

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Joseph L Irving (Applicant)

AND Barry Heslip (Respondent)

REPRESENTATIVES Joseph L Irving in person
Barry Heslip in person

MEMBER OF AUTHORITY Helen Doyle

INVESTIGATION MEETING 14 December 2005

DATE OF DETERMINATION 21 December 2005

DETERMINATION OF THE AUTHORITY

The employment problem

[1] Mr Irving was employed by the respondent, Barry Heslip to work as a builder's apprentice. He commenced his employment on 11 April 2005 and his final day of work was 10 June 2005. There was no written employment agreement but there was agreement on an hourly rate of \$9.00.

[2] Mr Irving says that his problem is that he was not paid his full wages for the nine weeks work. He seeks recovery of an amount that he has worked out for nine weeks on the basis of an eight hour day five days a week. He has taken into account a payment of \$720.00 leaving a balance of \$2520.00 gross.

[3] Mr Heslip accepts that there is some money owing to Mr Irving. The reason he did not pay Mr Irving was that he was not paid himself. There are two matters with which Mr Heslip takes issue. The first is that he does not accept that he was Mr Irving's employer for the whole period of his employment. The second is that he does not accept that Mr Irving worked eight hours a day every day.

Who was Mr Irving's employer for the nine weeks of his employment?

[4] Mr Heslip offered Mr Irving an apprenticeship. I do not find that it is open to him to say that Mr Irving was, for the weeks he worked at Sumner, working for a different employer. The owner of the restaurant at Sumner felt sorry for Mr Irving who had not been paid anything by Mr Heslip aside from \$100.00. He paid him \$720.00 for work he had done at Sumner and Mr Irving accepted at the investigation meeting another payment of \$60.00. That of itself does not change the true nature of the relationship of employment. I find that Mr Heslip was Mr Irving's employer for the full nine weeks.

What hours did Mr Irving work?

[5] On the day of the investigation meeting Mr Heslip provided a spread sheet of what he says is owing to Mr Irving. Although he agreed in an earlier telephone conference with the Authority to forward Mr Irving's time and wages records to the Authority by 4pm on Friday 4 November 2005 he failed to do so. Mr Heslip advised me that he had forwarded them but I have checked with the support officer and am quite satisfied that they were not received. I adjourned the investigation meeting briefly so that Mr Irving could consider the spreadsheet.

[6] Mr Irving did not accept that all the hours recorded on the spread sheet were accurate but was not in a position to recall exactly what his hours were. I asked Mr Heslip to bring me the diary in which he said he wrote Mr Irving's hours to confirm the hours in his spread sheet. Mr Heslip agreed to bring that to the Authority offices the day after the investigation meeting but failed to do so.

[7] Mr Irving on the other hand, immediately after the investigation meeting, provided me with a copy of his diary in which he recorded his hours from 10 May until 10 June 2005. I have taken time to carefully compare Mr Irving's diary with Mr Heslip's spread sheet for the relevant weeks. Mr Irving's diary entries cast considerable doubt on the accuracy of Mr Heslip's spread sheet and I consider Mr Irving's entries are more reliable. For example on 18 May 2005 Mr Heslip recorded that Mr Irving worked 5.5 hours. Mr Irving's diary record shows that he did not in fact work that day and notes the name of the friend he spent time with. On 26 May 2005 Mr Irving's diary records that he worked fewer hours than the hours recorded on Mr Heslip's spread sheet. I found Mr Irving to be a credible witness. Although Mr Heslip made no mention of it Mr Irving volunteered that he had been paid \$100.00 by Mr Heslip. That was the only amount that Mr Heslip paid to Mr Irving.

[8] I have decided to approach the matter this way. Up until 10 May 2005 I have relied on Mr Heslip's spread sheet but have calculated all the hours worked at the agreed rate of \$9.00 per hour rather than \$7.00 per hour that Mr Heslip unilaterally changed the hourly rate to in his spread sheet.

[9] I consider that it would be unsafe to simply calculate the wages on the basis proposed by Mr Irving as Mr Irving's own records do not support that he always worked eight hours, five days a week.

