (as Mr Gera asserts) it would have been vital for Mr Gera to be based in the office in order to stay in touch with those needs;
  - to have worked at home would have required him to take the respondent's licenced software home, which was not permitted;
  - others had been employed to do the development work.
- [11] In response to this Mr Gera told me that he did remain in good contact with what was going on at the office. He said he was rostered on to do technical support work on a weekend during April and came in to the office for this. He also told me that he took the licensed software home, with permission, during April. Finally he told me that there was a considerable amount of development work to be done so the employment of others to do such work was of no significance.
- [12] On balance and given the fact that Mr Convery's personal knowledge of the events is very limited, I have decided that I must accept Mr Gera's evidence that he worked for the respondent, from his home, during the month of April and was dismissed at the end of that month.

[13] The consequence of my findings is that Mr Gera is now entitled to salary for the month of April plus holiday pay at 6% of his total earnings.

[14] I calculate the sums involved as follows. At an annual salary of \$26,000.00 Mr Gera's arrears of wages for the month of April amount to \$2,167.00. This brings Mr Gera's total gross earnings to \$13,000.00. His holiday pay is calculated at 6% of this sum being \$780.00 gross.

[15] **I order World-Net Ltd to pay Mr Gera:**

- **\$2,167.00 gross arrears of wages for the month of April 2000;**
- **\$780.00 gross holiday pay.**

Y S Oldfield  
Member of Employment Relations Authority