

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Abhijit Kanetkar (Applicant)
AND Irongate (NZ) Limited (Respondent)
REPRESENTATIVES Abhijit Kanetkar In person
Grant Everiss, Advocate for Respondent
MEMBER OF AUTHORITY Leon Robinson
INVESTIGATION MEETING 1 September 2005
DATE OF DETERMINATION 9 September 2005

DETERMINATION OF THE AUTHORITY

The Authority determines that this employment relationship problem shall be resolved by the following orders:-

- A. Irongate (NZ) Limited is ordered to pay to Abhijit Kanetkar the gross sum of \$2,930.00 as arrears of wages pursuant to section 131 of the Employment Relations Act 2000.**
 - B. Irongate (NZ) Limited is ordered to pay to Abhijit Kanetkar interest on the judgment sum of \$2,930.00 at the rate of 9% per annum from 21 October 2004 until the date of payment pursuant to Clause 11 of Schedule 2 of the Employment Relations Act 2000.**
 - C. Irongate (NZ) Limited is ordered to pay to Abhijit Kanetkar the sum of \$70.00 in respect of the lodgement fee on this application.**
-

The Problem

[1] Abhijit Kanetkar (“Mr Kanetkar”) claims that Irongate (NZ) Limited (“Irongate”) owes him wages of \$2,930.00. Irongate says it does not owe Mr Kanetkar anything because he was negligent and did not provide the service he was employed to provide. It also says Mr Kanetkar caused it extra costs.

[2] The parties were unable to resolve the differences between them by the use of mediation.

[3] Mr Kanetkar did not provide the Authority or Irongate with a written statement of his evidence as previously arranged. Mr Grant Everiss (“Mr Everiss”), a director of Irongate, did not wish to adjourn the matter and confirmed his desire to proceed at the scheduled investigation meeting.

The issues

[4] These issues fall to be determined:-

- (i) Is Irongate liable to pay wages to Mr Kanetkar?
- (ii) If so, what quantum is owed to Mr Kanetkar?

These issues are dealt with in turn.

Liability in principle

[5] There is no issue between the parties as to the nature of Mr Kanetkar’s engagement. He was employed on a casual basis by Irongate as a Web Developer. The terms of that casual employment were recorded in an *Individual Employment Agreement for Casual Employee* dated and signed by the parties on 21 July 2004 (“the IEA”). Mr Kanetkar was remunerated by an hourly wage of \$20.00 per hour which included provision for holiday pay.

[6] Clause 2 of the IEA is as follows:-

2. Remuneration

2.1 *The Employee will be paid at the hourly rate specified in Item 3 of Schedule One and which rate includes holiday pay calculated at 6% as set out at paragraph 5.1 below.*

2.2 *Timing of Payment: Irongate will pay the employee by direct credit to a New Zealand bank account nominated by the employee at the amount of each period as per the Statement of Work less any applicable tax in the following pay run two weeks after the end of each two week period (15th month and end of the month). If the last date for payment is not a Business Day, payment may be made on the next Business Day.*

[7] At the material time, Mr Kanetkar was employed to work on a software development project known as AMO Email Marketing. This particular assignment was to commence on 6 September 2004 and was to be completed by 11 September 2004.

[8] The assignment was not completed by 11 September 2004. It is common ground that more time was required to complete the project and it was eventually presented as completed on 15 October 2004.

[9] The parties dispute the quality of the completed work. Mr Kanetkar says he completed the task he was assigned and there were no problems with it. Irongate vehemently denies this and says the software programme could not send email batches and would never be able to send multiple or high volume campaigns, both of which were specified by the client. As a result Irongate says it is not liable to pay Mr Kanetkar. It says that it had to contract another developer to build a new email system from scratch at a cost of \$12,000.00.

[10] Mr Kanetkar had submitted invoices for his work.

[11] The IEA did not specify a requirement for invoices. Mr Kanetkar's time was recorded in an Excel spreadsheet and he submitted each of the above invoices attaching the relevant spreadsheet of hours worked.

[12] Mr Kanetkar's invoices were not paid. By email of 26 October 2004 he enquired of Mr Everiss when he would be paid. He says he was referred to raise the matter with Mr Everiss by the accounts manager Ms Deborah Lees ("Ms Lees"). Mr Kanetkar says he was referred back to Ms Lees.

[13] By email of 4 November 2004 he again enquired of Ms Lees when he would be paid. Ms Lees responded with an email of the same date which stated:-

Unfortunately there has been a major issue with the AMO project. The development was not completed successfully or on time and we have had to outsource it to a team of 5 developers to try (sic) finish it off at a massive cost to us causing us to lose a significant amount of money on this project. This has caused major issues with our customer in Australia as they nearly may lose their biggest client over this, they are withholding payment to use for the project and are discussing what compensation they require from us for this situation.

At this stage we have placed your invoices in dispute as we require time to investigate the situation fully. We will contact you in a couple of weeks with an update and for further discussions.

*Kind regards
Deborah*

[14] Ms Lees sent Mr Kanetkar a further email on 15 November 2004. She advised:-

Hi Abhijit, I refer to the email I sent you on 4th November below:

On top of this we have had a very serious attack on My Web and the police are currently investigating and will most likely need to speak to each person who has access to the system.

Until these investigations are complete your invoice payments are being held in dispute.

[15] Mr Kanetkar has still not been paid. He now seeks orders from the Authority to resolve the problem.

[16] I am satisfied that there were problems with Mr Kanetkar's work. I accept too that no difficulties were communicated by him to Irongate. Mr Everiss tells me Irongate will not pay a single cent to Mr Kanetkar.

[17] I do not consider that Irongate is entitled to take that position. It agreed to pay Mr Kanetkar for each hour of his labour. He clearly provided that labour, although the results of it are now contested.

[18] Irongate resists paying wages due because it says Mr Kanetkar's work was not what it contracted for. Unfortunately, however, it did not contract with Mr Kanetkar for a particular result. It contracted him to provide labour each hour. That is what he did. He is entitled to be paid.

[19] Irongate's remedy for defective work was performance management of Mr Kanetkar's work including if appropriate, disciplinary action. It would have been prudent to do so to ensure its expectations were ultimately met. Having not done so, Irongate cannot resist paying Mr Kanetkar's wages.

The quantum

[20] Mr Kanetkar submitted the following invoices for payment:-

Invoice	Amount
29 September 2004	\$1,340.00
14 October 2004	\$1,240.00
21 October 2004	\$350.00
Total	\$2,930.00

[21] There is no dispute about the quantum. The sum outstanding is \$2,930.00.

Determination

[22] Accordingly, I determine that Mr Kanetkar is owed wages of \$2,930.00. **I order Irongate (NZ) Limited to pay to Abhijit Kanetkar the gross sum of \$2,930.00 as arrears of wages pursuant to section 131 of the Employment Relations Act 2000.**

[23] As Mr Kanetkar has not had the use of the sums owed to him by Irongate, I think it fit that he should have interest on the judgment sum at the rate of 9% per annum from 21 October 2004 until the date of payment. **I order Irongate (NZ) Limited to pay to Abhijit Kanetkar interest on the judgment sum of \$2,930.00 at the rate of 9% per annum from 21 October 2004 until the date of payment, pursuant to Clause 11 of Schedule 2 of the Employment Relations Act 2000.**

[24] Mr Kanetkar having been successful is entitled to have his lodgement fee reimbursed to him. **I order Irongate (NZ) Limited to pay to Abhijit Kanetkar the sum of \$70.00 in respect of the lodgement fee on this application.**

Costs

[25] As neither party was represented by professional advocates, there will be no orders for costs.