

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Mostafa Nazier Mohammad (Applicant)
AND Salmon Anglers Limited (Respondent)
REPRESENTATIVES Mostafa Nazier Mohammad In person
Kevin Edward George Smith, Advocate for Respondent
MEMBER OF AUTHORITY James Crichton
INVESTIGATION MEETING 28 March 2006
DATE OF DETERMINATION 22 May 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mostafa Mohammad) says that he is owed wages by the respondent (Mr Smith). Mr Smith resists that claim by first denying that he was Mostafa Mohammad's employer and then contending that, in any event, Mostafa Mohammad had been paid.

[2] Mostafa Mohammad is a high school student and, together with other members of his family including his father (Mohammad Mohammad), Mostafa Mohammad joined a fruit picking gang during the Christmas school holidays in January 2005.

[3] Mostafa Mohammad said that typically they started work about 7.00am and worked through until 2.30 or 3.00pm dependent on the weather. He said they started when the fruit was ready and worked seven days a week all through the holidays.

[4] Mostafa Mohammad says that he continued to work until he says it became clear that payment for his work would not be forthcoming.

[5] Mr Smith denies a failure to pay Mostafa Mohammad and contends that, on behalf of the employer, he paid Mostafa Mohammad by giving Mostafa Mohammad's father Mohammad Mohammad, the requisite cash. Mohammad Mohammad who gave evidence denies that he was ever paid for work performed by his son Mostafa Mohammad.

[6] Mostafa Mohammad gave unchallenged evidence that on or about 15 January 2005, he waited from 8.00 am through to 5.00 pm for Mr Smith to appear and pay him.

[7] Mostafa Mohammad says that the total amount owing to him amounts to \$933.60 being the sum of three dishonoured cheques drawn on a company incorporated as Salmon Anglers Limited Raspberry Account.

Issues

[8] The issues that the Authority needs to determine are as follows:

- (a) Who was the employer?
- (b) Was Mostafa Mohammad an employee of the employer?
- (c) Are there wages owing by the employer to Mostafa Mohammad?

Who was the employer?

[9] Mostafa Mohammad and Mohammad Mohammad were absolutely certain in their evidence before the Authority that Mr Smith was their employer.

[10] I am satisfied that Mr Smith was not their employer, but I understand why they would have thought that Mr Smith was. The principal person that the Mohammad family dealt with was Mr Smith and for all practical purposes, they saw him as being their employer.

[11] As a matter of law, as I endeavoured to make clear at the investigation meeting, Mr Smith was no more than an agent of the employer.

[12] Mr Smith's evidence (which on this point I accept) was that the company who issued the cheques that were subsequently dishonoured was the employer and that he simply managed the farm on which the raspberry fruit grew.

[13] The dishonoured cheques which constitute the wages which Mostafa Mohammad wishes to have paid to him are cheques drawn on the account of the company Salmon Anglers Ltd.

[14] These cheques, all of which were put into evidence, are all signed, according to Mr Smith, by Mr Grant Smith, the respondent's son.

[15] It appears that the respondent Mr Smith was at the time of the events complained of an undischarged bankrupt although by the time the matter came before the Authority, he had been discharged from his bankruptcy. It follows that, at the relevant time, the respondent was not able to sign cheques and his son, Mr Grant Smith, was a signatory to the account of Salmon Anglers Ltd.

[16] In evidence, Mohammad Mohammad was adamant that the cheques in question were signed by the respondent, Mr Kevin Smith and he even went so far as to claim that he had seen Mr Kevin Smith signing the cheques before he handed them over.

[17] I believe that Mohammad Mohammad was mistaken and that what he will have seen was Mr Kevin Smith completing the details of the amount of the cheque and the person to whom the cheque was to be paid. Mr Smith gave evidence that he would obtain a number of pre-signed cheques from his son and then complete the details later. That may be a business practice which is to be discouraged, but it is certainly not illegal.

[18] Mohammad Mohammad was of course encouraged in the view that Mr Kevin Smith had signed the cheques because the signature might at first glance appear to be that of Mr Kevin Smith.

