

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Mathew Steven Macdonald (Applicant)
AND Ashley Klenner t/a Glorit Farms (Respondent)
REPRESENTATIVES Mark Ryan, Counsel for Applicant
No appearance for Respondent
MEMBER OF AUTHORITY Y S Oldfield
INVESTIGATION MEETING 2 December 2005
DATE OF DETERMINATION 5 December 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] Mr Macdonald has come to the Authority for help with a problem relating to his wages, holiday pay and statutory holiday payments. Unfortunately, although he did furnish a statement in reply, Mr Klenner did not attend the Authority investigation meeting. A “track and trace” has confirmed that the notice of the investigation meeting was delivered to Mr Klenner’s address on 23 September 2005. Since Mr Klenner has been properly served with notice of the meeting and has not advised of any reason why he is unable to attend I have proceeded to investigate the matter as best I can in his absence and taking into consideration the material he lodged with his statement in reply.
- [2] At the investigation meeting, Mr Ryan indicated that Mr Macdonald wished to pursue a personal grievance of disadvantage. Unfortunately, that was not at all clear from the statement of problem which Mr Macdonald had lodged himself. In my view it served to put the respondent on notice of the wage arrears issues only, and for this reason, I declined to investigate the alleged disadvantage grievance at my investigation meeting. It remains open to Mr Macdonald to pursue a personal grievance should he wish to do so via a new statement of problem.
- [3] Mr Macdonald worked on Mr Klenner’s farm from February 2004 until January 2005. During that time he received \$200.00 per month and lived in a farm property for which he was not at the time charged rent. In June 2004 he and Mr Klenner entered into a written employment agreement which set a wage rate of \$400.00 per week. However they did not in fact change their existing arrangement. In addition the parties had entered into a separate oral agreement as follows. Mr Klenner offered to buy a car for Mr Macdonald’s use on the basis that Mr Klenner would meet the repayments on the vehicle instead of paying Mr Macdonald the balance of his wages. Once the car was paid off it would belong to Mr Macdonald. Mr Macdonald agreed and in November the car was purchased.

- [4] Unfortunately, by the end of that year Mr Macdonald was finding the hard work and long hours of the job were getting to be too much for him, and he resigned. He told me wanted to take over the repayments himself but for reasons which remain unclear this did not happen. Instead, he left the job in the first half of January 2005 and took the car with him.
- [5] Mr Macdonald has kept the car ever since, although he told me that he understands it is still in Mr Klenner's name. He assumes that Mr Klenner has kept up the repayments (Attached to the statement in reply was a copy of the finance agreement which shows that the car will not be paid for until late 2006.)
- [6] When I asked him what he wanted in order to resolve his problem, Mr Macdonald told me that as well as statutory and annual holiday pay, he would like the car to be put in his name. This might be a practical solution to the situation but it is not within my power to order a change of ownership of a motor vehicle. In addition I note that the Wages Protection Act requires payment in cash unless there was written authorisation for a different form of payment (which in this case, there was not.)
- [7] I can make an order that Mr Macdonald return the car since upon the ending of his employment he was obliged to return any of his employer's property which had come into his possession in the course of his employment. I can also make orders for the payment to Mr Macdonald of arrears of wages, holiday pay and payment for the statutory holidays which fell during his employment.
- [8] I have decided to proceed on that basis however I remind the parties that even after this determination has been issued it remains open to them to go back to mediation and negotiate a settlement on agreed terms. I strongly recommend that course of action.

Arrears of wages

- [9] Mr Macdonald provided me with a witness statement and with a schedule of days and hours worked. The schedule was prepared with the assistance of a friend and was not entirely consistent with what Mr Macdonald said in his statement. At the investigation meeting I worked through the evidence with him to resolve inconsistencies. The arrears of wages have been calculated in reliance on the following conclusions:
- Mr Macdonald received \$200.00 per month during his employment, being a total of \$2,400.00;
 - Mr Macdonald is entitled to the statutory Minimum Wage, which at the time in question was \$7.20 for youth (those under 18) and \$9.00 for adults (those aged 18 and over);
 - Mr Macdonald turned 18 on 23 May 2004;
 - From February 2004 until the end of May 2004 Mr Macdonald worked from 5.00 am until 6.30 pm each day however during this time he milked Mr Klenner's brother's herd, for which he was separately remunerated. He therefore worked for Mr Klenner for nine and a half hours each day during this time;
 - After the end of May he ceased milking the other herd and worked for Mr Ashley Klenner all day, from 5.00 am until 6.30 pm;
 - From August 2004 until January 2005 was calving season and he worked from 5.00 am until 8.00 pm;
 - Mr Macdonald worked seven days a week with every third weekend off;
 - Mr Macdonald worked every statutory holiday which fell during his employment;

- Mr Macdonald received no annual leave during his employment.

- [10] I calculate that Mr Macdonald worked 109 days in the period **from February to the end of May 2004**. At nine and a half hours per day and \$7.20 per hour this comes to **\$7,455.60** gross wages payable for that period.
- [11] In the period from the **beginning of June 2004 until the end of July 2004** he worked 55 days. At thirteen and a half hours per day and \$9.00 per hour this comes to **\$6,682.50** gross wages payable for that period.
- [12] Finally for the period from the beginning of **August 2004 until the first week of January** he worked 142 days. At fifteen hours per day and \$9.00 per hour this comes to **\$19,170.00** gross wages payable for that period.
- [13] Payment due for statutory holidays is as follows. Waitangi Day, Good Friday, Easter Monday and Anzac Day 2004 all fell before his birthday, so he is entitled to payment for four eight hour days at \$7.20 per hour which amounts to **\$230.40**. The remaining seven statutory holidays all fell after his birthday so he is entitled to payment for seven eight hour days at \$9.00 per hour which amounts to **\$504.00**.
- [14] Total arrears of wages for the whole period is therefore the sum of these amounts, plus 6% holiday pay, less the \$2,400.00 Mr Macdonald has already received. **This comes to \$31,642.50 gross.**
- [15] I therefore order the respondent, Mr Klenner to pay to Mr Macdonald the sum of **\$31,642.50 gross arrears of wages, holiday pay and payments for statutory holidays.**
- [16] For the reasons set out above, **I also order Mr Macdonald to return Mr Klenner's motor vehicle to him as soon as possible.**

Recommendation for further mediation

- [17] According to the finance agreement the total cost of the car Mr Macdonald has been using since last November is \$27,200.56. Using a tax rate of 22% as a rough guide indicates that the after tax value of Mr Macdonald's wages is around \$25,000.00 net, that is, less than the cost of the car to Mr Klenner. If he were to be able to keep the car, Mr Macdonald would not have been short changed.
- [18] If the car is returned Mr Klenner may of course elect to pursue a remedy against Mr Macdonald for its use, and any associated drop in its value, over the last 12 months.
- [19] It seems to me that this matter should be able to be resolved to the mutual benefit of the parties. Once again, notwithstanding the orders I have made, I urge the parties to attempt a negotiated settlement of all matters. They should include the issue of Costs in any discussions they have.