

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Patrick John McGrath trading as Landon Creek Bird Sanctuary
(Applicant)

AND Labour Inspector (Jon Henning) (Respondent)

REPRESENTATIVES No appearance by Applicant
Labour Inspector (Jon Henning) In person

MEMBER OF AUTHORITY James Crichton

INVESTIGATION MEETING Oamaru 24 August 2006

DATE OF DETERMINATION 29 August 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] By demand notice dated 28 June 2006, the respondent Labour Inspector (Mr Henning) served on the applicant (Mr McGrath) a demand notice pursuant to s 224(1) of the Employment Relations Act 2000.

[2] In accordance with his obligations under the Act, Mr Henning also provided Mr McGrath with sufficient information to enable Mr McGrath to file an objection to the demand notice.

[3] Acting on that information, Mr McGrath wrote to the Authority by letter dated 4 July 2006 objecting to the demand notice on the following bases:

- (a) That the reference number was missing from the demand notice and therefore the demand notice was null and void;
- (b) The claim that all moneys owed to the employee were in fact paid;
- (c) That the employee failed to work as required and in particular failed to attend at work when required; and
- (d) That the employee failed to fulfil his obligations to Work & Income New Zealand thus making it impossible for Work & Income New Zealand to pay Mr McGrath the subsidy to which he would otherwise have been entitled for creating the job that the employee fulfilled.

[4] I convened a telephone conference of the parties on 27 July 2006. Both parties attended and arrangements were made for a hearing to take place at Oamaru on 24 August 2006 at which both parties were to attend and advance their respective positions.

[5] Clear formal advice of that investigation meeting was sent to both parties and I am satisfied that both parties received accurate and timely information of the details of the investigation meeting.

[6] Notwithstanding that, Mr McGrath failed to attend.

[7] I deferred the start of the investigation meeting by 20 minutes in case Mr McGrath was coming but had been delayed, but there was still no appearance.

[8] Accordingly, I proceeded to deal with the matter in Mr McGrath's absence, being satisfied that he had had every reasonable opportunity to be present and to advance his argument.

Mr McGrath's position

[9] All that is available to the Authority by way of information from Mr McGrath as to why he objects to the demand notice is his facsimile letter of 4 July 2006. I have already listed the points that Mr McGrath makes. For the sake of completeness, I propose to deal with those points although I would have much preferred to hear Mr McGrath in person so that I could be sure that I understood his argument clearly. Mr McGrath's failure to attend is of course a matter for him. The notice of hearing clearly sets out that a failure by an applicant party to attend involves a risk of his claim being dismissed.

[10] In his faxed letter, Mr McGrath's first objection relates to the absence of a reference number on the demand notice. Nothing turns on that. There is no statutory obligation to include a reference number. The reference number is an entirely internal device for the Department of Labour to maintain the sanctity of its filing system. I dismiss that objection.

[11] Given Mr McGrath's absence, I am quite unable to consider his bald statement that the employee concerned was paid all the money owed to him. The whole purpose of an investigation meeting in these circumstances is to give the employer an opportunity to be heard on just that point and Mr McGrath's failure to attend makes it impossible to deal with that contention.

[12] Similarly, it is impossible for me to deal with Mr McGrath's contention that the employee concerned did not work appropriately; there is no evidence before me about that and even if there were, the argument would need to advance to the point where it was alleged that that failure to work had an impact on the basis on which the employee was to be remunerated.

[13] The final point that Mr McGrath makes is the one where he alleges that the employee failed to fulfil his obligations to Work & Income New Zealand and therefore Mr McGrath was not paid the subsidy he was entitled to. Mr McGrath needs to be very clear that his obligations as an employer to the employee exist whether or not the employee is the subject of a job subsidy. If the employee has not fulfilled his obligations, that is a matter that Mr McGrath needs to take up with Work & Income New Zealand and does not justify Mr McGrath failing to fulfil his obligations as a good employer to pay the employee the wages he is required to receive by law.

Determination

[14] Pursuant to s.226 of the Employment Relations Act 2000 I am to determine whether or not the whole or part of the wages or holiday pay specified in the demand notice is due to the employee by the employer and I now do that without the benefit of having heard Mr McGrath despite the Authority's efforts (including travelling to Oamaru for the purpose) to hear him.

[15] With one qualification which I will refer to shortly, I am satisfied that the calculation set out in the demand notice dated 28 June 2006 accurately reflects the payment that is appropriately due to the employee. The qualification is to adopt the revised calculation set out in a letter dated 6 August 2006 from Mr Henning to Mr McGrath wherein Mr Henning revises the calculation downwards by reason of two arithmetical errors.

[16] The sum of \$1,195.54 as set out in the demand notice dated 28 June 2006 (but subsequently amended by letter dated 6 August 2006) remains unpaid. Mr McGrath has not met his obligations to pay that sum, nor has he taken the opportunity provided to him to appear at my investigation meeting and explain to me why the demand notice is incorrect.

[17] Accordingly, I direct that Mr McGrath is to pay to the Labour Inspector at P O Box 5510 Dunedin for the attention of Mr Henning the sum of \$1,195.54.

[18] That payment is to be made within 14 days of the date of this determination. Mr Henning is directed to ensure that those moneys are made available directly and without deduction to Daniel Bryant whose wages these moneys are.

Costs

[19] Costs are to lie where they fall.

James Crichton
Member of Employment Relations Authority