

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2015] NZERA Christchurch 201  
5552507

BETWEEN                      GLENDA PORTER  
   Applicant  
  
A N D                              COMPLETE SITEWORKS  
   COMPANY LIMITED  
   Respondent

Member of Authority:        Helen Doyle  
  
Representatives:              Steve Richardson, Advocate for the Applicant  
   Pera Te Amo, Advocate for the Respondent  
  
Investigation Meeting:        26 November 2015 at Christchurch  
  
Submissions Received:        26 November and 1 December 2015 for the Applicant  
   1 December 2015 for the Respondent  
  
Date of Determination:        17 December 2015

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**DETERMINATION OF THE AUTHORITY**

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- A        Glenda Porter was an employee of Complete Siteworks Company Limited.**
- B        Glenda Porter was unjustifiably dismissed and orders have been made for payments by Complete Siteworks Company Limited as below:**
- (i)        Reimbursement for lost wages in the sum of \$2880.00 gross.**
  - (ii)        Payment for the lost benefit of holiday pay on that sum in the sum of \$230.40 gross.**
  - (iii)        Payment of compensation in the sum of \$6000 without deduction.**

**C Complete Siteworks Company Limited has been ordered to pay the following amounts:**

- (i) Payment for four days Ms Porter was able to work but advised not to come to work in the sum of \$288 gross.**
- (ii) Payment for four public holidays not worked which would otherwise have been working days for Ms Porter in the sum of \$288 gross.**
- (iii) Payment at time and a half for working on Waitangi day in the sum of \$27 gross.**
- (iv) Payment for one alternative day for working on Waitangi day in the sum of \$72.00 gross.**
- (v) Holiday pay on gross earnings in the sum of \$487.32 gross.**
- (vi) Reimbursement of payment made by Ms Porter for vegetables and milk in the sum of \$28.34.**

**D I have not awarded a penalty.**

**E I have reserved costs and set a timetable for an exchange of submissions.**

### **Employment relationship problem**

[1] Glenda Porter received the following text message from the sole director of Complete Siteworks Company Limited (Complete Siteworks), Pera Te Amo on 27 February 2015 at 8.42pm. Ms Porter said that the text message dismissed her from her cook/housekeeper role with Complete Siteworks that she had held since 3 November 2014. The message provided:

*5 of the boys are moving out over the weekend and my wife and kids are moving in tomorrow so the boys are gunna sort themselves out one of them has their girlfriend moving in with them and didn't want to be looked after they rather have away allowance so if you can drop key off at some stage tomorrow if my wife isn't there just leave it under the mat.*

[2] Ms Porter says that her dismissal was unjustified. She seeks lost wages and holiday pay between 27 February and 1 May 2015 in the sum of \$3,675, outstanding arrears of wages and holiday entitlements in the sum of \$1,070, compensation in the sum of \$7,000, penalties for breach of good faith, failure to provide an employment agreement and wage and time records, and costs.

[3] In its statement in reply, Complete Siteworks says that Ms Porter was taken on as a contractor, not as an employee, and her services were simply cancelled and she was not unjustifiably dismissed.

[4] The Authority will determine the status of Ms Porter's relationship with Complete Siteworks. If Ms Porter was not an employee and the relationship was contractual in nature then the Authority has no jurisdiction to deal with her claim. If the finding is that Ms Porter was an employee then the Authority will consider if Ms Porter is owed wages and other money and whether she has a personal grievance and, if so, whether remedies should be payable.

### **The issues**

[5] As part of its investigation the Authority heard from Ms Porter and Mr Te Amo. Mr Te Amo had to leave the investigation meeting early to attend to a health and safety matter in Wellington. The Authority did hear evidence from him before he departed but Mr Richardson's cross examination was cut short. I am satisfied that Mr Te Amo had an opportunity to give his evidence to the Authority about his view of the relationship Complete Siteworks had with Ms Porter and the reasons it ended when it did. Mr Te Amo said that Complete Siteworks did not employ anyone and made general references to earlier difficulties in employing individuals.

