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Martin v Bryant CA159/10 (Christchurch) [2010] NZERA 706 (9 August 2010)

Last Updated: 10 November 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

CA 159/10 5301753

BETWEEN JOHN GILMORE MARTIN

Applicant

A N D IVAN BRYANT

Respondent

Member of Authority: Representatives:

Investigation Meeting:

James Crichton

Applicant in Person

No appearance for Respondent

27 May 2010 at Blenheim

5 August 2010 at Timaru

Determination:

9 August 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Martin) seeks to recover unpaid wages from his former employer (Mr Bryant). A statement of problem was filed in the Authority on 8 April 2010. Shortly after his receipt of the statement of problem, Mr Bryant telephoned the Authority and spoke with the senior support officer. He was extraordinarily rude and abusive to the senior support officer and also made it very clear to the senior support officer what little regard he had for Mr Martin. As a consequence of that telephone discussion, the senior support officer noted the file to the effect that the investigation meeting might require security in place. No statement in reply was ever filed, although despite the abuse, the senior support officer was clear in his discussion with Mr Bryant that a statement in reply was required.

[2] To obviate the need for bringing the parties together and thus risking further unpleasantness from Mr Bryant, I directed that the parties were to be interviewed separately by the Authority and I arranged for Mr Bryant to be seen in his home area when I was there on other business. Mr Bryant was advised of the time and place for the interview with me on 27 May 2010 in Blenheim but failed to attend. Courierpost records show that notice of this interview was received at the respondent's address on 7 May 2010. There has been no further contact with Mr Bryant.

[3] I am satisfied that Mr Bryant has had every consideration afforded to him by the Authority. In particular he has been served with the statement of problem. Because of his behaviour on the telephone call with the senior support officer, I

directed that the parties were to be interviewed separately and despite that concession and my willingness to make time to see Mr Bryant in his home area, he did not avail himself of the opportunity to engage. I am satisfied that Mr Bryant had every opportunity to address the matter with the Authority but simply chose not to.

[4] That being my considered view, I elected to proceed with the Timaru interview with Mr Martin and then to proceed with the preparation of this determination on the basis of the evidence before the Authority.

[5] It is also disappointing to record that in addition to abusing the senior support officer, Mr Bryant also used the same unparliamentary language in text messaging to Mr Martin's wife. His behaviour throughout the Authority's investigation has left much to be desired. There can be no doubt that his behaviour has not been informed by good faith and were it available to me to do so, I would have considered the application of a penalty against Mr Bryant.

Issues

[6] The Authority needs to consider the following questions:

- (a) Who is the employer;
- (b) What wages are owed;
- (c) Is any other money owed? **Who is the employer?**

[7] I am satisfied that Mr Ivan D Bryant is Mr Martin's employer. Mr Martin provided me with his bank statement which shows credits to his bank statement from I D Bryant. There is no other relevant documentation which would suggest any other employer employed Mr Martin. The engagement was for a short period only and the unpaid wages is for the final work period of the employment.

What wages are owed?

[8] Mr Martin claims wages are owed for 60 hours work at \$20 per hour. I am satisfied on the basis of the documentary evidence before the Authority that those wages are indeed owed. Furthermore, it seems that Mr Bryant accepts that that money is owed as well. He has made several specious claims that he has paid those wages into Mr Martin's account. Mr Martin has assured me (and I accept) that the payment has never been made.

[9] I am satisfied then that Mr Martin is entitled to a payment of \$1,200 gross. **Is any other money owed?**

[10] In addition to the foregoing, Mr Bryant is entitled to the payment of the \$70 filing fee in the Authority.

Determination

[11] Mr Bryant is to pay to Mr Martin the following sums:

- (a) Wages due and owing of \$1,200 gross;
- (b) The filing fee of \$70;

[12] A certificate of determination is to issue with this determination. **Costs**

[13] Costs are to lie where they fall.

James Crichton

Member of the Employment Relations Authority