

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 68/08
5111350

BETWEEN HOLLINGSIDE DAIRY
 LIMITED
 Applicant

AND HAMISH STEVENS
 Respondent

Member of Authority: Helen Doyle

Representatives: Elizabeth and Derek Wilson for Applicant
 No appearance for Respondent

Investigation Meeting: Ashburton on 8 May 2008

Determination: 15 May 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Hollingside Dairy Limited (Hollingside Dairy), is a duly incorporated company having its registered office at Ashburton and carries on the business of farming. Hollingside Dairy was represented at the investigation meeting by its directors, Elizabeth and Derek Wilson.

[2] Hollingside Dairy employed the respondent, Hamish Stevens, as a farmer between the dates 1 June 2006 and 12 July 2006. The company says that Mr Stevens breached his employment agreement during his period of employment by charging unauthorised travel expenses in the amount of \$1,154.08 to the fuel card that was provided to Mr Stevens.

[3] An affidavit of service was provided to the Authority by a process server. The process server deposes in her affidavit to Mr Stevens being served on 13 March 2008 at 9.10am with a notice of investigation meeting, a statement of problem and a booklet called *Going to the Employment Relations Authority*. The process server deposes that she believed the person served was Mr Stevens because he identified himself prior to service and accepted receipt of the documents.

[4] Mr Stevens did not lodge a statement in reply or take any other steps in relation to the matter. He did not attend at the investigation meeting on 8 May 2008.

[5] The Authority is satisfied that Mr Stevens was served with the statement of problem and a copy of the investigation meeting notice. He was aware of the date, time and location of the investigation meeting. No reason was advanced to the Authority for his failure to attend. I proceeded to hear evidence from Mr and Mrs Wilson in accordance with clause 12 of schedule 2 of the Employment Relations Act 2000.

[6] Mr Stevens entered into a written individual employment agreement with Hollingside Dairy which was signed on 7 June 2006 by Mr Stevens and Mr and Mrs Wilson on behalf of Hollingside Dairy.

[7] Clause 8.1 of Mr Stevens' individual employment agreement provided as follows:

Car/Ute.

Where the Employee is required to use his/her own road vehicle on the Employer's business the Employee shall be reimbursed at the rate of -----c per kilometre.

[8] I am satisfied that at the time the individual employment agreement was entered into there was an entry in hand writing made alongside clause 8.1 to provide that a fuel card was supplied to Mr Stevens. I am further satisfied that it was agreed that as a term and condition of employment Mr Stevens could use the fuel card for purchases of fuel necessary to travel to and from work. Mr Stevens was provided with farm accommodation about 11 kilometres from the farm. Aside from travel to and from the farm Mr Stevens was not required to use his vehicle for any other business purpose.

[9] For the period from 3 June 2006 to 4 July 2006 Mr Stevens charged a total amount of \$1,247.58 to the fuel card. The Authority was provided with the invoice details with respect to the fuel card that confirmed Mr Stevens purchases of fuel over that period.

[10] From 1 June 2006 until Mr Stevens' employment was terminated as at 12 July 2006 Mr Stevens attended at work for 16 days. I have set out below the days during that one month period that Mr Stevens attended at work and the days on which he purchased fuel using the fuel card.

1 June	½ day worked	
2 June	Worked	
3 June	Worked, purchased fuel	87.15
4 June	Worked	
5 June	Public holiday	
6 June	Worked, purchased fuel	65.84
7 June	Worked	
8 June	Worked	
9 June	Did not work, purchased fuel	48.56
10 June	Did not work	
11 June	Did not work, purchased fuel	38.77
12 June	Snow day, unable to get to work	
13 June	Snow day, unable to get to work Purchase of fuel	71.91
14 June	Snow day, unable to get to work	
15 June	Snow day, unable to get to work but attended work to take some freezer product home	
16 June	Snow day, unable to get to work	
17 June	Work day, purchased fuel	37.70
18 June	Work day	
19 June	Work day, purchased fuel	47.23
20 June	Work day	
21 June	Work day, purchased fuel	62.83
22 June	Did not work, purchased fuel	38.55
23 June	Did not work, purchased fuel	59.58
24 June	Did not work, purchased fuel on two separate occasions	58.06 83.05
25 June	Did not work, purchased fuel	70.46
26 June	Worked	
27 June	Did not work, purchased fuel	81.26
28 June	Worked, purchased fuel	80.02
29 June	Worked, purchased fuel and lubricants	79.21
30 June	Not at work, purchased fuel	48.54
1 July	Not at work, purchased fuel	55.23
2 July	Not at work, purchased fuel	46.38
3 July	Not at work	
4 July	Not at work, purchased fuel	87.25

5 July	Not at work	
6 July	Not at work	
7 July	Not at work	
8 July	Not at work	
9 July	Not at work	
10 July	Not at work	
11 July	Not at work	
12 July	Employment terminated	
	Total Purchases of fuel	\$1247.58

[11] I accept the evidence of Mr and Mrs Wilson that Mr Stevens was purchasing fuel to the fuel card for reasons not associated with the business of Hollingside Dairy or the travel to and from the farm. The entries set out above clearly support that.

[12] An allowance was made by Mr and Mrs Wilson from \$1,247.58 for payment for the 16 days that Mr Stevens did attend at work of \$93.50. This was to account for the travel by Mr Stevens to and from the farm. I accept that was a reasonable deduction which was calculated on the basis of:

16 days x 24km = 384km x 7km per litre = 55 litres x \$1.70 per litre.

[13] I am satisfied that as at the date of the investigation meeting Mr Stevens has failed to pay to Hollingside Dairy Limited the amount of \$1,154.08 or any part of that sum despite demand having been made to Mr Stevens in writing by Hollingside Dairy's solicitor.

Determination

[14] Mr Stevens has breached his individual employment agreement with Hollingside Dairy because he has purchased fuel using the fuel card supplied by his employer for other than authorised purposes.

[15] As a result of the breach Hollingside Dairy has suffered damage in the sum of \$1,154.08.

[16] Mr Stevens has failed to pay to Hollingside Dairy the amount claimed of \$1,154.08 or any amount in deduction thereof as at the date of the investigation meeting.

[17] I order Hamish Stevens to pay to Hollingside Dairy Limited the sum of \$1,154.08 being unauthorised travel expenses charged to the applicant's fuel card.

Costs

[18] Mr and Mrs Wilson attended the investigation meeting without their legal representative. Whilst they are not entitled to costs for their time spent at the investigation meeting, Hollingside Dairy is entitled to be reimbursed for legal expenses and disbursements that they incurred in consultation with a solicitor about this matter.

[19] Ms Petelo is the solicitor for Hollingside Dairy Limited and she advised the Authority in a letter dated 12 May 2008 that the legal costs in respect of the matter total \$477.25, made up of a fee of \$350.00 together with GST and disbursements in the sum of \$83.50. I have deducted the GST amount but the expenses are reasonable and Hollingside Dairy should be able to recover those from Mr Stevens.

[20] I order Hamish Stevens to pay to Hollingside Dairy Limited expenses incurred in terms of this matter in the sum of \$433.50.

Summary of orders made:

- I have ordered Hamish Stevens to pay to Hollingside Dairy Limited the sum of \$1,154.08 for unauthorised travel expenses charged to the fuel card provided to him by Hollingside Dairy Limited.
- I have ordered Hamish Stevens to pay to Hollingside Dairy Limited the sum of \$433.50 being expenses it incurred.

Helen Doyle
Member of the Employment Relations Authority