Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE

BETWEEN   Kevin Lomax (applicant)

AND   Mobile Pimp Limited (respondent)

REPRESENTATIVES   The applicant represented himself
                               No appearance by or for the respondent

MEMBER OF THE AUTHORITY   Denis Asher

INVESTIGATION   Wellington, 12 October 2005

DATE OF DETERMINATION   12 October 2005

ORAL DETERMINATION OF AUTHORITY

Employment Relationship Problem

1.   The following is a record of an oral determination issued by the Authority today, 12 October 2005.

2.   Mr Kevin Lomax says he is owed unpaid wages, holiday pay and one-month's notice of termination by the Company – statement of problem received on 18 July 2005.

3. No statement in reply has been received from the Company despite advice of the employment relationship problem being sent to its post office box, its email address, its registered office and address for service and, by the applicant, by way of personal service on the Company's listed director, Mr Daniel Nelson.

4. The parties have not undertaken mediation in respect of this matter. Given the Company's failure to co-operate in the proceedings I was satisfied no value lay in directing the parties to mediation: s. 159 of the Act applied.

5. Following a discussion with Mr Lomax, and with his agreement, I set the matter down for an investigation: ss. 160 & 173 of the Act applied.

6. Notice of the investigation was personally served on the Company's director, Mr Nelson, on 20 August 2005 – refer to the faxed advice to that effect received from the applicant on 5 October and his sworn confirmation of the same during today's investigation.

7. I was therefore satisfied it was appropriate to proceed with today's investigation: ss 160 & 173 of the Act applied.

Discussion

8. Mr Lomax gave evidence today that he was employed by the respondent to install car audio and alarm systems. He also said that he was advised by Mr Nelson by telephone, on 3 June of this year and before he went to work, that his position had been made redundant and he should look for another job.

9. While under oath, Mr Lomax confirmed his statement of problem, that he was owed unpaid wages and holiday pay totalling $858.00 nett. He also produced a record of the calculation which includes, he says, Mr Nelson's signature confirming the amount owed to the applicant. Mr Lomax confirmed that the sum remains unpaid.

10. Mr Lomax also gave evidence to the effect that, at the time of the respondent terminating his employment on the grounds of redundancy, he was not given or paid the one-month's notice provided for at clause 13.1 of his individual employment

agreement, i.e. a nett total of $2,400.00 (refer to the attachment to the statement of problem). The applicant confirmed that that amount remained unpaid.

11. Mr Lomax confirmed at today's investigation that he also seeks to recover his filing fee of $70.00.

12. In all the circumstances I am satisfied that Mr Lomax is contractually entitled to his unpaid wages and holiday pay and notice, that he is also entitled to recover his filing fee, and that he has properly made out his claim for the amounts identified above which total $3,328.00 nett.

Determination

13. For the reasons set out above, I therefore order the respondent, Mobile Pimp Limited, to pay to the applicant, Kevin Lomax, the total nett sum of $3,328.00 (three thousand, three hundred and twenty eight dollars).

14. I draw to the Company's attention that failure to comply with this determination may result, ultimately, in Mr Lomax applying to the Employment Court for the exercise of its powers under s. 140(6) of the Act, which includes fines, sequestration of property and imprisonment.

15. In the event of financial difficulties I strongly recommend to the Company that it immediately discuss its situation with Mr Nelson, with the assistance of audited accounts, and that the parties explore a fair and reasonable repayment regime of the monies to which Mr Lomax is legitimately entitled.

Denis Asher
Member of Employment Relations Authority