

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 355
5565695

BETWEEN GREGORY MCCARTHY
 Applicant

AND CONVENDIUM LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in person
 No appearance for Respondent

Investigation Meeting: 18 October 2016

Determination: 20 October 2016

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

- A. Convendium Limited is ordered to pay to Mr McCarthy within 14 days of the date of this determination the sum of \$59,911.80 gross under section 131 of the Act.**
- B. Convendium Limited is ordered to reimburse Mr McCarthy the filing fee of \$71.56 within 14 days of the date of this determination.**

Employment relationship problem

[1] By way of statement of problem lodged in the Authority on 1 July 2015 Mr Gregory McCarthy claims he is owed arrears of wages. Convendium Limited (Convendium) did not lodge a statement in reply within the requisite 14 day period required under section Regulation 8(1) of the Employment Relations Authority Regulations 2000.

[2] A review of the Authority's file shows that an initial attempt to serve the statement of problem on Convendium was not successful as the company had moved. The application was then served on a new address. The application was served on Mr Paul Monnery. On 11 August 2015 when the statement or problem was served on Mr Monnery he was a director and majority shareholder of Convendium. While no longer a director, Mr Monnery continues to be a majority shareholder.

[3] Mr Monnery spoke to the Authority Officer managing this matter on 12 August 2015 and advised the Authority he was in discussions with Mr McCarthy and was passing the matter over to his lawyer. The Authority was advised by Mr Monnery that the company lawyer would contact the Authority the following Monday.

[4] No further contact was made by Convendium either through its directors or its lawyers.

[5] In June 2016 Mr McCarthy advised the Authority he wished the matter to be progressed. On 27 September 2016 I issued a Notice of Direction setting out a proposal to investigate Mr McCarthy's claim on 18 October 2016. Included in the Notice of Direction was a direction to Convendium that any correspondence to the Authority must include an application for leave to respond to the matter.¹

[6] The parties were given seven days to object to the proposed process. No communication was received from either party and so the matter was set down for investigation and determination and a Notice of Investigation Meeting was served on both parties.

[7] On 12 October 2016 Mr Murray Creighton, a director and shareholder of Convendium contacted the Authority and requested that the matter be delayed. No application for leave was made at that time. In response the Authority noted that no application for leave had been received and advised Mr Creighton that if Convendium wished to have the opportunity to respond to the matter it must apply for leave immediately or the matter would proceed as set down.

¹ In accordance with the Employment Relations Regulations 2000, Regulation 8(3).

[8] At the appointed start time for the investigation meeting no representative for Convendium attended the Authority. I adjourned the investigation meeting and asked the Authority Officer to contact Convendium to seek advice as to whether it would be attending the investigation meeting. The Authority Officer emailed Mr Creighton. After receiving no response from Mr Creighton the Authority Officer sent an email to two alternative email addresses forwarding the email sent to Mr Creighton and reiterating the need for the respondent to apply for leave to respond to the matter.

[9] Just prior to reconvening the investigation meeting the Authority received further correspondence from Convendium. The correspondence did not include an application for leave and Convendium was advised that in the absence of such an application the matter would proceed.

[10] I am satisfied Convendium was properly served with the statement of problem and subsequent correspondence from the Employment Relations Authority together with a notice of the investigation meeting.

[11] Being satisfied Convendium was properly served with the proceedings and Notice of Investigation meeting, I proceeded to investigate Mr McCarthy's employment relationship problem pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2000 (the Act) to fully act in the matter as if the respondent was present or represented.

[12] As permitted by s 174E of the Act this determination has not recorded all the evidence received from Mr McCarthy but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

Background

[13] Mr McCarthy started working for Convendium on 1 May 2014. I have received a copy of a written employment agreement which has been signed by Mr McCarthy but not Convendium. Mr McCarthy left his employment at the end of March 2015.

[14] The employment agreement provides for the payment of a salary of \$120,000.00 per annum plus a bonus of \$20,000.00.

[15] For the months of May, June and July 2014 Mr McCarthy agreed to receive his payment by way of GST invoices submitted to Convendium. From August 2014 onwards Mr McCarthy was to be paid as an employee with PAYE being deducted at source.

[16] Records produced by Mr McCarthy show that for August and September 2014 he received monthly payments of \$9,985.30 gross. This figure has been ascertained from Mr McCarthy's Inland Revenue Earnings Statement which shows that for each of the two months Mr McCarthy was paid \$7,817.00 net from Convendium and paid PAYE tax of \$2,168.30.

[17] Mr McCarthy claims outstanding salary payments for the months of October, November and December 2014 and January, February and March 2015.

[18] I am satisfied Mr McCarthy has not been paid the wages owed to him for each of the months set out above. Convendium Limited is ordered to pay to Mr McCarthy within 14 days of the date of this determination the sum of \$59,911.80 gross under section 131 of the Act.

Costs

[19] Mr McCarthy was unrepresented at the investigation meeting and so there is no issue as to costs. Mr McCarthy is entitled to be reimbursed the filing fee on his application and Convendium is ordered to pay to Mr McCarthy the sum of \$71.56 within 14 days of the date of this determination.

Vicki Campbell
Member of the Employment Relations Authority