

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Kevin John Lunt (Applicant)  
**AND** Customised Solutions Group Limited (Respondent)  
**REPRESENTATIVES** Kevin Lunt in person.  
No appearance for respondent  
**MEMBER OF AUTHORITY** Ken Raureti  
**INVESTIGATION MEETING** 19 January 2007  
**DATE OF DETERMINATION** 24 January 2007

DETERMINATION OF THE AUTHORITY

**Employment relationship problem.**

[1] Mr Lunt commenced employment with Customised Solutions Group Limited (CSG) as a Technician/Engineer on 2 May 2006. CSG's core business specialises in customising wheel chairs and lifting/hoist facilities for disabled clients. The customising and engineering work was done by a small team comprising of a Technician/Engineer/Engineering Manager (Mr Lunt) one Fitter, and two semi-skilled Technicians. Mr Lunt's terms of employment are contained in a signed written individual employment agreement.

[2] Mr Lunt says he has not been paid any wages/salary for the months of August and September 2006. He is seeking recovery of his unpaid wages, and he is also seeking reimbursement of various expenses. He says the company is unable to pay the salaries due to him and two other employees for reasons that are unclear.

[3] CSG has not filed a Statement in Reply, nor has it responded to the many and varied attempts the Authority has made to give it such an opportunity. A Support Officer from the Authority has made a number of attempts to contact the respondent by way of leaving telephone messages for the respondent to contact the Authority, by sending a fax to the respondent's number (transmission was successful), and by way of signed proof of delivery postal mail.

**No appearance for the respondent.**

[4] There was no appearance for the respondent at the Authority's investigation meeting. A signed track and trace proof of delivery has satisfied me that a copy of the notice of the investigation meeting was served upon CSG's registered office. The meeting was scheduled to commence at 10.00am. A Support Officer of the Authority tried to contact the respondent by telephone at its landline and mobile phone contact numbers. The efforts made to the landline returned a disconnected signal, and the efforts made to the mobile phone number returned a message that the number was not currently allocated to a phone.

[5] The respondent has made no contact or communication with the Authority. In light of the foregoing, and after having waited fifteen minutes for the possible late attendance of the respondent, I exercised the power to proceed with the matter pursuant to clause 12, Schedule 2 of the Employment Relations Act 2000.

### Background.

[6] Joseph Sang Yum is one of two Directors and equal shareholders of CSG; the other is Michael Sang Yum. Joseph Sang Yum was a friend of Mr Lunt's, he offered Mr Lunt employment with his company to work and manage the engineering/jobbing workshop. Mr Lunt accepted the job offer and worked for CSG from May 2006 through to the end of September 2006. The relevant term of employment for this matter is contained in clause 7 of the employment agreement which records that he was to be paid according to an hourly rate of \$25.00 per hour, which was to be paid monthly into a bank account nominated by Mr Lunt on the 22<sup>nd</sup> of each month.

[7] Mr Lunt says that in August, he did not receive his salary so he asked his employer what the story was. His employer told him that the company had the money but it was tied up in a High Court matter, however he was reassured that he would be paid. He continued to work on until the end of September, and made repeated requests for his wages. He says that each request was met with some growing story about the company being tied up in a High Court matter but resolution was imminent. Mr Lunt resigned from his employment, he says that he has not been paid any wages for August and September 2006 and is seeking recovery of the unpaid wages.

[8] Mr Lunt is also seeking reimbursement of \$901.35 being expenses he said has incurred on behalf of CSG for the purchase or various sundry type consumables like paint, clamps, bolts, wire, hose fittings, hinges, an electric motor and other items.

[9] In Mr Lunt's efforts to recover the wages due to him, he made repeated requests of the company, including a visit to its premises on the 20<sup>th</sup> of October 2006. During that visit the Office Administration Clerk and the Accountant drew up a spreadsheet/table of Mr Lunt's Year to Date earnings, what he has been paid, and what is outstanding/due to him. The table is:

PAY SLIP September 2006				
Name:	Kevin Lunt			
IRD No:				
Tax Code:	M			
Start:	2 May 2006			
Year to Date				
		GROSS	PAYE	NET
	Apr-06	0.00	0.00	0.00
	May-06	0.00	0.00	0.00
	Jun-06	4000.00	944.36	3055.64
	Jul-06	4000.00	944.36	3055.64
	Aug-06	3000.00	621.18	2378.82
	Sep-06	4000.00	944.36	3055.64
		15000.00	3454.26	11545.74
		Less paid	7/20/2006	3055.64
			8/20/2006	3055.64
		Add expenses		901.35
		Total		<b>6335.81</b>
This amount is subject to final approval by Michael Sangyum.				
Date: 20 <sup>th</sup> October 2006				

**Findings.**

[10] Mr Lunt progressed his employment problem at the Authority on his own behalf, and supported it with his verbal account of the problem, and where he could, with various documents that he had copies of, being a copy of a payslip, his employment agreement, a reference and a copy of the spreadsheet table above. Mr Lunt presented as a down to earth credible person. His evidence is unchallenged, and I have no reason to doubt that he has not been paid the net amount of \$6335.81 he is claiming.

[11] Part of that amount is his claim for \$901.35 being reimbursement for various expenditure he has incurred on behalf of CSG. Whilst Mr Lunt did not have copies of any receipts to substantiate this aspect of his claim, he did indicate to me that the company has a record of the amounts, and it was CSG's office person and Accountant who produced the spreadsheet table from their records showing that amount as being due to him. I am satisfied with that evidence, and therefore accept that notwithstanding he was unable to prove the expenditure with receipts, he has incurred that amount of expenditure and he is entitled to be reimbursed for it.

**Determination.**

[12] It is a fundamental rule that, subject to the statutory exceptions, employers must pay the entire amount of a worker's wages without deduction. Mr Lunt's employment agreement detailed his hourly rate of pay and when and how his wages were to be paid. On top of his contractual right to be paid for the work he has performed for CSG, are the safeguard measures of the Wages Protection Act 1983. Section 4 of that Act requires that subject to sections 5 (1) and 6 (2), *an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.* Neither section 5 relating to deductions with the worker's consent, nor s.6 which relates to the recovery of overpayment of wages apply to this matter.

[13] I am satisfied that Mr Lunt has not been paid his wages for August and September 2006. He is entitled to be paid the entire amount. CSG is ordered to pay Mr Lunt his outstanding wages of \$7000.00 gross, plus an additional amount of \$901.35 net being reimbursement for expenditure he has incurred personally on behalf of CSG.

Ken Raureti  
Member of Employment Relations Authority