[6] Section 6 of the Employment Relations Act 2000 (the Act) provides the meaning of employee. I set out the material provisions below:

- (1) *In this Act, unless the context otherwise requires, **employee** –*
  - (a) *means any person of any age employed by an employer to do work for hire or reward under a contract of service; and*
  - (b) *includes –*
    - (i) *a homemaker; or*
    - (ii) *a person intending to work; but*
  - (c) *excludes a volunteer who ...*
- (2) *In deciding for the purposes of subsection (1)(a) whether a person is employed by another person under a contract of*

- service, the court or the Authority (as the case may be) must determine the real nature of the relationship between them.*
- (3) *For the purposes of subsection (2), the court or the Authority*  
 –  
 (a) *must consider all relevant matters, not including any matters that indicate the intention of a person; and*  
 (b) *is not to treat as a determining matter any statement by the persons that describes the nature of their relationship*

[7] The Supreme Court in *Bryson v. Three Foot Six Limited (No.2)*<sup>1</sup> stated amongst other matters what “all relevant matters” in s 6(3)(a) of the Act means, and it is helpful to set that out:

[32] *“All relevant matters” certainly include the written and oral terms of the contract between the parties, which will usually contain indications of their common intention concerning the status of their relationship. They will also include any divergences from or supplementation of those terms and conditions which are apparent in the way in which the relationship has operated in practice. It is important that the Court or the Authority should consider the way in which the parties have actually behaved in implementing their contract. How their relationship operates in practice is crucial to a determination of its real nature.*

*“All relevant matters” equally clearly require the Court or Authority to have regard to features of control and integration and to whether the contracted person has been effectively working on his or her own account (the fundamental test) which were important determinants of the relationship at common law.*

[8] The Authority will need to consider the following in order to determine the nature of the relationship:

- (a) What was the intention of the parties to the relationship;
- (b) Was there anything in writing to indicate the terms of the relationship between the parties;
- (c) How did the relationship operate in practice;
- (d) Was Ms Porter a homemaker?
- (e) Were there features of integration and control in the relationship; and

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<sup>1</sup> [2005] NZSC 34, [2005] ERNZ 372 at [32]

(f) Was Ms Porter effectively working on her own account?

[9] If the Authority determines that the relationship was other than that of a contractor, then it will need to determine:

(a) Was Ms Porter was unjustifiably dismissed; and

(b) If Ms Porter was unjustifiably dismissed then what remedies are appropriate and are there issues of mitigation and contribution.

(c) Is Ms Porter owed wages and/or other money

(d) Were there breaches for which a penalty should be awarded?

**What was the intention of the parties to the relationship?**

[10] Ms Porter responded to a brief advertisement which she supplied as part of her evidence. The advertisement on myjobspace.co.nz provided as follows:

*Cook/housekeeper – cook and housekeeper required for contractors based in Christchurch. Start date 28th October for approx 12 months.*

[11] Ms Porter had been undertaking what she considered to be an almost identical job in Auckland for Te Aratika Drilling Limited preparing meals and doing general housework in a residence where construction crews were accommodated. She was employed in that job and had a written employment agreement which was provided to the Authority as part of the documentation.

[12] Ms Porter was interviewed for the position by Mr Te Amo who is the director of Complete Siteworks.

[13] There was a dispute whether Mr Te Amo advised Ms Porter when she was interviewed that she would be engaged as a contractor. Mr Te Amo said that other people employed in similar positions for the company in Wellington and Auckland centres are engaged as contractors and he would have and did engage Ms Porter in the same way. He could not recall when he gave his evidence what response Ms Porter gave, if any, to being engaged as a contractor.

[14] Ms Porter said Mr Te Amo did not refer whatsoever to her being engaged as a contractor at the interview or after she started work. Ms Porter said that she knew

what it was to be engaged as a contractor and had there been advice that the nature of her engagement was to be that of a contractor she would have wanted a higher hourly rate of about \$25 per hour and would not have contracted for \$18 per hour which was what she was paid.

[15] Complete Siteworks says that its intention was to take Ms Porter on as a contractor and not an employee. It has provided copies of reconciled bank account transactions from its accounting package Xero that show payments made to Ms Porter were allocated to an away from home allowance and on charged to a job. There are some emails and text messages that support that Ms Porter regarded herself as an employee and not as a contractor. I could not be satisfied from the evidence that there was a common intention between the parties as to the nature of the relationship.

**Was there anything in writing to indicate the nature of the relationship?**

[16] There was no written agreement between the parties setting out the nature of the relationship. In the statement in reply Complete Siteworks said that was because it is not normal practice for contracts to be drawn up and signed for small amounts of contract work.

