

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 205/10
5281570

BETWEEN	JOSEPH LAWRENCE Applicant	TAYLOR
A N D	CLUTHA COMPANY LIMITED Respondent	GRAZING

Member of Authority: Helen Doyle

Representatives: Applicant Self Represented
Dean Lawrence, Advocate for Respondent

Investigation Meeting: Balclutha on 24 September 2010

Date of Determination: 9 November 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Joseph Lawrence was employed by Clutha Grazing Company Limited from early June 2009 until 28 August 2009 in the role of tractor driver/engineer and maintenance.

[2] Mr Lawrence says that he is owed the following:

- Unpaid wages in the sum of \$2,920.50;
- Holiday pay;
- Reimbursement for:
 - New battery \$227.00;
 - Liteace Throttle cable \$50;
 - Water blaster hose etc \$50;
 - Liteace oil, belts etc \$89.50;
 - Stihl replacement chain \$65;
 - Piglets \$375;

- Cell phone use \$30;
- Used washing machine pump \$120;
- Electricity for electric fence \$60;
- Use of MIG welder, wire, gas \$50;
- 12 inch wrench, Stilson \$100;
- Use, transport of 3F plough \$40;
- Wages for trimming overgrown trees, hedge, reforming entrance and driveway to rental property at the rate of \$18 per hour for 20 hours \$360;
- Replacement Toyota 2L diesel engine \$2,000;
- Labour for engine swap 20 hours @ \$15 \$300.
- Interest on the amounts owing.

[3] Clutha Grazing Company Limited (Clutha Grazing) accept some amounts are owing to Mr Lawrence, dispute others and counterclaim the following:

- \$400 on the basis of a contractors quote to clear trees;
- \$125.84 for repair of lawnmower left out by Mr Lawrence in the rain;
and
- \$350 diesel used by Mr Lawrence for personal use.

The Issue

[4] The Authority needs to consider the amounts claimed by Mr Lawrence and Clutha Grazing and be satisfied that the amount claimed is related to employment and that there is sufficient evidence to the standard of balance of probabilities to be satisfied hat such amount is owing.

Wages

[5] There is agreement that Mr Lawrence is owed wages in the sum of \$2,920.50 gross being \$162.25 hours at \$18 per hour.

Holiday pay

[6] There was a dispute as to whether Mr Lawrence had been presented with and agreed to terms and conditions of an employment agreement. Dean Lawrence

operates the farm on behalf of Clutha Grazing. Although sharing the same surname he is not a relation of Mr Lawrence. He said that Mr Lawrence had been given an employment agreement but that he had not returned the agreement. Mr Lawrence said that he had seen an employment agreement up at the farm house but that he was 99% sure that he did not take it away.

[7] I note an agreement was available for the Authority to consider but I accept that amongst the terms and conditions of Mr Lawrence's employment was that he would be paid at the rate of \$18 per hour gross for work performed. Mr Lawrence was paid monthly and was supplied with a farmhouse and a three bedroomed house provided.

[8] Dean Lawrence said \$18 per hour included holiday pay but Mr Lawrence said that he did not realise that holiday was part of the hourly rate.

[9] Section 28 of the Holidays Act 2003 provides that an employer may pay annual holiday pay with the employee's pay if the employee is employed in accordance with the Act on a fixed term agreement to work for less than 12 months or work for the employer on a basis that is so intermittent or regular that it is impracticable for the employer to provide the employee with four weeks annual holiday. The employee must agree to such payments in his or her employment agreement and annual holiday pay is to be paid as an identifiable component of the employee's pay at a rate not less than 8% of the employee's gross earnings.

[10] I could not be in the absence of an employment agreement satisfied that Mr Lawrence's employment was either a fixed term agreement or a casual arrangement. Mr Lawrence said that he had not realised he had agreed to the holiday pay being paid with his pay.

[11] I find that holiday pay is owing to Mr Lawrence. Mr Lawrence provided details of his gross earnings including the wages that are still outstanding over the period he was employed by Clutha Grazing as \$8,090.50. The holiday pay is calculated on the basis of 8% of gross earnings being \$647.20. I find Mr Lawrence is owed the sum of \$647.20 for holiday pay.

New battery

[12] Mr Lawrence claims the cost of a new battery purchased for employment purposes of \$227. Clutha Grazing do not dispute as such that Mr Lawrence is entitled to payment for the new battery but say that they believe Mr Lawrence has already been paid for the new battery by the addition of more hours to his timesheet, for which he has been paid.

[13] Mr Lawrence did not accept that he has already received payment for the new battery and there was no evidence to satisfy me that this amount had been paid. There was no separate identifiable component in the timesheets in front of me.

