

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 136/08
5097532

BETWEEN TREVOR ALLAN
 RICHARDSON
 Applicant

AND JAMES AND ANN NICHOL
 Respondent

Member of Authority: Yvonne Oldfield

Representatives: Mr Richardson in person
 Mr and Mrs Nichol in person

Investigation Meeting: 8 February 2008

Further information 21 February 2008 from Respondent
received

Determination: 10 April 2008

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Richardson was employed by Mr and Mrs Nichol on their dairy farm from November 2004 until June 2007. He says that during his employment they failed to deduct the correct amount of PAYE from his wages, with the result that Inland Revenue has sought payment from him for the balances owed over successive years. Some of this debt appears to have been paid back already¹. However, according to his personal tax summary, a deficit of \$2,117.47 relating to the 2006/2007 year remains outstanding. He wants Mr and Mrs Nichol to pay this debt.

[2] Mr Richardson also says that the farm cottage which was provided to him as part of his terms of employment was substandard. His statement of problem seeks to

¹ On 27 March 2007 Inland Revenue directed Mr and Mrs Nichol to deduct the sum of \$735.79 from Mr Richardson's wages in instalments, which they subsequently did. This repayment appears to relate to a PAYE shortfall prior to the 2006/2007 tax year.

have the accommodation valued “*to see if it is correct against what has been charged and be reimbursed accordingly.*”

[3] Mrs Nichol was responsible for organising Mr Richardson’s wages and making his PAYE payments to Inland Revenue. She believes she paid Mr Richardson the correct gross pay but accepts that she must have deducted the wrong amount of tax from his wages. She and her husband have offered to pay any penalty Mr Richardson may incur,² but have refused to pay the outstanding tax. They also say that the cottage was not substandard as they had renovated it not long before Mr Richardson began using it.

[4] Tax and accommodation matters are outside the jurisdiction of the Employment Relations Authority. Soon after the matter was lodged here I convened a telephone conference with the parties and told them so. At the same time however I gathered that there were background issues between them that did fall within my jurisdiction. The terms of employment had never been set out in writing and Mr Richardson had not received payslips. He had paid varying amounts of child support during the time of his employment and so the direct credit into his bank account had been adjusted several times. The result of all this was that he was unclear about his entitlements as well as about what he had been paid in total. This was hindering him from sorting out the situation with Inland Revenue and also led him to wonder whether his gross pay was correct.

[5] I therefore proceeded to meet with the parties and investigate these background issues, specifically:

- i. What the agreed terms and conditions of employment were, and
- ii. Whether during the year 2006/2007 Mr Richardson received the gross pay he was entitled to.

² So far, Mr Richardson has not been charged a penalty.

The terms and conditions of employment

[6] Both Mr and Mrs Nichol gave evidence at my investigation meeting along with Mr Richardson. All three found it difficult to remember their early discussions about the terms of employment because it was some time since Mr Richardson had first gone to work at the farm. Mr and Mrs Nichol told me they did supply Mr Richardson with a standard Federated Farmers employment agreement but he did not sign and return it to them. Mr Richardson did not recall that.

[7] After questioning all three and examining what records there were (wage and time records were incomplete) I established that Mr Richardson accepted the job on the basis that he would work up to 55 hours per week, with every second weekend off. In return he would receive:

- i. \$550.00 per week gross (paid fortnightly);
- ii. the use of a three bedroom farm cottage free of charge, and
- iii. an unspecified annual bonus in either cash or bobby calves (to be sold at market at Mr Richardson's discretion.)

[8] For tax purposes, the cottage was valued at \$100.00 per week. At the time of his employment Mr Richardson was not told specifically that the accommodation was a taxable benefit or what it was valued at. However he was told that (exclusive of the bonus) he would be on an annual salary of \$34,000.00. \$550.00 per week plus accommodation valued at \$100.00 comes very close to this figure (it equates to an annual salary of \$33,800.00.) I accept therefore that the cottage was valued at \$100.00 from the outset of the employment.

[9] At my investigation meeting Mr Richardson and his partner expressed concern that they had to pay tax on the value of the rent for the cottage, when they had been told they had free accommodation. Mrs Nichol explained that this was not up to her, but was something she was required to do by Inland Revenue. She provided me with copies of the information she had received about this from Inland Revenue. I am

satisfied that this matter was not at her discretion. The full package, including the value of the cottage, was taxable income.

[10] During his time with the respondents Mr Richardson did not get any increases in his weekly pay however his bonuses were adjusted from year to year. Overall his terms and conditions of employment appeared to be consistent with the “going rate” for this industry. I was given the 2006 Federated Farmers remuneration survey in evidence and noted in it that the average annual wage of a northern North Island dairy farm employee (inclusive of all benefits including accommodation) was approximately \$36,000.00. With bonuses added in, Mr Richardson’s package for the 2006/2007 year exceeded this figure.

Payments made

[11] Mr Richardson has no issue regarding the bonuses and is satisfied that they were paid (either in calves or cash) as they should have been. There is also no dispute that he received free accommodation and as I have already said, his issues about the quality of the accommodation are outside my jurisdiction.

[12] This leaves the issue of whether he did in fact receive \$550.00 gross per week. I was provided with Mr Richardson’s bank statements from which I was able to calculate that net payments to his bank account during the 2006/2007 year totalled \$21,799.84. Information about his child support payments showed that child support was deducted from his wages at a rate of \$112.50 per fortnight from the fortnight ended 27 July 2006 until the end of the financial year.

[13] As for the PAYE deductions, Mr and Mrs Nichol supplied me with their employer PAYE payment statements for the period. Because he was their sole employee these provide a record of PAYE paid to Inland Revenue in respect of Mr Richardson. For the period in question the sum of payments recorded on the statements was \$4,950.72. However the “total tax paid” figure on Mr Richardson’s

personal tax summary³ was \$4,505.45 (a difference of \$445.27.) If the figure supplied by Mr and Mrs Nichol is correct it would appear either that Inland Revenue have failed to credit the full amount of their payments to Mr Richardson's IRD account. Alternatively, they may have failed to remit this money to Inland Revenue on Mr Richardson's behalf. Either way, the effect would have been to inflate his tax bill. Mr Richardson may wish to ask Inland Revenue to check this matter.

[14] Setting aside the personal tax summary, and considering only information that has come directly from the parties themselves, it can be established that the following payments were made by the respondents to or on behalf of Mr Richardson between 1 April 2006 and 31 March 2007:

Net payments to his bank account	\$21,799.84
PAYE deductions	\$4,950.72
Child support payments	\$2,025.00
TOTAL	\$28,775.56

[15] \$28,775.56 gross per annum equates to \$553.38 weekly. It appears that Mr Richardson was paid the correct gross pay during the 2006/2007 tax year.

Yvonne Oldfield

Member of the Employment Relations Authority

³ Mr Richardson's personal tax summary for the 2006/2007 tax year set out his taxable income as \$34,252.00. Being inclusive of the value of the accommodation, that figure, as we have already seen, is consistent with what was agreed.