

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2015] NZERA Wellington 40
5520074

BETWEEN MARK NEWPORT
 Applicant

AND CITI SPRINT COURIERS (HB)
 LIMITED
 Respondent

Member of Authority: Trish MacKinnon

Representatives: Applicant in person
 No appearance by or for Respondent

Investigation Meeting: 13 February 2015 at Napier

Determination: 21 April 2015

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mark Newport was employed by Citi Sprint Couriers (HB) Limited (Citi Sprint) as a courier driver from 23 June 2014 until 29 August 2014. He claims he was not paid wages owing to him under his employment agreement during that time. Nor did he receive the expenses Citi Sprint had agreed to pay him in relation to his vehicle. Mr Newport seeks payment only for those days he worked during his period of employment and one month's vehicle expenses.

[2] Citi Sprint is a registered company with one director, Mr Noel Solomon. A copy of Mr Newport's application to the Authority was delivered by courier to Mr Solomon at the registered address of the company by letter dated 30 September 2014. The registered address of the company was changed on 9 October 2014. A further copy of Mr Newport's application, and a Notice of Investigation Meeting was sent to Mr Solomon at the address on 17 December 2014.

[3] That letter was returned by the courier company which had been unable to deliver the documents. On the Authority officer's instructions, the courier company returned to Citi Sprint's registered address and left the documents at the premises.

[4] To avoid any doubt that the documents had been received by Citi Sprint, the Authority officer asked Mr Newport if he would personally serve documents on Mr Solomon. Mr Newport confirmed on 26 January 2015 that he had effected service of the documents at 8.40am that day by handing them to Mr Solomon through the open window of his car and explaining their content. Mr Newport subsequently affirmed that he had effected service.

[5] Citi Sprint made no response to the Authority and no representative of the company attended the investigation meeting. I delayed the start of the investigation meeting by 15 minutes during which time the Authority officer made further attempts to contact Mr Solomon by mobile phone, leaving a voicemail message for him. He did not respond to that message.

[6] I am satisfied from the evidence I received that Mr Solomon was served the notice of the investigation meeting and chose not to appear. I decided to continue with the investigation meeting as if the respondent had duly attended, or been represented, in accordance with Clause 12, Schedule 2 of the Employment Relations Act 2000 (the Act).

Evidence

[7] Mr Newport informed me he had signed an employment agreement with Citi Sprint in the weekend immediately preceding the commencement of his employment on 23 June 2014. He was not given a copy of the employment agreement but I accept his evidence that it was signed by himself and Mr Solomon on behalf of Citi Sprint.

[8] Mr Newport said the agreement for remuneration recorded in the employment agreement was that he would be paid \$17.50 per hour. Additionally, he would receive running expenses for the vehicle he had purchased and used on his Citi Sprint duties. Citi Sprint would also pay the monthly loan on his van. Documentary evidence was provided to me by way of an authority for automatic payments signed by Mr Solomon for that amount.

[9] It was Mr Newport's evidence that he worked for four weeks and one day before Mr Solomon asked him to take a week off as there was insufficient work. Mr Newport said Mr Solomon expressed confidence that a significant amount of work would be available from the following week. When Mr Newport returned to work the following week, he said he was told by Mr Solomon that there was no work available that week either.

[10] On 18 August 2014, Mr Newport said he gave two weeks' notice of resignation in accordance with his employment agreement. He said he did so because he had received no further work from Mr Solomon following the first four weeks and one day that he had completed. He told me the only payment he received during his employment was a minimal amount for use of diesel and for road user charges. Additionally, he said Mr Solomon paid the insurance on his vehicle for the first month of his employment.

[11] Mr Newport made it clear he was not claiming wages for the entire period of his employment but simply for the 21 days he had actually worked. He said there were no timesheets and the only record of his work was by way of the dockets for deliveries he had completed. There was one docket per delivery and he had given these to Mr Solomon.

[12] I am satisfied Mr Newport gave me an honest account of his employment with Citi Sprint. I accept his evidence that he worked the 21 days for which he is claiming remuneration. I am further satisfied he received no payment for his work and that his employer failed to pay the monthly loan on his vehicle as it had agreed to do.

[13] My assessment of Mr Newport's honesty was reinforced by the fact he claimed \$737 in respect of that loan, which was the monthly amount he actually paid. Mr Solomon, for reasons which were unclear, had signed an authority to pay \$800 each month to Mr Newport for the vehicle loan.

Determination

[14] Citi Sprint Couriers (HB) Limited is ordered to pay Mr Newport the following sums:

- (a) Twenty one days' wages calculated at the rate of \$17.50 per hour, for an 8 hour day, totalling \$2,940 gross;

- (b) Vehicle expenses in the sum of \$737; and
- (c) Reimbursement of the Authority's filing fee in the sum of \$71.56.

Costs

[14] Mr Newport represented himself in the investigation meeting and, accordingly, no issue of costs arises.

Trish MacKinnon
Member of the Employment Relations Authority