

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2022] NZERA 372
3154821

BETWEEN HAMISH JARVIS-WINTER
Applicant

AND LOCAL LADS
CONTRACTING LTD
Respondent

Member of Authority: Rowan Anderson

Representatives: Applicant in person
No appearance for the Respondent

Investigation Meeting: 8 June 2022

Submissions received: 8 June 2022 from Applicant
No submissions from Respondent

Determination: 9 August 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Hamish Jarvis-Winter claims that Local Lads Contracting Ltd (Local Lads) failed to pay wages relating to fifty hours of work performed by him. Additionally, Mr Jarvis-Winter claims that he did not receive notice that his employment was being terminated and that he is entitled to payment of two weeks' notice.

The Authority's investigation

[2] For the Authority's investigation directions were put in place for the provision of written witness statements. Mr Jarvis-Winter provided a statement of evidence to the Authority.

[3] I am satisfied that the respondent was served and that they have had a fair and reasonable opportunity to respond to the application made.

[4] Kaden Carnaby, sole director and shareholder of Local Lads, engaged with the Authority's investigation to some limited degree. However, neither Mr Carnaby nor any other representative of Local Lads attended the investigation meeting.

[5] On 12 May 2022 Mr Carnaby sent an email to the Authority with various attachments, including what he described as a written explanation. Mr Carnaby's email contained references to a "counterclaim" and sought payment for what he described as "emotional damages".

[6] On 13 May 2022 I directed the Authority Officer to contact Mr Carnaby by email as to the claims made in the material he lodged on 12 May 2022. A request was made that he participate in a case management conference.

[7] Mr Carnaby responded later the same day advising that he would not be taking any part in the investigation, that there was no reason to contact him, and that he should not be invited to "calls". Mr Jarvis-Winter was provided the relevant correspondence from Mr Carnaby.

[8] Given the response from Mr Carnaby as to his non-participation, a Minute was sent to the parties on 18 May 2022. That Minute set out the background to the relevant issues in terms of Local Lads's lack of engagement and noted that leave was not granted for Local Lads to make a counterclaim on the basis that it would be prejudicial to Mr Jarvis-Winter. However, the Minute noted that so far as the material provided by Mr Carnaby sought to defend Local Lads from the claims made by Mr Jarvis-Winter, that Local Lads could rely upon it.

[9] The Minute noted that Mr Carnaby was encouraged to attend the investigation meeting and to participate in the proceedings. The Minute noted that the should the Authority not be able to test the evidence of Mr Carnaby, through provision of sworn evidence and attendance at the investigation meeting, then it would not be relied upon by the Authority. Notwithstanding this, and as detailed later in this determination, the Authority sought responses from Mr Jarvis-Winter as to the material lodged by Mr Carnaby at the investigation meeting.

[10] The investigation meeting was scheduled to commence at 9.30am on Wednesday 8 June 2022. As nobody appeared on behalf of the respondent at that time, I instructed an Authority Officer to attempt to make contact with Mr Carnaby by telephone. I was advised that somebody answered the phone but that that person advised that it was not Mr Carnaby's number.

[11] Notwithstanding that Local Lads had been given notice the scheduled commencement time of 9.30am, there was no appearance on behalf of Local Lads. An attempt to contact Mr Carnaby by telephone, as noted above, was made at approximately 9.40am. I advised those present that I would delay the commencement of the investigation meeting to provide additional time for any representative of the respondent to arrive. However, nobody appeared for Local Lads, and I commenced the investigation meeting, as permitted by clause 12 of Schedule 2 to the Employment Relations Act 2000 (the Act).

[12] Mr Jarvis-Winter was the only witness and provided an affirmation.

[13] At the conclusion of the evidence, I adjourned the investigation meeting for a short period prior to inviting oral submissions from the parties present. Mr Jarvis-Winter noted that he was not given notice as to his employment being terminated and that he claimed he should have been paid two weeks' notice.

[14] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[15] The issues requiring investigation and determination were:

- (a) Is Mr Jarvis-Winter entitled to wage arrears? If so, should interest be calculated on any award of arrears?
- (b) Should Mr Jarvis-Winter be paid the filing fee of \$71.56 by the respondent?

Analysis and discussion

Payment of wages

[16] Mr Jarvis-Winter seeks recovery of an arrears of wages. Section 131 of the Act provides that, where there has been a default in payment of any wages or money payable to an employee, that such wages or money may be recovered by the employee by action commenced in the Authority.

[17] Mr Jarvis-Winter had known Mr Carnaby for approximately two years prior to the commencement of his employment.

