

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 33/08  
5100040

BETWEEN                      MICHAEL JAMES  
   GRAINGER  
   Applicant

AND                              CATHERINE BUTSON  
   Respondent

Member of Authority:      Philip Cheyne

Representatives:            Neville Grainger, Representative for Applicant  
   No appearance for the Respondent

Investigation Meeting:     1 April 2008 at Dunedin

Determination:              2 April 2008

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]      Michael Grainger worked for Catherine Butson in February and March 2007 doing some painting. He says that he has not been paid for all the time worked.

[2]      Mrs Butson in a statement in reply says that she did not employ Mr Grainger but engaged him as a self employed painter.

**No appearance by the respondent**

[3]      I am satisfied that the notice of investigation meeting was served on Mrs Butson. There was no appearance by her at the investigation meeting venue at 2.00pm so I spent about 10 minutes with Michael Grainger and Neville Grainger confirming their evidence about the problem before reserving my determination to be given in writing.

[4] Mrs Butson arrived at about 2.25 pm but by that time Michael Grainger and Neville Grainger had left the building. Mrs Butson protested that the meeting time was 2.30pm but she is wrong about that.

[5] For reasons to be explained I do not intend to indulge Mrs Butson and I will continue to commit to writing the determination of this matter.

[6] The statement of problem was first sent to Mrs Butson on 3 January 2008. She claimed not to have received that so it was resent to the same address on 24 January 2008. A statement in reply was lodged on 22 February 2008 without any explanation for the delay. The Authority support officer rang Mrs Butson several times to arrange a date for an investigation meeting but received little co-operation from Mrs Butson. The date for the meeting was then set by me and a notice served on Mrs Butson.

[7] Mrs Butson's lack of engagement with the Authority mirrors her failure to properly engage with attempts by the Mediation Service to arrange mediation. That too mirrors Mrs Butson's failure to meet promises to Neville Grainger about resolving the matter.

[8] There is no reason for the Authority to indulge Mrs Butson and inconvenience Michael Grainger (and his father) any further.

### **Determination**

[9] The problem is quite simple. Michael Grainger is about 17 years old. He was engaged to work to paint a shed for Mrs Butson. He worked for two weeks then requested payment at the agreed rate of \$10 per hour for time worked. Mrs Butson was given details of the hours worked, a total of 46½ hours. Michael Grainger kept working, another 21½ hours over the following several weeks but did not receive any payment. Michael Grainger then stopped worked and refused to do anymore until he was paid. Mrs Butson was given details of the extra hours worked.

[10] After repeated visits and phone calls from Neville Grainger, Mrs Butson paid \$400.00 of the \$680.00 owed by depositing it into Michael Grainger's bank account on 5 April 2007. Neville Grainger continued to press for the balance owing but Mrs Butson did not pay. These proceedings were eventually initiated.

[11] In her statement in reply Mrs Butson says that this was not employment. I do not accept that assertion. Mrs Butson set and controlled the work required. She provided all the tools and equipment. Michael Grainger provided his labour for an agreed hourly rate. He was not in business for himself and he had no opportunity to derive any profit or loss by management of any business. He was employed by Mrs Butson.

[12] The second part of Mrs Butson's reply is to the effect that Michael Grainger worked very slowly when compared to another person who Mrs Butson engaged to finish off the job when Michael Grainger stopped work to try and get paid. This complaint about the speed of work is irrelevant. Michael Grainger is entitled to be paid for the hours worked at the agreed rate.

[13] It does Mrs Butson no credit to try and avoid her obligation to pay Michael Grainger by claiming that this was not employment. However, it seems that such is her way.

### **Summary**

[14] Mrs Butson is to pay Michael Grainger \$280.00 without any further delay.

[15] I was not asked to order interest or impose any penalty.

[16] Mrs Butson is to reimburse Michael Grainger \$70.00 being the lodgement fee. This is to be paid without delay.

Philip Cheyne  
Member of the Employment Relations Authority