**How did the relationship operate in practice?**

*Duties*

[17] Ms Porter said that she was provided with a document by Mr Te Amo at an early stage to tell her what was required of her. It was headed *Routine* with a list of duties for shopping, cleaning and cooking. These included vacuuming, bathrooms, toilets, spot cleaning, washing, drying and folding the tea towels and the bath towels and once a week undertaking a full clean and change of beds. Ms Porter was to provide meals and some ideas for food were also provided to her with this document.

[18] There was some suggestion that Ms Porter did not receive this until February 2015. I find it more likely that she received it before or about the same time she commenced her duties. Her performance of duties each day was, I find, commensurate with the document and consistent with those of a housekeeper and cook.

*Payment and hours worked*

[19] Mr Te Amo's wife, Selena Te Amo, dealt with administrative matters for the company. Ms Porter says that she provided Mrs Te Amo with her bank account details, IRD number and tax code before she started work. Mr Te Amo does not accept that IRD and tax code details were provided and there was nothing in writing to support the provision of that information. It is clear however from the emails sent to Mrs Te Amo that a bank account number was provided and payments were made by direct credit into that bank account.

[20] Ms Porter worked on average 20 hours per week and was paid \$18 per hour. The hours did vary from week to week but did not exceed 24 hours in any one week. Ms Porter would submit her total hours worked for the week by email to Mrs Te Amo and a complete copy of those emails have been provided to the Authority.

[21] Ms Porter said that she emailed Mrs Te Amo at the same email address that her hours of work were sent to wanting an employment agreement early on in the relationship. The early emails were not available for the Authority to view but there is an email dated 30 January 2015 that provides:

*Hi Selena,*

*I mailed in early December and asked about an employment contract, kiwiSaver and tax forms but never received a reply.  
As I'm having problems contacting Pera, could you please sort these documents out as soon as possible?*

*Cheers*

*Glenda*

[22] Ms Porter says she did not receive a response to that request. The Authority did not hear from Mrs Te Amo but there was, from the written material provided on behalf of the company, a suggestion that email was never received.

[23] There was also an issue raised as to the authenticity of that email because of its format. Ms Porter explained that there were issues with her laptop around Easter time and some of the emails had been uploaded to Cloud requiring her to download them to her phone and that was why they were in a different format. I am satisfied that the email provided whilst in a different format was nevertheless an authentic email.

[24] Ms Porter would generally carry out cleaning in the morning when the contractors were at work because that was easier and she would return in the

afternoon for meal preparation. Meals were required to be prepared by 7pm. Ms Porter lived about a two minute drive from the house at which she performed the duties for Complete Siteworks.

[25] Mr Te Amo said that Ms Porter worked hours to suit herself and to enable her to undertake work for her son as a contractor. Ms Porter denied that and said that she only assisted her son from time to time with paperwork and the like for his business and was not undertaking contracting work for his business. I could not be satisfied that Ms Porter was undertaking work as a contractor at that time for her son.

[26] Over the period that Ms Porter worked for Complete Siteworks she worked every Monday to Friday save for four days when she was asked not to attend at work for different reasons and she seeks payment in respect of those days if the Authority concludes the nature of the relationship is one of employment.

[27] There was a kitty maintained for general household expense incurred by the crew. Ms Porter said that she occasionally used money from the kitty to buy food or groceries. Sometimes when there was no money in the kitty jar Ms Porter would pay for groceries and ask for reimbursement providing a receipt.

[28] There is an email provided as part of the documentation in which Ms Porter advises Mrs Te Amo that there was no money in the tin and as there were no vegetables or milk she had made some purchases. Ms Porter wrote in her email that the receipt [for the purchases] is in the tin and assuming Mr Te Amo has that receipt asks to be reimbursed for \$28. Ms Porter says that such reimbursement was not made and Mrs Te Amo did not respond at all to the email. There was though an earlier record of a reimbursement in November 2014 shown as having been made to Ms Porter's bank account as *ref shopping* for a purchase of food.

[29] Ms Porter had some unpaid time off over the Christmas period. She was not paid for statutory days over that period.

### *Taxation*

[30] The gross amount of \$18 was paid into Ms Porter's bank account without tax being deducted or withheld. Ms Porter said that she did not pick that up until after she was dismissed when she looked closely at her bank accounts and discovered she had been paid the full rate without having PAYE deducted. She said that she trusted that

PAYE was being taken out and as she was only part time and having a WINZ top up at that time it did not occur to her to check. It would be usual in the absence of a withholding tax exemption certificate with a provision of labour only contract for Complete Siteworks to withhold tax deductions. That did not happen. Ms Porter did not claim for any expenses such as driving to the supermarket for supplies.

