

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 205
5366629

BETWEEN CHARLIE RIAN
Applicant

AND MARTIN PERSONNEL
LIMITED
Respondent

Member of Authority: R A Monaghan

Representatives: C Rian in person
No appearance for respondent

Investigation Meeting: 15 June 2012

Determination: 15 June 2012

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Charlie Rian seeks the payment of a bonus he says his former employer, Martin Personnel Limited (MPL), owes him. MPL employed him as a recruitment consultant, and the bonus was payable under an agreement the parties had reached in respect of a particular placement.

[2] MPL lodged a statement in reply in which it said:

- Mr Rian did not carry out the task he was required to carry out in order to qualify for the bonus; and
- The fee Mr Rian arranged for the placement in question did not accord with MPL's terms and conditions of business.

Preliminary matter

[3] MPL did not attend and was not represented at the investigation meeting.

[4] I am satisfied that it received the statement of problem and the notice of the investigation meeting. As no good cause has been shown for the failure to attend or be represented at the meeting I have proceeded under Schedule 2 clause 12 of the Employment Relations Act 2000 to hear and determine the matter.

Background

[5] Mr Rian notified MPL of his resignation on or about 12 August 2011. A meeting with the company's managing director and general manager went ahead on 12 August in order to discuss arrangements for the termination of the employment relationship. One of the matters discussed was a sensitive placement on which Mr Rian was working.

[6] The discussion resulted in a letter of the same date. The relevant provision was:

... a meeting to be set up by Mr Rian to introduce [the general manager] to the client no later than the 19/08/2011. In doing so an addition bonus of 25% of any fee, representing the current vacancy of ..., will be paid to Mr Rian upon payment of the client.

[7] Nothing turns on the fact that an apparently original version of the letter filed in the Authority was signed by the general manager but not by Mr Rian. Mr Rian said there was a second original which he signed, but in any event I accept the letter set out the parties' agreement on the point.

[8] The placement was successful. A fee was paid to MPL in respect of it. Mr Rian sought a payment of \$2,500 as his bonus, being 25% of the fee paid.

[9] The managing director replied by emailed message dated 2 November 2011 saying the outcome was a good result but that:

... there was a fall over in one of his placements at ... and I have had to write a credit of \$2,333.04.

The difference is \$166.96.

I offer this amount as full and final settlement of our employment relationship.

The cheque is in the mail.

[10] Mr Rian says MPL was not entitled to make that deduction, and seeks payment of the full amount of \$2,500.

Determination

[11] On the face of this matter Mr Rian is seeking an order for a payment to which he is entitled in terms of the 12 August letter. MPL has purported to make a deduction from the amount owed.

[12] Nothing in the parties' written employment agreement, or in any other document signed by Mr Rian, permits such a deduction. The attempt to make it was a breach of the Wages Protection Act 1983.

[13] MPL has attempted to justify its action with reference to the points raised in the statement in reply, and to further information set out in a written statement of its managing director.

[14] None of that material was properly in evidence. At least an attendance on the part of a suitable witness for MPL was required in order to secure such treatment of that material. In the absence of a suitable witness Mr Rian's evidence went unchallenged.

[15] Accordingly I am not satisfied that the facts support the first of the points raised in the statement in reply, that is I am not satisfied that Mr Rian failed to do what he was required to do in order to qualify for the payment. Regarding the second point, Mr Rian said the fee arranged with the client was discounted from the fee specified in the terms and conditions of business, but the discount was authorised. In the absence of any evidence to the contrary from MPL I accept that.

[16] Finally, even if it is accurate, neither the additional information contained in the managing director's statement nor the original reliance on the 'fall over' in another placement amount to a defence to the breach of the Wages Protection Act. If the reference to a 'full and final settlement' in the emailed message of November 2011 was intended as a reference to matters of the kind set out in the managing

director's written statement, then it was vague at the time and has done no more than lead me to speculate now.

[17] Moreover none of the disputes of the kind suggested by MPL's material are before the Authority for determination, as there has been no counterclaim. I take the material no further.

Order

[18] MPL is therefore ordered to pay Mr Rian the sum of \$2,500 (gross).

[19] The amount is due and payable immediately.

Costs

[20] MPL is further ordered to reimburse Mr Rian for the filing fee of \$71.56.

R A Monaghan

Member of the Employment Relations Authority