



New Zealand Employment Relations Authority Decisions

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Rodie v Easton (Wellington) [2010] NZERA 974 (24 February 2010)

Last Updated: 22 June 2011

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

WA 35/10 5289608

BETWEEN ASHLEY RODIE

Applicant

AND COLIN EASTON

Respondent

Member of Authority: Representatives:

Investigation Meeting: Determination:

P R Stapp

Keith Rodie for Applicant

No appearance by Respondent

24 February 2010 at Palmerston North

24 February 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Rodie has claimed that he is owed \$2,000 grade bonus and \$3,000 production bonus from Mr Colin Easton, a dairy farmer.

[2] There has been no reply from Mr Easton.

The Authority's investigation meeting

[3] There was no appearance by Mr Easton at the Authority's investigation meeting. I was satisfied that Mr Easton was properly served with the notice of the investigation meeting and all the papers by courier using track and trace. The start of the Authority's investigation meeting was delayed to enable the Authority's support officer to make attempts to contact Mr Easton and check on his whereabouts. The support officer telephoned Mr Easton twice but there was no answer. There has been no good cause for Mr Easton's failure to attend the Authority's investigation meeting.

Therefore, under clause 12 of Schedule 2 of the Employment Relations Act I proceeded to act fully in the matter as if Mr Easton attended or been represented.

Consideration of mediation

[4] The applicant and his father would have attended mediation if Mr Easton had agreed and had been cooperative. I considered directing the parties to mediation but decided not to make any direction because I considered that mediation

would not contribute constructively to help to resolve the employment relationship problem. I reached this decision because Mr Easton had not replied to correspondence, had not provided a statement in reply and had not reasonably contacted the Authority with any explanation of his failure to reply and respond to the statement of problem and the notice of investigation meeting and an Authority memorandum.

The respondent's conduct

[5] Mr Easton has been uncooperative in assisting the Authority's investigation. He has not been communicative by failing to provide a statement in reply and to follow the directions of the Authority's memorandum requiring him to produce wages and time records and any other relevant documents to consider Mr Rodie's claim.

Issues

[6] Is Mr Rodie owed the money he has claimed? **The facts**

[7] Ashley Rodie was employed by Colin Easton. Mr Rodie was employed as a dairy assistant on Mr Easton's dairy farm. Mr Rodie had no knowledge of any relationship with a company and or any other legal entity associated with his employment. I accept that Mr Rodie reasonably believed that his employer was Colin Easton. This conclusion is supported by the employment agreement between Ashley Rodie and Colin Easton and that there is no indication from any of the paperwork produced that there is any other legal entity that could have been the employer.

[8] Mr Rodie was paid a gross annual salary of \$40,000 per annum plus a grade bonus of \$2,000 and a production bonus of \$1,000 for every 60,000 milk solids. He estimated the latter involved \$3,000. He accepted that the grade bonus could involve a deduction of up to \$200 per grade, but claims he had no formal notice of any such deduction during his employment, although he did have one meeting about performance.

[9] The employment agreement and details on the remuneration refer to a package of \$45,000 including the bonuses. Mr Rodie expected the payment of the bonuses at the end of the season. The details confirm the bonus arrangements.

[10] Mr Rodie worked for the season and handed in his notice and was paid his entitlements and final pay except for the two bonuses. Mr Rodie had no issue about the calculation of his wages and final pay.

Determination

[11] It is my finding that Mr Rodie is owed a grade bonus of \$2,000 without any deduction and the production bonus of \$3,000.

[12] I have accepted Mr Rodie's evidence in the absence of anything being produced by Mr Easton. Furthermore Mr Easton failed to attend the Authority's investigation meeting following attempts to contact him and no reasons for his failure to attend were provided. Thus he defaulted on any opportunity to provide any explanation and evidence contrary to Mr Rodie's claim.

[13] Mr Rodie produced a discussion paper which was purportedly written by Mr Easton. Mr Easton's failure to attend the Authority's investigation meeting meant that the paper could not be scrutinised and Mr Easton could not be questioned on any of the content. Thus, I have given the paper little weight and come to the conclusion that Mr Easton has reneged and defaulted on the payments he was required to honour under the employment agreement. Mr Rodie gets the credit for producing the paper when the document might have been adverse to him about the eligibility for payment of the grade and production bonuses. In any case the employment agreement required the payments to be made.

Orders of the Authority

[14] I order Colin Easton to pay Ashley Rodie:

- a. \$2,000 grade bonus; and
- b. \$3,000 production bonus.

[15] I also order Colin Easton to pay Ashley Rodie the \$70 filing fee.

P R Stapp
Member of the Employment Relations Authority