

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** Andrew Maiden (Applicant)  
**AND** Edward Maihi (Respondent)  
**REPRESENTATIVES** Applicant representing himself  
Respondent representing himself  
**MEMBER OF AUTHORITY** P R Stapp  
**INVESTIGATION MEETING** Wanganui, 19 September 2006  
**DATE OF DETERMINATION** 22 September 2006

**DETERMINATION OF THE AUTHORITY**

**Employment Relationship Problem**

[1] Mr Andrew Maiden is seeking the recovery of wages not paid by his employer, Edward Maihi. He has also raised a personal grievance to resolve his problem.

**The proceedings**

[2] The applicant filed a statement of problem in the Authority on 15 June 2006. It was served on the Respondent. Mr Maihi did not lodge a statement in reply. The Authority gave consideration to mediation as required under s159 of the Employment Relations Act (the Act). It was decided it would not be constructive to direct the parties to mediation to resolve the problem when Mr Maihi had earlier put a condition on attending, which involved him being paid his wages and that was not acceptable to the applicant. There had also been difficulties with service and no reply lodged in the Authority. Mr Maihi was telephoned by the Authority's support officer and there was no record of him returning the call.

[3] The Authority set the matter down for an investigation meeting and in a memorandum directed the respondent to produce any wage and time records and any employment agreement. The respondent was put on notice that if he wanted to reply he had to provide the reasons for not providing the statement of reply within the time required and the right to reply would not be unreasonably withheld. Mr Maihi did not respond to that direction.

[4] Mr Maihi only attended the investigation meeting when he was contacted on the day by the Authority's support officer. Mr Maihi attended the Authority's investigation meeting. He did not bring with him any wage and time records or supporting documents in regard to national wage rates that he referred to during the investigation meeting and relied upon his memory. Also it emerged that neither party had any idea of an agreed rate of pay. Mr Maihi raised an issue of Mr Maiden using shearing equipment owned by Mr Maihi when he was not working for him and says he is

entitled to offset the cost of the use of the equipment and calculated the value to be \$300. Mr Maiden objected and said this was an arrangement agreed to at the time without any payment being mentioned.

[5] I conclude that Mr Maihi failed to co-operate with the investigation despite attending the investigation meeting and that only occurred at the initiative of the Authority contacting him on the day. Mr Maihi acknowledged he had ripped up the papers and notice of investigation meeting when he was personally served.

### **The facts**

[6] Mr Maiden was employed by Mr Maihi as a shearer. Mr Maiden worked only one day, on 2 January 2006 as a casual. There was no employment agreement. There was no agreement on a rate of pay, although both parties probably had a different understanding of what the rate would be. Mr Maihi referred from memory to a national shearer's rate of pay including holiday pay for the intermittent work. Mr Maiden says he expected to receive \$132 net for the day's work for shearing 132 sheep (letter to Mr Maihi dated 17 March 2006 and statement of problem). Mr Maiden revised the pay calculation during the investigation meeting to \$138.60 (\$1.05 net per sheep) without making any claim for holiday pay.

[7] I accept that his rate of pay was \$138.60 for the day because Mr Maihi could not produce any details and evidence of the national rate despite making a calculation during the investigation meeting from his memory that Mr Maiden did not accept as accurate. Mr Maihi did not provide Mr Maiden with an intended employment agreement required under the Act when he offered work to Mr Maiden. No wage and time records were produced by Mr Maihi as he was requested to do by the Authority.

[8] I accept the applicant's claim, as proved, in the sum of \$138.60.

### **Findings and orders of the Authority**

[9] I order Edward Maihi to pay Mr Andrew Maiden the sum of \$138.60 net wages.

[10] I do not intend to deal with the matter raised by Mr Maihi that Mr Maiden use of Mr Maihi's shearing gear for other work cost \$300 since there was no evidence of any agreement on a payment.

[11] Mr Maihi's action of not paying Mr Maiden was unjustified. However Mr Maiden has not been disadvantaged because he was only employed for the one day and the problem could properly be resolved as a recovery of wages. Therefore, the employment relationship problem does not need to be resolved as a personal grievance as claimed. That part of his claim is dismissed.

[12] Mr Maihi's failure to pay Mr Maiden and deny him the use of his wages can be properly compensated for by an award of interest (instead of compensation). I order Edward Maihi to pay Andrew Maiden the additional sum of 9% per annum on \$138.60 from the 2<sup>nd</sup> of January 2006, when the money became due, until the date of the investigation meeting. By my reckoning this is \$8.95 net.

[13] Mr Maiden has been put to the unnecessary cost to recover his wages he was entitled to because Mr Maihi deliberately did not pay him. Mr Maihi unreasonably did not attend mediation, which the Department of Labour tried to organise at Mr Maiden's initiative to save costs. Mr Maiden has incurred the cost of the \$70 filing fee. I order Edward Maihi to pay Mr Maiden the \$70 filing fee.

### **Schedule of Payments**

[14] Edward Maihi is to pay Andrew Maiden:

- \$138.60 wages
- \$8.95 interest.
- \$70 filing fee.

P R Stapp

Member of the Authority