

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 273/09
5075822

BETWEEN STEPHEN BRUCE RIPPON
Applicant

AND NORSAND LIMITED
Respondent

Member of Authority: Yvonne Oldfield

Representatives: Stephen Rippon in person
Murray Wilkinson for Respondent

Investigation Meeting: 23 April 2009

Determination: 11 August 2009

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In a determination dated 11 December 2007 I concluded that Mr Rippon had been unjustifiably dismissed and ordered an award of compensation. At paragraph [4] of the determination I noted:

“Mr Rippon also claimed that when he left the company he was unable to take certain items with him. He sought their return. By the end of the investigation meeting good progress had been made on resolving this issue and [the then representatives of the parties] assured me that they would complete arrangements for the return of personal items without the need for orders from the Authority.”

[2] Unfortunately however it turned out that this view was optimistic. In mid 2008 Mr Rippon informed the Authority that he had not received all his property back in a satisfactory state. Further discussions and attempts at mediation during 2008 failed to resolve the matter. After a teleconference with the parties in which I clarified the

remaining issues I convened an investigation meeting to hear evidence about the outstanding claims.

Issues

[3] The background to these claims was that initially, Mr Rippon had worked as a contract painter in the respondent's boatyard. After the relationship changed to one of employment, he continued to use some of his own tools and equipment. There was no dispute that he left some such property behind when he was subsequently made redundant, but issues arose as to what that consisted of, and what its value was. The items which remain in dispute are as follows:

- i. work bench;
- ii. CD player;
- iii. soft pad and fittings;
- iv. step ladder, and
- v. chisels and spreaders.

[4] Mr Rippon sought either the return of the items or orders for reimbursement of the cost of their replacement. He also sought \$1,000.00 compensation for the stress and inconvenience associated with the loss of his tools and the delay in recovering them.

(i) Work bench

[5] This item had been returned but Mr Rippon told me it was in a damaged condition. He seeks to recover the cost of repairs to it. His evidence was that when it was returned the cross beam bracing (a piece of 6 x 2) was loose. Although no materials were needed apart from nails, he says it took him some time to fix it and put the cost of the labour involved at \$100.00. Mr Rippon showed me photos of the workbench but it was not possible to make an accurate assessment of its condition from these. In response to questions about its age he told me at one point that it had high sentimental value because he had had it since he started out and at another that it was between three and three and a half years old at the time he took it to the respondent's yard.

[6] Mr Wilkinson strongly disputes any suggestion that the state of the workbench deteriorated while it had been left at his workshop. He told me that prior to its return to Mr Rippon the workbench had been stored in a container and had not been used. He told me the workbench was built of scrap wood, was unstable, and had no value.

[7] I am not satisfied that there is sufficient evidence to establish that the condition of the workbench deteriorated while it was at the respondent's yard. **No order is made for damages in relation to this item.**

(ii) CD player

[8] Mr Rippon told me that he took his CD player into the workshop in 2006 and used it continuously thereafter. He said that on the day he had arrived to pick up his belongings from the workshop, he was offered a completely different item to the one he left behind. Mr Wilkinson conceded that his staff offered Mr Rippon the wrong thing. He brought what he believed to be the right one to the investigation meeting. Mr Rippon agreed that this (a Sony) was of similar type and age to his (probably, from its appearance, at least ten years old.) However, although he said he could not remember the brand he did not think his had not been a Sony. He also said that it was still in "reasonable working condition" when he last saw it. The Sony Mr Wilkinson showed us did not appear to be in working condition at all. Mr Rippon was not prepared to accept it and asked me to make an order for damages to the value of the item he had left behind.

[9] Whether the item Mr Wilkinson showed me was Mr Rippon's CD player or not, it was not in dispute that it was about the same age. Electronic goods do not hold their value. A well-used ten year old CD player is of negligible value. No meaningful order for damages can be made. **I decline Mr Rippon's claim in relation to the CD player.**

(iii) Soft pad and fittings and spreaders.