*End of relationship*

[31] On or about 24 February 2015 by email, Mrs Te Amo asked Ms Porter to state what she did for each block of hours she was claiming and to break it right down. She was also asked for information about the meals she had made for each night of the previous week and what she had planned for the week ahead. Mrs Te Amo advised that she needed that information by the following day.

[32] Ms Porter provided a two page detailed email to Mrs Te Amo as instructed that same day, breaking down in some detail what she cooked and how she undertook the housework. In the email Ms Porter pointed out that she had worked three hours on Waitangi Day morning and was only paid at the normal rate despite it being a public holiday and that she should have been paid out for time and a half. I find that supports that Ms Porter's view of the relationship was that it was employment.

[33] I further note that on the hours provided for the week to Mrs Te Amo in which Waitangi day fell Ms Porter had claimed three hours at time and a half and the balance of the hours worked, 19.45 hours at the normal rate. Mrs Te Amo did not respond to that issue or indeed to any of the matters in that email. I note that the amount deposited into Ms Porter's bank account did not include additional time for working on Waitangi day.

[34] Mr Te Amo then advised Ms Porter that he wished to meet with her at about 5pm on 27 February 2015. Although Ms Porter waited at work for a period of time, Mr Te Amo did not come to the house. He explained to the Authority that he was tied up. Ms Porter then received the text message that she says terminated her employment and Complete Siteworks says ended the contracting relationship.

[35] Ms Te Amo sent two further text messages to Mr Te Amo that evening. He did not respond to them. The first asked whether she would be paid out two week in lieu of notice as per *ERA laws* and the second was to explain that she could not drop the key back until Monday as she was out of town. The following day Ms Porter also

requested all of her pay slips within ten working days and advised she would be contacting the Authority about her unjustified dismissal.

[36] Mr Te Amo responded on 2 March to say that there was no need to drop the key off as the locks have been changed and security, police and insurance advised.

[37] Mr Te Amo said that Complete Siteworks had no further need for Ms Porter's services because the contracts were going *pear shaped* and Mrs Te Amo was coming down and *the boys were heading out of town*. Ms Porter did not accept that was the situation. She said that on 27 February she had had requests from crew members for self-saucing pudding and a roast for the following week that supported they had no idea they would not be there. She also said that after the relationship ended she drove by the house and the crew were still there.

### **Was Ms Porter a homemaker?**

[38] Mr Richardson presented a carefully structured argument that Ms Porter was a homemaker under s 5 of the Act and therefore an employee under s 6 of the Act. The two significant decisions about homeworkers from the Employment Court and the Court of Appeal concern as Mr Richardson correctly submits the health sector. I find rather than considering that matter at this point I will proceed with the more established tests as to the nature of the relationship and return only to the issue which is not a straightforward legal question if required.

### **Control and integration**

[39] I find that there was a level of control over Ms Porter. She was expected to prepare meals each weekday evening between 5pm and 7pm and that required her to attend work during that period. There was more flexibility I accept about when the housework was undertaken although as Ms Porter said in her evidence it made sense to undertake that aspect of the role when the crew was not in the house.

[40] The hours within which Ms Porter was expected to undertake her tasks were 20 hours per week. There was some slight variation to the hours each week but that was not significant. There was a list of duties which Ms Porter undertook and the only time she deviated from these duties was when she would assist the crew with washing and drying their clothes.

[41] Ms Porter did not provide any tools or equipment for undertaking the role.

[42] Ms Porter was an integral part of the business as she was involved in feeding and attending to the cleaning and washing for Complete Siteworks contractors when they were living away from home.

[43] I find that the factors under these tests weigh more in favour of an employment relationship than a contracting relationship.

#### **Fundamental or economic reality test**

[44] This test requires consideration as to whether Ms Porter was effectively working on her own account. Ms Porter did not pay tax and neither was it withheld by Complete Siteworks. Ms Porter was not registered for GST. I find that it is more likely that there was simply no discussion at all about tax. The evidence supports Ms Porter regarded herself as an employee and she was not disabused of this by Complete Siteworks. She did not claim for any expenses and took no financial risks. If Ms Porter was required to buy food with her own money she asked for reimbursement.

[45] I do not find that the factors under the fundamental test that Ms Porter was in business on her own account.

#### **Industry Practice**

[46] I am not really assisted by industry practice in this case.

