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Pech v Frederic Developments Limited (Auckland) [2007] NZERA 56 (28 February 2007)

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 52/07 AEA 574/05

BETWEEN

AND

DANIEL PECH

Applicant

FREDERIC DEVELOPMENTS LIMITED

Respondent

Member of Authority: Representatives:

Determination:

Leon Robinson

Mark Nutsford for Applicant No Appearance for Respondent

28 February 2007

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant Mr Daniel Pech ("Mr Pech") claims he was unjustifiably dismissed. He asks the Authority to investigate and resolve the problem by formal orders in his favour for reimbursement, compensation, arrears of wages, interest and costs.

[2] Frederic Developments has taken no steps in the matter. Its last involvement was to deny Mr Pech was an employee. That matter was resolved by the Authority in Mr Pech's favour the reasons for which are explained in a Determination between these parties numbered AA309/05 dated 17 August 2005. Since that time, the parties have been parties before the Employment Court. Those Court proceedings have now been disposed of.

[3] Frederic Developments Limited's counsel sought and was permitted to disengage as its representative in November 2006. There has been no further involvement by Frederic Developments Limited.

[4] At the investigation meeting held on 19 December 2006, Mr Pech established to my satisfaction that a notice of investigation meeting was served on Frederic Developments Limited at its registered office as well as on the principal director's home residence. I asked a support officer

to telephone the principal director to ascertain the company's intentions. The support officer was unable to speak with the director but left a voice message on the director's mobile telephone to contact the Authority. There was no response. Accordingly, I proceeded to deal with the matter fully as if the Respondent had attended.

[5] Because of the Respondent's failure to take any steps, the parties have not attempted to resolve the differences between them by the use of mediation.

The facts

[6] Mr Pech was employed by the Respondent as a Project Manager.

[7] He says that on 16 December 2004 the principal director Mr Keith Wagner telephoned him at home. Mr Wagner told him he was broke and could not go on with the project, and that it was all over. He told Mr Pech not to come in as everything was finished and so was he (Mr Wagner). He also said that all other staff were "let go" as well.

[8] Mr Pech says he was shocked. He says he believed Mr Wagner. They arranged for Mr Pech to retrieve his final pay the following day. Mr Pech later collected a cheque which was reduced by an amount that Mr Pech had borrowed.

[9] A few days later Mr Pech was driving past the workplace. He says to his surprise he saw that operations were continuing and his former colleagues were all working. When he telephoned Mr Wagner, he tells the Authority Mr Wagner said "he didn't want me anymore". When he asked for his holiday pay, he says Mr Wagner told him he was not entitled to any because he was a self-employed contractor.

The Determination

[10] Mr Pech's evidence is unchallenged. I have no reason to doubt it and I find that Mr Pech was dismissed. His employer does not attend to justify the termination and I discern no basis for any justification. Accordingly, I find the dismissal was unjustifiable and Mr Pech has personal grievance. He is entitled to remedies in settlement of that grievance.

[11] Having made those findings and in considering both the nature and the extent of the remedies to be provided, I am bound by [section 124](#) of the [Employment Relations Act 2000](#) to consider the extent to which Mr Pech's actions contributed towards the situation that gave rise to the personal

grievance, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly. I find no blameworthy conduct on Mr Pech's part as would constitute contributory fault.

[12] Mr Pech quantifies his lost wages as the sum of \$20,880.00. That is sixteen weeks during which he was out of work on an average gross wage of \$1,305.00. I am satisfied he took steps to mitigate his losses. Eventually he found a new job with NZ Civil in building and road works. **I order Frederic Developments Limited to pay to Daniel Pech the gross sum of \$20,880.00 as reimbursement.**

[13] I am satisfied that Mr Pech is also owed his holiday pay. He quantifies that sum as \$1,033.68 being 6% of his gross wages of \$17,228.00. **I order Frederic Developments Limited to pay to Daniel Pech the sum of \$1,033.68 as arrears of wages.**

[14] As Mr Pech has stood out of these sums since they were due to him on 16 December 2004, I think it fit that he has interest. **I order Frederic Developments Limited to pay to Daniel Pech interest on the sum of \$21,913.68 at the rate of 8% per annum from 16 December 2004 until the date of payment.**

[15] I am satisfied too that Mr Pech has suffered hurt, humiliation, loss of dignity and injury to his feelings. Having regard to his evidence and the circumstances of the dismissal, **I order Frederic Developments Limited to pay to Daniel Pech the sum of \$8,000.00 as compensation.**

Costs

[16] In the event that costs are sought, I invite the parties to resolve the matter between them, but failing agreement, Mr Nutsford is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. That submission is to be served on the Respondent and the principal director Mr Keith Wagner personally and any reply by the Respondent to be lodged within 14 days thereafter but in any case no later than 28 days after the date of this Determination.

Leon Robinson

Member of Employment Relations Authority

Summary of orders

Frederic Developments Limited is ordered to pay to Daniel Pech the gross sum of \$20,880.00 as reimbursement.

Frederic Developments Limited is ordered to pay to Daniel Pech the sum of \$1,033.68 as arrears of wages.

Frederic Developments Limited is ordered to pay to Daniel Pech interest on the sum of \$21,913.68 at the rate of 8% per

annum from 16 December 2004 until the date of payment.

Frederic Developments Limited is ordered to pay to Daniel Pech the sum of \$8,000.00 as compensation.

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