

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 210/10  
5284189**

BETWEEN      NEIL MCGECHIE  
                         Applicant

AND             GLEN MCQUOID  
                         Respondent

Member of Authority:    Leon Robinson  
  
Representatives:         Applicant In Person  
                                 No appearance by Respondent  
  
Investigation Meeting:    11 February 2010  
  
Further Information:      18 February 2010  
  
Determination:            4 May 2010

---

**DETERMINATION OF THE AUTHORITY**

---

**The problem**

[1]    The applicant Mr Neil McGechie ("Mr McGechie") says he was unjustifiably dismissed by the respondent Mr Glen McQuoid. Mr McGechie claims arrears of wages, holiday pay, sick leave, chainsaw allowance and compensation.

[2]    Mr McQuoid wrote a letter to the Authority dated 6 January 2010 advising there had obviously been a mistake, the claim was totally unfounded and Mr McGechie had never worked for him.

[3]    I did not accept Mr McQuoid's letter as a statement in reply as required by the Authority's regulations. I therefore regarded the matter as undefended. I set the matter down for investigation meeting and proceeded to deal with it as fully as if Mr McQuoid had attended. Mr McGechie's sworn evidence to the Authority is unchallenged.

## The facts

[4] Mr McGechie says in October 2008 he and Mr McQuoid agreed that Mr McGechie would be employed personally by McQuoid as a woodcutter. He says they agreed that Mr McGechie would be paid \$20.00 per hour and Mr McQuoid would deduct and pay the appropriate rate of tax to the Inland Revenue department. Mr McGechie says Mr McQuoid agreed to pay his accident compensation levy and holiday pay. Mr McGechie says Mr McQuoid agreed to pay him a chainsaw allowance of \$1.50 per m<sup>3</sup> of wood cut.

[5] Mr McGechie says he commenced work on or about 2 November 2008. He says he worked Monday to Saturday each week working 8-10 hours each day. He says generally Mr McQuoid paid him in cash. He says that he recorded his hours worked and the cubic metres cut in a notebook. He says he handed a note of the hours he worked each week to Mr McQuoid and was paid the following Wednesday.

[6] Mr McGechie says that Mr McQuoid paid him for public holidays when he did not work.

[7] Mr McGechie says that after three months he asked Mr McQuoid to be paid his chainsaw allowance which was at that time according to Mr McGechie's calculations \$2,400.00. He says Mr McQuoid asked where he got that figure from. The matter remained outstanding and no resolution was reached. Mr McGechie tells the Authority he did not pursue the matter thereafter.

[8] Mr McGechie had chest pains on Friday 3 July 2009. He says he could not get hold of Mr McQuoid that day. He says that on 4 July 2009 Mr McQuoid visited him at his home wanting the work splitter. Mr McGechie was still unwell on Monday 6 July 2009 and did not go to work. He saw his doctor on 8 July 2009 and the doctor certified him unfit for work for ten days from 3 July 2009. Mr McGechie says Mr McQuoid would not answer his calls. He says he posted the medical certificate to Mr McQuoid on 13 July 2009.

[9] On 15 July 2009 Mr McGechie says he called on Mr McQuoid at his house. He says Mr McQuoid completely ignored him.

[10] Mr McGechie says he did not return to work. He says Mr McQuoid continued to completely ignore him and the relationship did not continue because Mr McQuoid would not engage with him. He says he is owed outstanding wages of \$1,300.00 and sick pay as well as his chainsaw allowance.

[11] At the Authority's request Mr McGechie has obtained from the Inland Revenue Department a statement of his earnings and income. The statement evidences that Mr McQuoid did not make any payments of tax in respect of Mr McGechie's "engagement".

### The merits

[12] The first question to be decided is whether Mr McGechie was an employee. It is unfortunate that Mr McQuoid chooses not to participate in the Authority's investigation and as consequence Mr McGechie's evidence is unchallenged.

[13] Mr McGechie says he was an employee and that he and Mr McQuoid reached an oral agreement between them that Mr McGechie would be employed as well as the terms of that employment. I accept Mr McGechie's unchallenged evidence that he was an employee paid at \$20.00 per hour and worked full time. I accept Mr McGechie's evidence that he was paid for public holidays.

[14] I accept Mr McQuoid's evidence that he is owed \$1,300.00 arrears of wages and sick pay of \$650.00.

[15] I also accept that Mr McGechie is owed holiday pay. He says his gross earnings for the eight month employment is the total sum of \$26,800.00. Holiday pay on that sum is \$2,144.00.

[16] Mr McGechie says Mr McQuoid agreed to pay him a chainsaw allowance of \$1.50 per m<sup>3</sup> of wood cut. I find that Mr McGechie did not pursue this sum prior to

the ending of the relationship as I would have expected. In any event I am not persuaded of it and the term in my view is too vague to be enforced. I decline to make an award.

[17] As for the claim of unjustifiable dismissal, I do not accept there was a sending away amounting to a dismissal. I do not consider Mr McGechie did enough to ascertain the precise situation in relation to his continuing employment. I do not consider he confronted the uncertainty he alleges as he was obliged to do. I find that he acquiesced and the employment simply came to an end by the joint inertia of both parties. I find that Mr McGechie was not actually dismissed.

### **The determination**

[18] For these reasons, I find that Mr McGechie is owed arrears of wages of \$1,950.00 and holiday pay of \$2,144.00. **I order Glen McQuoid to pay to Neil McGechie the gross sum of \$4,094.00 as arrears of wages.**

### **The costs**

[19] There will be no order for costs.

Leon Robinson  
**Member of Employment Relations Authority**