

The facts

[4] Mr Cutts was employed by Hutt Valley Signs Limited according to an employment agreement produced. Hutt Valley Signs Limited paid Mr Cutts' wages: supported by time sheets and wage and time records.

[5] Mr Cutts was employed by Hutt Valley Signs Limited in two periods which were interrupted when he resigned to work in Australia and then returned to New Zealand. His employment ended with Hutt Valley Signs Limited when the business was sold on 28 August 2009. During the day of the transfer of the business Mr van Schoonhaven paid Mr Cutts \$500 advance on wages to assist Mr Cutts. Inadvertently Mr van Schoonhaven forgot to process the advance in the records and only discovered it when he completed the final payroll. He has tried to recover the advance from Mr Cutts by telephone and correspondence without any success.

[6] Mr van Schoonhaven filed the statement of problem in the Authority under his own name when the proper respondent should be the employer: Hutt Valley Signs Limited. Mr van Schoonhaven's advance was made on behalf of the company and was not paid personally. The employment agreement between Hutt Valley Signs Limited and Mr Cutts governed the employment relationship. Mr van Schoonhaven accepted Mr Cutts' employer was Hutt Valley Signs Limited.

Consideration of mediation under s 159

[7] I considered directing the parties to mediation with the Department of Labour under s 159 of the Employment Relations Act 2000, but upon considering the papers on the file, I have decided mediation would not contribute constructively to resolving the matter: s 159 (1) (b) (i) of the Act. Mr Cutts has not filed a statement in reply. The file notes indicate that Mr Cutts has not been an easy person to contact. There had been 7 attempts to contact him and he answered twice. He indicated to the support officer that he had sent a statement of reply, which he was told had not been received, and he never properly followed the matter up afterwards. He failed to

properly respond and return telephone calls. Also, he did not reply to the employer's initiative to go to mediation in the first instance.

The correct name of the respondent

[8] Mr van Schoonhaven is a director and shareholder of Hutt Valley Signs Limited. All the papers have been served on the registered address of the company, being Mr Van Schoonhaven's address. He has agreed that the company should be the applicant and to whom the money is owed. Pursuant to s 221 (a) of the Employment Relations Act 2000 I have joined Hutt Valley Signs Limited in the employment relationship problem filed in the Authority. I have struck out Mr van Schoonhaven under s 221 (a) of the Act.

Mr Cutts' appearance at the Authority's investigation meeting

[9] The notice of the investigation meeting was served on Mr Cutts by Mr van Schoonhaven. To Mr Cutts' credit he responsibly turned up at the investigation meeting but did not bring any papers and had no copy of the statement in reply he says he sent.

Determination

[10] Mr Cutts owes Hutt Valley Signs Limited \$500. I accept Mr van Schoonhaven's word about the payment being made as an advance and that attempts had been made to recover that sum from Mr Cutts without any success. The advance was not disputed by Mr Cutts, although he indicated he had some problem with holiday pay. There had been no statement in reply from Mr Cutts challenging the claim or denying it. Mr van Schoonhaven's paperwork supported the claim and attempts had been made to get the money from Mr Cutts without success. This even involved a proposal for flexible payment arrangements that Mr Cutts had ignored.

[11] I am also satisfied that Mr Cutts' employment agreement with Hutt Valley Signs Limited implied that such sums if made in advance as money owed under the employment relationship would be recoverable, despite some clumsy wording in the employment agreement. There exists a right to make a deduction from the final pay

for whatever monies may be owed. As a deduction was overlooked at the time the final pay was arranged, and as there was no deduction made the right extends to recover it, and there had been written notice provided. I have decided therefore that the claim has been successfully established and that in terms of the employment agreement Mr Cutts is to pay Hutt Valley Signs Limited \$500.

[12] In addition, Mr Cutts is to pay Hutt Valley Signs Limited the \$70 filing fee because he has put the applicant to the expense of needing to file in the Authority when he could have reasonably made the payment without the Authority's involvement and avoided the cost.

[13] Mr Cutts came to the investigation meeting to negotiate a sum. However I informed him that the sum owed would be required to be paid plus the filing fee because he could have used every opportunity before the hearing to make an arrangement with Mr van Schoonhoven. Mr Cutts raised that he had some problem about holiday pay, but I informed him that this hearing had nothing to do with that since there had been no claim made and he had failed to provide a statement in reply. I did not believe there ever was a statement in reply sent because Mr Cutts never followed it up after he found out it had not been received and he did not have a copy with him. Also, I hold that Mr Cutts wanted to delay the inevitable outcome in the matter because of the difficulties in making contact with him and his failure to reply before the investigation meeting despite the correspondence. I decided not to refer the matter to mediation during the investigation meeting because the employer was entitled to some closure and certainty of outcome. Mr Cutts agreed to pay the \$500 plus the \$70 filing fee by the end of April and confirmed he had the company's details to pay.

Order of the Authority on repayment and filing fee

[14] I order Mr Anthony Cutts to pay Hutt Valley Signs Limited \$500 and the \$70 filing fee.

P R Stapp
Member of the Employment Relations Authority