[10] From 10 May 2005 I have relied on Mr Irving's diary entries except for two days where Mr Irving had nothing recorded in his diary. These are the dates of 27 May and 10 June 2005 and on those dates I have relied on Mr Heslip's spreadsheet record. I have taken a half hour lunch break into account in accordance with Mr Irving's evidence.

[11] I calculate the hours on that basis for the nine weeks at \$9.00 per hour as below:

Date	Hours	Wages
11 April 2005	8 hours	\$72.00
12 April 2005	7.5 hours	\$67.50
13 April 2005	7.5 hours	\$67.50
14 April 2005	7.5 hours	\$67.50
15 April 2005	6 hours	\$54.00
Total		\$328.50

18 April 2005	6.5 hours	\$58.50
19 April 2005	8.5 hours	\$76.50
20 April 2005	6.5 hours	\$58.50
21 April 2005	No work	
22 April 2005	5.5 hours	\$49.50

Total **\$243.00**

25 April 2005	No work	
26 April 2005	3 hours	\$27.00
27 April 2005	No work	
28 April 2005	5.5 hours	\$49.50
29 April 2005	4.5 hours	\$40.50

Total **\$117.00**

2 May 2005	7 hours	\$63.00
3 May 2005	7 hours	\$63.00
4 May 2005	6 hours	\$54.00
5 May 2005	6.5 hours	\$58.50
6 May 2005	2 hours	\$18.00

Total **\$256.50**

9 May 2005	7 hours	\$63.00
10 May 2005	8 hours	\$72.00
11 May 2005	4.75 hours	\$42.75
12 May 2005	8 hours	\$72.00
13 May 2005	no work	

Total **\$249.75**

16 May 2005	no work	
17 May 2005	6 hours	\$54.00
18 May 2005	no work	
19 May 2005	7.5 hours	\$67.50
20 May 2005	8 hours	\$72.00

Total **\$193.50**

23 May 2005	8 hours	\$72.00
24 May 2005	6 hours	\$54.00
25 May 2005	7.5 hours	\$67.50
26 May 2005	4 hours	\$36.00
27 May 2005	4.5 hours	\$40.50

Total **\$270.00**

30 May 2005	6.5 hours	\$58.50
31 May 2005	8.5 hours	\$76.50
1 June 2005	9 hours	\$81.00

2 June 2005	no work	
3 June 2005	8 hours	\$72.00
Total		\$288.00
6 June 2005	no work	
7 June 2005	8.75 hours	\$78.75
8 June 2005	7.5 hours	\$67.50
9 June 2005	7 hours	\$63.00
10 June 2005	4 hours	\$36.00
Total		\$245.25

Wages Owning

[12] The total gross wages are \$2191.50. The following amounts that Mr Irving received have to be deducted. They are the payments of \$720 and \$60 from the owner of the restaurant at Sumner and the sum of \$100.00 which Mr Heslip paid to Mr Irving. That leaves a balance due and owing by Mr Heslip to Mr Irving of \$1311.50 gross.

[13] I order Barry Heslip to pay to Joseph Irving the sum of \$1311.50 gross being unpaid wages.

Holiday Pay

[14] Mr Irving is also entitled to holiday pay. I have calculated it as follows. 6% of \$2191.50 is \$131.49.

[15] I order Barry Heslip to pay to Joseph Irving the sum of \$131.49 gross for holiday pay.

Interest

[16] Mr Heslip did not pay Mr Irving the wages that he was entitled to. Mr Irving was treated badly in this respect by Mr Heslip. Mr Irving is a young worker and was unsure of his rights. I am of the view that Mr Irving is entitled to interest on the sum of \$1311.50 and \$131.49 from the day that his statement of problem was lodged with the Authority on 20 September 2005.

[17] I order payment of interest on the unpaid holiday pay and unpaid wages in the combined sum of \$1442.99 from 20 September 2005 until the date of payment at the rate of 8.5% in accordance with clause 11 (1) of the second schedule of the Employment Relations Act 2000.

Costs

[18] Mr Irving was not represented at the investigation meeting. He is entitled to be reimbursed for his filing fee.

[19] I order Barry Heslip to pay to Joseph Irving the sum of \$70.00 being reimbursement of the filing fee.

Helen Doyle
Member of Employment Relations Authority