[10] These items are grouped under one head because (even though he did not have first hand knowledge that Mr Rippon had left them behind) Mr Wilkinson was prepared to concede the possibility that he had, and was willing to pay the

replacement cost. There was some dispute between the parties as to what the new cost would be. Mr Rippon provided invoices to show total replacement costs of these items at \$112.89. Since it is not possible to establish precisely what was lost to him, I have accepted this as the best evidence available of the replacement cost of the items if purchased new.

(iv) Chisels

[11] Mr Wilkinson told me that while he was prepared to accept that Mr Rippon may have brought in his own spreaders and scrapers, he did not accept that Mr Rippon brought in a chisel set as he claims. He told me that there were plenty of chisels on site and that Mr Rippon had access to an order book and could have bought more if he had needed to. He noted that a chisel set was not something a painter used constantly, and when a painter did need a chisel, it did not need to be a good one. For this reason he disputed the cost quoted by Mr Rippon for a mid-range replacement (\$79.10.) For his part, Mr Rippon told me that the price quoted was for a mid range set similar to the one he says he had on site.

[12] I have concluded that I must give Mr Rippon the benefit of the doubt in respect of the chisels. Mr Wilkinson's evidence was based on a belief that Mr Rippon would not have needed to bring chisels in, but he did not know for sure whether he did or not. Since it is not in dispute that Mr Rippon did bring his own tools to the yard, I accept that chisels were likely to have been included. I also accept that it is reasonable to say that a mid-range set of chisels would have been appropriate for his purposes.

(v) Ladder

[13] Mr Rippon told me he was in the habit of bringing his own ladder to work because there were no more than 7-8 ladders available on site and these were not sufficient for the use of all the different tradesmen present. (He said there could be as many as 20 boats being worked on at any one time.) Mr Wilkinson does not accept that Mr Rippon had a ladder on site at all, and notes that there were "*ladders everywhere... 50 of different types.*"

[14] The two witnesses were also in dispute about the cost of a replacement ladder suitable for a painter's purposes. Mr Wilkinson showed me an advertisement for a ladder priced at \$177.02 but Mr Rippon said this was a "home handyman's ladder" and not suitable for a tradesman. He showed me a quote for \$335.76 for a ladder of the type he said he left behind.

[15] Once again, Mr Wilkinson did not know for sure whether or not Mr Rippon brought a ladder in to the yard along with his other equipment. I have concluded that I must give Mr Rippon the benefit of the doubt in respect of the ladder as I did with the chisels, and for the same reasons.

[16] I also give Mr Rippon the benefit of the doubt in relation to the value of a replacement ladder. I consider on balance that a painter would have been more likely to use a ladder of the type he describes than the one Mr Wilkinson priced for the Authority.

Orders

[17] Mr Rippon believes he is entitled to be reimbursed the cost of new replacements. As set out above, I have accepted his evidence of the price of replacement items if purchased new, as follows:

- i. soft pad and fittings and spreaders: \$102.89;
- ii. set of chisels: \$79.10, and
- iii. ladder \$335.76

[18] This totals \$517.75. However none of the items left behind were new. Mr Rippon told me that the soft pad and fittings were one or two months old (out of a potential life span of months rather than years), the chisels were six months old and the ladder three and a half years old.

[19] In these circumstances damages equating to the cost of new replacements cannot be justified. Neither party provided me with any evidence as to the likely level of depreciation. I have therefore taken what I consider to be a reasonable middle road and applied the rule of thumb that the items would have retained no more than 50% of

their value. The respondent is therefore to pay to Mr Rippon a sum equalling 50% of the purchase price of new items.

[20] Norsand Limited is therefore to pay to Mr Rippon damages in the sum of \$258.88 in total for the loss of items which were not returned to him at the end of his employment.

[21] As indicated above, Mr Rippon also claimed \$1,000.00 compensation as a general remedy for stress associated with the loss of use of his belongings. This claim does not succeed. The delay and inconvenience experienced by Mr Rippon is partly of his own making in that he was unwilling to accept reasonable offers made by Mr Wilkinson (including offers made in relation to the soft pad and fittings) and I am not convinced that a case has been made for further compensation in disadvantage or any other cause of action.

Yvonne Oldfield

Member of the Employment Relations Authority