#### **Conclusion**

[47] There was no common intention in this case for a contracting relationship and there was nothing in writing was provided. The evidence supports that Ms Porter thought she was an employee and made requests for an employment agreement and for time and a half for working on a public holiday. It is unfortunate that there was no discussion about these matters earlier.

[48] I find that viewed overall the real nature of the relationship was one of employment. I do not need to return to the issue of whether Ms Porter was a homeworker. For completeness the relationship did not have features of casual employment as Ms Porter attended work every day for a set period.

[49] I will consider whether Ms Porter was unjustifiably dismissed and whether she is owed money for unpaid wages, statutory days and holiday pay.

**Was Ms Porter unjustifiably dismissed?**

[50] Whether a dismissal was justifiable must be determined under s 103A of the Act which provides the test of justification. The Authority must, in determining whether a dismissal is justifiable, objectively determine whether the actions of Complete Siteworks and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

[51] The Authority must, in applying the test set out above, consider the four procedural factors set out in s 103A (3)(a) to (d) of the Act and any other factors it thinks appropriate. It must not determine a dismissal unjustifiable solely because of defects in the process if they were minor and did not result in the employee being treated unfairly. A fair and reasonable employer will also comply with the statutory obligations of good faith.

[52] Ms Porter was dismissed without notice by a text message. The text message suggested that alternative arrangements had been made for undertaking her duties of cooking and housekeeping.

[53] I do not find that the procedural requirements of s 103A (3)(a) to (d) of the 103A test or the statutory obligations of good faith were met and these defects were not minor and resulted in Ms Porter being treated unfairly.

[54] The substantive reason for Ms Porter's dismissal as set out in the text message was that the crew was going to look after themselves with an *away allowance*. Mr Te Amo in his evidence said that the crew left the house to work elsewhere although that is not altogether consistent with the contents of the text message which only refers to five of the crew moving out. Ms Porter accepted that there could be changes that meant that she may not be employed until October 2015 but she said that she did not expect her employment to finish after four months, particularly when there was nothing apparent to her that that would be the case. I could not be satisfied that there was substantive justification for the dismissal.

[55] Ms Porter has a personal grievance that she was unjustifiably dismissed from her employment with Complete Siteworks and is entitled to remedies.

*Contribution*

[56] I do not find that Ms Porter contributed to the situation that gave rise to her personal grievance.

*Lost Wages*

[57] Ms Porter said that after her dismissal she could not continue to afford to pay rent and after about two weeks she had to live in her car for about five weeks. She travelled out of town in search of work and obtained full time work on 1 May 2015 which paid more than she had received at Complete Siteworks.

[58] Mr Richardson submitted that the Authority should award lost wages beyond May because the hours of the work in the full time position were such that Ms Porter could have undertaken both roles. I do not accept that submission. Ms Porter did not look for full time work whilst employed by Complete Siteworks or it would seem part time work after she obtained full time work. She would also have had to have time to sleep. I find that any claim for lost wages should be confined to the period between 27 February and 1 May 2015 which is a period of nine weeks.

[59] Ms Porter provided a copy of her earnings during that period and confirmed that those received from the YMCA were from 1 May 2015. I cannot be satisfied in this case that Ms Porter's employment would inevitably have ended even with a fair process. I will however confine any award to a period of eight weeks which takes into account there was some unlikelihood of employment beyond a two month period.

[60] I have calculated Ms Porter's lost wages on the basis of 20 hours per week at \$18 per hour for a period of eight weeks as \$2880 gross.

[61] I order Complete Siteworks Company Limited to pay to Glenda Porter the sum of \$2880 gross being reimbursement of lost wages under s 123(1)(b) of the Act.

*Holiday pay*

[62] There is a claim for the loss of the benefit of holiday pay on that sum. I accept that claim. Ms Porter is entitled to 8% of the above award of \$2880 being the sum of \$230.40.

[63] I order Complete Siteworks Company Limited to pay to Glenda Porter the sum of \$230.40 being loss of the benefit of holiday pay under s 123(1)(c)(ii) of the Act.

*Compensation*

[64] Ms Porter claims the sum of \$7000 under this head. The dismissal clearly had a significant effect on Ms Porter's financial situation and left her homeless for a period. Her evidence supported she was very reliant on her income and the dismissal was unexpected and by text message rather than in person. She was confused about the reasons for her dismissal and that was I accept particularly hurtful for her. Ms Porter believed that she was doing a good job. Ms Porter is entitled to compensation in the sum of \$6000 without deduction under s 123(1)(c)(i) of the Act.