[14] In conclusion therefore I find the sum of \$227 is owing to Mr Lawrence for a new battery.

Liteace throttle cable and water blaster

[15] The sum of \$50 each for these items was claimed. Clutha Grazing accept that these amounts owe and therefore Mr Lawrence is owed the sum of \$100.

Liteace oil, belts etc.

[16] Mr Lawrence said that he replaced oil in a farm vehicle and put a new belt on the vehicle. Dean Lawrence disputed this and said that for Clutha Grazing it was a matter of proof because Mr Lawrence had other vehicles that he used.

[17] I accept in terms of this matter that there is inadequate proof in front of me to satisfy me that there is money owing for these items or that they were purchased and used in a farm vehicle.

Stihl replacement chain

[18] Mr Lawrence said that he used the large farm chain saw to fell willows. He said that before he started the bar and chain were worn out and that he was therefore required to replace the chain at a cost of \$65. Dean Lawrence said that Mr Lawrence used the saw for his own fire wood and that Mr Lawrence got the chain but it was not necessary.

[19] This was a matter of some considerable dispute between the parties. Having heard the evidence I am not satisfied that Dean Lawrence approved this purchase for employment purposes. I therefore make no order for payment.

Piglets

[20] Clutha Grazing agree that Mr Lawrence is owed the sum of \$375 for piglets purchased.

Cell phone use

[21] Mr Lawrence claims \$30 for cell phone calls. Dean Lawrence accepts that Mr Lawrence did call him for employment purposes whilst employed on the farm but only during the last month of employment. He does not accept that there was a promise to Mr Lawrence to provide a phone and/or make payment for calls. There was no record in front of the Authority to verify the cell phone use and attribute that to either personal or work related use.

[22] In all the circumstances and in order to resolve this problem I consider \$10 would be an amount that seems to be fair and reasonable in all the circumstances.

Used washing machine pump

[23] Mr Lawrence replaced the washing machine pump in the farmhouse washing machine. Dean Lawrence explained in his evidence that Clutha Grazing did not supply washing machines with the farm houses and that therefore the claim for the washing machine pump was replaced for personal reasons and is not a matter that the company should be liable for.

[24] I accept Dean Lawrence's evidence and I am not satisfied that the washing machine pump although I accept it was purchased, was done so for employment purposes and therefore I do not conclude that it should be reimbursed. The washing machine is the property therefore of the person who purchased it.

Electricity for electric fence

[25] Although Mr Lawrence had claimed the sum of \$60 under this heading he agreed to accept \$10 and Dean Lawrence accepted this. The sum therefore owing for this matter is \$10.

Use of Mig Welder, wire, gas

[26] Dean Lawrence said that not a lot of welding was done by Mr Lawrence and the gas use would have been minimal and not the \$50 that was claimed. He said that only a very small part was welded. Mr Lawrence said that he took the gas bottle to be filled and that the welder was used exclusively for work for the company. Mr Lawrence put the welding at 5-6 hours and felt that the amount claimed of \$50 was a fair cost for the welding and gas.

[27] It is accepted that Mr Lawrence did undertake some welding but not to the extent that he has claimed. The Authority needs to take a common sense approach to the matter. I accept Dean Lawrence's evidence that the welding was not extensive and that gas use would have been reasonably light. However I also accept Mr Lawrence's evidence that there was work undertaken.

[28] In all the circumstances I am of the view that a fair reimbursement for this matter would be \$25.

12 Inch Wrench and Stilson

[29] Mr Lawrence said that these items were lost when he was working on the farm and that they were to the value of about \$50 each. Mr Lawrence said that he had expected the items to be returned but they were not.

[30] Dean Lawrence said in respect of these matters that the tools were Mr Lawrence's own personal tools and that the company did not have them in its possession. I accept Dean Lawrence's evidence that the company did not have these tools and should not be expected to reimburse Mr Lawrence for personal tools that were somehow mislaid.

Use and transport of 3F plough

[31] Dean Lawrence accepted that Mr Lawrence had ploughed the paddock but said Mr Lawrence wanted to do that for his own purposes. Mr Lawrence said that he had the agreement of Dean Lawrence to plough up the yard and he got a plough from a friend in Mosgiel and gave his friend a \$40 gratuity for the use of the plough and has not included in his claim the cost of transporting the plough.

[32] I am not satisfied from the evidence that the ploughing was undertaken for employment purposes. I accept Dean Lawrence's evidence that his understanding was this was something Mr Lawrence wanted to do of his own accord and I make no order for reimbursement in the circumstances.

