

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 97/10  
5279651

BETWEEN                      PLUMBCRAFT LIMITED  
   Applicant  
  
AND                                PATRICK HILL  
   Respondent

Member of Authority:      Yvonne Oldfield  
  
Representatives:            Sean Stephens, Director, and Martin Gould for  
   Applicant  
   No appearance for Respondent  
  
Investigation Meeting:      3 March 2010.  
  
Determination:                3 March 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]      This matter concerns a claim to recover damages arising out of a former employee's alleged breaches of contract. Plumbcraft Limited and Mr Hill entered into an agreement in February 2007 with the intention that Mr Hill would complete his drain laying apprenticeship with Plumbcraft over the next four years. As things turned out, the employment lasted only until March 2009 when Mr Hill resigned.

[2]      Plumbcraft now seeks to recover:

- i. \$2,000.00 which it says it paid to the Industry Training Organisation in respect of Mr Hill's training fees;
- ii. \$354.53 outstanding for tools supplied to Mr Hill, and

- iii. A \$130.00 fee incurred in recovering Plumbcraft's truck which was impounded when police apprehended Mr Hill driving it without a licence.

[3] Mr Hill has not provided a statement in reply to Plumbcraft's claim nor has he responded to any correspondence from the Authority, although a file note indicates that an Authority support officer has on one occasion spoken with him by telephone and informed him of the requirement to lodge a statement in reply.

[4] *CourierPost* has confirmed to the Authority that it delivered the statement of problem and the notice of investigation meeting to Mr Hill's address. In the circumstances I am satisfied that Mr Hill has been put on notice of the Authority's investigation. I therefore proceed to determine the matter on the basis of evidence supplied by Plumbcraft's witnesses at the investigation meeting of 3 March 2010.

**(i) Training fees**

[5] Mr Gould and Mr Stephens told me that Mr Hill's course fee was paid in full (that is for the whole four year apprenticeship) to the Plumbing and Gasfitting Industry Training Organisation (ITO) in or about December 2008. They also told me that the agreement with Mr Hill was that he should repay half of this himself, but that if he finished his course and went on to work for Plumbcraft for a year after that he would not have to repay the other half. At the time of his resignation in March 2009 he still had a long way to go to complete the course. According to Mr Gould and Mr Stephens, Mr Hill has never repaid any fees. Plumbcraft now seeks the full fee.

[6] Clause 6.4 of the Employment Agreement sets out:

*"Payment of apprenticeship fees*

*Apprenticeship fees are the responsibility of the Apprentice (employee). Plumbcraft has offered to pay [half] the trainee's fees -\$2250.00 providing the employee completes one year's full employment from the date the trainee becomes qualified. If in that time the employee's employment is terminated (by either party) any monies*

*paid by Plumbcraft towards training will be repaid by the employee from their final pay.”*

[7] The word “half” has been inserted by hand in the printed text of the agreement, but not initialled. It is not clear therefore whether that was done before or after the agreement was executed by the parties, but for the purposes of this determination, this issue has no material effect. The evidence is that Mr Hill did not stay with Plumbcraft until he had completed his course, let alone for a further year thereafter. Pursuant to clause 6.4 he is therefore obliged to repay Plumbcraft the full course fee.

[8] When referring to the terms of the employment agreement, Mr Gould noted that he was not sure if the figure of \$2,250.00 was correct and acknowledged that it was not the amount indicated in attachments to the statement of problem.

[9] I asked to be provided with a copy of the ITO invoice so that this point could be checked. A faxed copy was supplied to the Authority. It itemised a fee of \$2,000.00 for fees in respect of Patrick Hill. I order Mr Hill to pay to Plumbcraft the sum of \$2,000.00 in respect of course fees.

**(ii) Tools**

[10] It was part of Mr Hill’s terms of employment that he provide his own personal tools. Plumbcraft witnesses told me that during his time with the company it had purchased an extensive list of tools on his behalf, most of which he had already paid for when his employment ended. However it said that there remained an outstanding balance of \$354.53 in relation to the following items:

- i. plastering trowel;
- ii. chisel;
- iii. saw;
- iv. self-igniting torch;
- v. caulking gun, and
- vi. water pump pliers.

[11] Mr Gould and Mr Stephens told me that Mr Hill has retained these items for his own use but that payment remains outstanding.

[12] It was a term of the employment agreement that at its conclusion Mr Hill would return any tools which were the property of Plumbcraft. Mr Hill was obliged either to pay for the tools itemised here or return them. The evidence is that he has done neither of these things. I order Mr Hill to pay to Plumbcraft the sum of \$354.53 in respect of his outstanding staff account.

**(iii) Fee for vehicle release**

[13] Mr Gould told me that it was part of Mr Hill's duties to drive Plumbcraft's truck and that Plumbcraft kept a copy of Mr Hill's driver's licence on its files. In about early March 2009 Mr Gould conducted Mr Hill's regular review and asked whether there was anything the company needed to know about. Mr Hill said there was not. Within a couple of weeks of that meeting he was pulled over whilst out in the truck. When it transpired that he was driving without a licence the vehicle was impounded. Immediately after this incident, Mr Hill resigned.

[14] Mr Gould told me that the company had no idea that Mr Hill had lost his licence until that point. Plumbcraft was without the vehicle for a day or two and had to pay \$130.00 for its release. I was supplied with a receipt for this payment.

[15] I accept that the applicant has incurred unnecessary expense as a direct result of Mr Hill's misconduct in driving the company truck without a licence. I order Mr Hill to pay \$130.00 in respect of the fee incurred in obtaining the release of the vehicle.

[16] **In summary, Mr Hill is ordered to pay to Plumbcraft a total of \$2,484.53 damages in respect of costs incurred in relation to course fees, tool purchases and a vehicle release fee.**

Yvonne Oldfield

Member of the Employment Relations Authority