[18] Mr Carnaby had asked Mr Jarvis-Winter if he wanted to work for him, and he subsequently agreed to do so, initially on one painting job which commenced on 6 April 2022.

[19] Mr Jarvis-Winter gave evidence that he was paid for the work he performed on the first house and up until the commencement of a second house on 19 April 2021.

[20] Mr Jarvis-Winter's evidence was that there was an agreed wage and that that was the amount reflected in the unsigned casual individual employment agreement ("IEA") that was signed on 19 April 2021.¹

[21] The rate set out in the IEA was \$22.68 per hour.²

[22] Mr Jarvis-Winter gave evidence that he worked, but was not paid for, the period between 19 April 2021 to 26 April 2021. He received no payment at all for that period and performed 50 hours of work during that period.

[23] On 26 April 2021 Mr Jarvis-Winter received a telephone call from Mr Carnaby during which he advised that the owner of the property had said not to come back. Mr Jarvis-Winter understood that that was the end of the job, and he packed his tools and left the worksite.

[24] Mr Jarvis-Winter was asked about his calculations as to the alleged sum of the wages outstanding. He stated that he had reached the figure of \$1,134 by multiplying the hourly rate of \$22.68 by the hours he worked (50).

¹ "Casual Individual Employment Agreement – Hamish Winter", attached to the statement of problem.

² "Casual Individual Employment Agreement – Hamish Winter", attached to the statement of problem, at clause 5.1.

[25] Mr Jarvis-Winter stated that he had sought payment from Mr Carnaby on a number of occasions but that no payment was ever forthcoming. He advised Mr Carnaby of the amount outstanding in terms of the work performed, and Mr Carnaby did not dispute the amount said to be owed or the hours of work performed. I accept the evidence of Mr Jarvis-Winter as to the time worked by him and the wages that are owed for work performed by Mr Jarvis-Winter between 19 and 26 April 2021. An amount of \$1,134 gross should have been paid to Mr Jarvis-Winter by the Local Lads. That amount remains outstanding and I order that Local Lads make payment of that amount to Mr Jarvis-Winter.

[26] There was no basis on which to withhold payment from Mr Jarvis-Winter, and he should have been paid the wages that were outstanding.

[27] Mr Jarvis-Winter claims that interest should be paid on the unpaid wages. The Authority may award interest, calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016.³ I consider it appropriate in the circumstances, including having regard to the previous attempts by Mr Jarvis-Winter to have Local Lads make payment, that interest be paid on the outstanding wages.

[28] Mr Jarvis-Winter is also entitled to be reimbursed the cost of the filing fee by Local Lads.

Notice period

[29] Mr Jarvis-Winter confirmed his understanding that he was employed on a casual basis but that the IEA was not agreed until after he had started work, and that it was signed when he commenced work on the second house on 19 April 2021.

[30] Clause 16 of the IEA provides that, on the basis that the employment is casual, notice of termination is not required and that no notice or payment in lieu of notice applies.⁴

[31] Mr Jarvis-Winter's evidence was that the hours of work were irregular, without set days, and that Mr Carnaby would text when he needed to attend work. It is apparent

³ Employment Relations Act, Schedule 2, section 11.

⁴ "Casual Individual Employment Agreement – Hamish Winter", attached to the statement of problem, at clause 16.1 and 16.4.

that both parties to the IEA intended the employment relationship to be casual, and that that was the true nature of the relationship as at the time Mr Jarvis-Winter was advised that there was no further work.

[32] I find that Mr Jarvis-Winter was not entitled to payment in lieu of notice.

Other matters

[33] Mr Jarvis-Winter confirmed that he had received a copy of the material lodged by Mr Carnaby. That material included various allegations, including that Mr Jarvis-Winter had taken tools belonging to Local Lads. Mr Jarvis-Winter denied the allegations made by Local Lads.

[34] Noting that Mr Carnaby and Local Lads refused to participate in the proceedings and that the Authority was unable to test with him the assertions he made in the material lodged on 12 May 2022, I also accept the evidence given by Mr Jarvis-Winter in relation to the claims made by Mr Carnaby as to Local Lads's tools. The claims made by Local Lads are dismissed.

Orders

[35] Local Lads Contracting Ltd is ordered, within 28 days of the date of this determination, to make payment to Mr Jarvis-Winter the following sums:

- (a) \$1,134 gross for arrears of wages;
- (b) \$19.75 in interest; and
- (c) \$71.56 in reimbursement of the filing fee.

Costs

[36] Neither party was represented and so there is no issue as to the costs.

Rowan Anderson
Member of the Employment Relations Authority