[65] I order Complete Siteworks Company Limited to pay to Glenda Porter the sum of \$6000 without deduction being compensation under s 123(1)(c)(i) of the Act.

**Recovery of wages and other entitlements**

*Payment of wages for four days Ms Porter was told not to come to work*

[66] Ms Porter says that she was told not to come into work at short notice for four days. On 28 November 2014 she was advised that the crew had gone North for the weekend. On 19 December 2014 she was advised there was a break in and finger printing was being undertaken by the police. On 9 and 10 February 2015 she was advised there were issues with the alarm.

[67] I accept that there may have been some issues arising on those days however Ms Porter was employed Monday to Friday and was otherwise available to work.

[68] I find that she is entitled to be reimbursed for the four days being 16 hours at \$18 per hour in the sum of \$288 gross.

[69] I order Complete Siteworks Company Limited to pay to Glenda Porter the sum of \$288 gross being reimbursement for four days on which Ms Porter was otherwise available to work.

*Payment for statutory holidays falling over the Christmas/New Year period*

[70] Ms Porter was required to take leave from shortly before Christmas until 5 January 2015. There were four public holidays falling within that period which would

otherwise have been working days for Ms Porter. She is entitled under s 49 of the Holidays Act 2003 to be reimbursed for those days. Her relevant daily pay is \$72.

[71] I order Complete Siteworks Company Limited to pay to Glenda Porter the sum of \$288 gross for the four public holidays during the Christmas/New Year period that would otherwise have been working days.

*Time and a half for working on Waitangi day and an alternative day in lieu*

[72] Ms Porter worked three hours on Waitangi day which was paid at normal time and should have been paid at time and a half. There is a balance due and owing to Ms Porter of \$27.

[73] Ms Porter should also have received payment for an alternative day in lieu for working on Waitangi day in the sum of \$72.

[74] I order Complete Siteworks Company Limited to pay to Glenda Porter the sum of \$99 being payment at time and a half for working on Waitangi day and for an alternative day in lieu.

*Holiday Pay*

[75] Ms Porter is entitled to holiday pay calculated at 8% of gross earnings. From her bank records I have calculated that payments in the sum of \$5416.50 gross were made to her. I have added to that figure the above sums of \$675 and have arrived at a total gross figure of \$6091.50. \$6091.50 multiplied by 8% is the sum of \$487.32.

[76] I order Complete Siteworks Company Limited to pay to Glenda Porter the sum of \$487.32 being holiday pay.

*Reimbursement for payment for vegetables and milk*

[77] Ms Porter asked Mrs Te Amo for reimbursement of \$28.34 for buying produce and milk during her employment but there was no response to her email. Ms Porter said in the email that she left a receipt in the petty cash tin. I find that Ms Porter should be reimbursed for that money.

[78] I order Complete Siteworks Company Limited to pay to Glenda Porter the sum of \$28.34 being reimbursement for buying vegetables and milk.

**Penalties**

[79] Penalties are claimed for breaches of good faith, not providing an employment agreement or a wage and time record. I am mindful that the nature of the relationship between Complete Siteworks and Ms Porter was disputed and any breaches, including those of good faith, have to be seen in that light.

[80] Mr Richardson relied on a determination about a Labour Inspector matter as support for penalties being awarded notwithstanding there was a dispute as to the status of the relationship.

[81] Those matters usually involve the Labour Inspector engaging with the employer in their statutory role before proceedings are issued and giving an opportunity for improvement or payment. They are different to a case by an individual involving a dispute as to the status of the employment relationship and if a finding that there is an employment relationship, a personal grievance.

[82] Whilst I have found Ms Porter was an employee it seems that Complete Siteworks believed the situation to be otherwise and made that clear at a reasonably early stage. It is unfortunate though that they did not respond to Ms Porter as soon as she raised her concerns and to Mr Richardson in a more constructive manner.

[83] I am not minded however to award a penalty for any of the claimed breaches in the circumstances.

**Costs**

[84] I reserve the issue of costs. Costs are usually awarded on a daily tariff basis and this matter took under half a day for investigation. Taking into account the holiday period rapidly approaching Mr Richardson has until 21 January 2016 to lodge and serve submissions as to costs and Mr and Mrs Te Amo until 4 February 2016 to lodge and serve submissions in reply.

Helen Doyle

Member of the Employment Relations Authority