Trimming overgrown trees, hedge and reforming entranceway to property

[33] Mr Lawrence said that he talked to Dean Lawrence about doing the work around the farmhouse and that Dean Lawrence said to just do it. By way of counterclaim the company says that Mr Lawrence simply cut down trees leaving them around the rental property and that a quote for removing the trees was \$400. I will return to this when I consider the company's claim against Mr Lawrence. I am not satisfied that Dean Lawrence agreed to pay Mr Lawrence for this work. I shall return to this however because Mr Lawrence also has a view on that matter. I do not however make any award in favour of Mr Lawrence for the work undertaken.

Replacement of the Toyota 2 Litre diesel engine and labour for engine swapped

[34] The sum claimed by Mr Lawrence is \$2,300. This particular claim concerns the liability, if any; Clutha Grazing has for damage to Mr Lawrence's private vehicle when Mr Lawrence's daughter's partner drove his vehicle without oil. This resulted in damage to the engine.

[35] I am not satisfied that Clutha Glazing has any liability in terms of Mr Lawrence's personal vehicle. Mr Lawrence was reimbursed for the cost of travelling from the farmhouse to the farm but I am not satisfied that that extends to repair to that vehicle including replacement of the engine. I am further not satisfied that there was any agreement by Dean Lawrence that the company would reimburse for the new engine. I do not allow this claim.

Summary

[36] In summary therefore the amount owing to Mr Lawrence are:

- wages in the sum of \$2,920.50;
- holiday pay in the sum of \$647.20;
- new battery \$227.00;

- Liteace throttle cable and water blaster \$100.00;
- Piglets \$325.00;
- Cellphone \$10.00;
- Electricity Electric fence \$10.00;
- Use of welder/wire/gas \$25.

The company's counterclaim

[37] The company counterclaims against Mr Lawrence for \$400 for the clearing of the trees on the farmhouse property.

[38] Whilst this quote was produced to the Authority, Dean Lawrence said that he didn't hire anyone to remove the trees; he simply got a quote but was required to tidy the place up because the trees were chopped and simply left on the ground.

[39] Mr Lawrence in response to that says in his evidence that he asked for someone to inspect the farm accommodation but that offer was not taken up and that he could not finish the job off because he was being required to leave. Dean Lawrence did not accept that.

[40] There must have been some benefit to the farm by virtue of the work Mr Lawrence started in clearing trees notwithstanding it was incomplete. On that basis then I do not award the full amount claimed. I have calculated loss on the basis of one-10 hour day being required at \$18 per hour to finish off the work that Mr Lawrence had started around the farmhouse area.

[41] Clutha Grazing is therefore owed the sum of \$180.

[42] In terms of the lawnmower Mr Lawrence does not accept that he left it uncovered outside and denies that he is responsible for the damage to it. I am not satisfied that he was responsible for the damage and make no award for this.

[43] There was also a claim for diesel for personal use in the sum of \$350. This claim arose from a suggestion that Mr Lawrence had taken diesel from the farm. The person who had provided a statement about this serious allegation was not present at the investigation meeting. Whilst I accept that there were difficulties in that person

being present, I cannot be satisfied that Mr Lawrence took diesel from the company in the sum of \$350 as claimed and do not allow this claim.

[44] In conclusion therefore Clutha Grazing Company Limited is entitled to the sum of \$180 in terms of its counterclaim.

Determination

[45] I order Clutha Grazing Company Limited to pay to Joseph Lawrence the sum of \$4264.70 as set out in para. 36 of this determination.

[46] I order Joseph Lawrence to pay to Clutha Grazing Company Limited the sum of \$180.

[47] Mr Lawrence has claimed interest on the amounts owing. I am not satisfied that this is a case where Clutha Grazing simply stood by and refused to make any payment or acknowledge any liability for the items claimed by Mr Lawrence. There was some matter genuinely in dispute.

[48] Nevertheless in terms of wages and holiday pay Mr Lawrence has been without these sums for some time. I am therefore of the view that Mr Lawrence is entitled to interest on the amounts of wages and holiday pay which is the sum of \$3567.70 gross.

[49] I order interest be payable on the sum of \$3567.70 from 1 October 2009 to the date of payment at the rate of 4% which rate does not exceed the 90 day bill rate as at the date of this determination plus 2% under the 2nd Schedule to the Employment Relations Act 2000.

Costs

[50] Both parties had a measure of success. Neither party was represented. Mr Lawrence should be reimbursed his filing fee.

[51] I order Clutha Grazing Company Limited to pay to Mr Lawrence the sum of \$70 being his filing fee.

Helen Doyle
Member of the Employment Relations Authority