[19] As a consequence of directions which I gave at the end of the hearing, I have been provided with information by Mr Smith which enables me to satisfy myself that the cheques in question are not signed by Mr Kevin Smith.

Was Mostafa an employee?

[20] Mr Smith said that Mostafa was never employed by Salmon Anglers Limited but his father, Mohammad Mohammad, was.

[21] It is difficult to accept that evidence as it is inconsistent with the provision by Salmon Anglers Limited of three cheques which are plainly made out to Mostafa and in respect of two of them, re-engrossed pay *cash*.

[22] The existence of these three dishonoured cheques in favour of Mostafa drawn on Salmon Anglers Limited Raspberry Account would seem to support Mostafa Mohammad's contention that he was:

- (a) Employed to pick raspberries by the entity we now understand to be Salmon Anglers Limited; and
- (b) Owed the aggregate of the sums represented by the three cheques which might well be unpaid wages.

[23] I accept Mr Smith's evidence that the Mohammad family worked piece-work but I do not accept the contention that only Mohammad Mohammad was supposed to be paid as that appears to be inconsistent with the existence of three dishonoured cheques in favour of Mostafa.

Is Mostafa owed wages?

[24] Mr Smith says that he paid Mohammad Mohammad in cash for Mostafa Mohammad's work. He says that he paid Mohammad Mohammad the equivalent money to the value of the three dishonoured cheques.

[25] Mohammad Mohammad denies that that money was paid to him in respect of Mostafa Mohammad's work but claims that the money paid to him by Mr Smith was money that was due to him personally for wages and was not money due to Mostafa Mohammad. Mohammad Mohammad says that Salmon Anglers Limited does not owe him any money in respect of his work.

[26] Faced with those two pieces of conflicting oral evidence and with nothing to support either man's contention, I am left to assess the credibility of the two witnesses.

[27] Clearly the relationship between all the parties was troubled; Mostafa Mohammad acknowledged committing acts of vandalism against the raspberry farm when he was not paid and I took the opportunity to speak to him about that behaviour.

[28] Mostafa Mohammad's father and Mr Smith also had a difficult relationship and each was keen for me to learn about their view of the other's bona fides.

[29] In the end, all I am left with is the conviction that the relationship between Mohammad Mohammad and his son, Mostafa Mohammad, seemed strong and sincere and had Mohammad Mohammad been paid by Mr Smith for Mostafa Mohammad's work, I feel certain, based on the interaction I saw between father and son, that Mohammad Mohammad would have accounted to Mostafa Mohammad for the money received.

[30] That being the position as I observed it, I think it more rather than less likely that Mr Smith is mistaken about paying Mostafa Mohammad through his father Mohammad Mohammad. Clearly,

the affairs of Salmon Anglers Limited were, at the relevant time, somewhat confused and this is the sort of error that could well have been made.

[31] One other matter requires comment from me in respect of the conclusion of this matter. Mr Smith alleges that Mohammad Mohammad, although by common consent he has received all his entitlement to wages, has yet to sign an Inland Revenue Department IR12 form so that Salmon Anglers Limited can account to the Inland Revenue Department for the tax that it has deducted from Mohammad Mohammad's wages.

[32] As that is an obligation of both Mohammad Mohammad and Salmon Anglers Limited, it is proper that I remind Mr Smith and Mohammad Mohammad that I had previously directed Salmon Anglers Limited to provide an IR12 form duly signed by the company which would then be provided to Mohammad Mohammad with my direction that he sign it so that it could be returned to Salmon Anglers Limited for filing with the Inland Revenue Department.

[33] Despite those earlier directions that I made, that matter has not been attended to and I now draw the parties' attention to this matter again so that both are reminded of their obligations.

Determination

[34] I direct that Salmon Anglers Limited is to pay to Mostafa Mohammad the sum of \$933.60 gross as unpaid wages.

Costs

[35] The parties are to pay their own legal costs, if any.

James Crichton
Member of Employment Relations Authority