

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 45/10
5130833

BETWEEN ROLLING THUNDER
 MOTOR COMPANY
 LIMITED
 Applicant

AND DIANE KENNEDY
 Respondent

Member of Authority: Paul Montgomery

Representatives: David Burton, Advocate for Applicant
 Respondent in person

Submissions Received: 29 September 2009 for Applicant

Determination: 3 March 2010

DETERMINATION OF THE AUTHORITY

[1] In this application to the Authority, the applicant states:

That the respondent owes the applicant money that it has loaned her over a period of time, which despite demand, she has refused to pay.

The sum in question totals \$71,230.39 (the loan).

[2] The applicant seeks:

- Judgment in the sum of \$71,230.39;

- Interest;

- Costs;

- A compliance order requiring the respondent to pay the above sums;
- Any other order considered just.

[3] In her statement in reply, Ms Kennedy says:

The account is in dispute.

I would like the opportunity to discuss this with Chris Elles (Managing Director).

[4] In a statement of evidence Mr Elles says he has attended two mediations and the matter still remains unresolved.

The brief facts

[5] Ms Kennedy was employed as the General Manager of the applicant company, Mr Elles having purchased the business in January 2001.

[6] Ms Kennedy was employed in the business for many years and continued to work for it when it was purchased by Mr Elles. She continued in her role as General Manager. No written employment agreement defining the terms of the relationship was entered into by the parties.

[7] The debt incurred by Ms Kennedy arises from purchases made using the Barter Card system.

[8] Mr Elles says

Essentially, Barter Card operated as a company credit card for employees. It was to be used for company purchases. There was also a clear agreement with Diane that it could be used for personal purchases but that person would have to reimburse the business. As General Manager this was Diane's responsibility.

[9] There is no evidence of any written agreement as to the terms under which the Barter Card could be used by employees for personal purposes, at least nothing has been put before the Authority confirming this was a *clear agreement*.

[10] Mr Elles said the use of the Barter Card was a benefit of Diane's employment agreement with the applicant. However, the agreement was that any sums spent on the card were to be repaid. The Authority has no confirming documentation.

[11] The applicant company and its officers have provided the Authority with three spreadsheets and a welter of invoices relating to the purchases in question.

Analysis and discussion

[12] This matter placed before the Authority is not a personal grievance, nor is it a dispute regarding the application, interpretation or operation of an employment agreement. Nor is the action the recovery of wages and there is no application for a penalty in respect of a breach of an employment agreement. There being no written agreement, the issue of recovery of overpayments cannot apply.

[13] In a letter dated 26 June 2008 Mr Burton on behalf of his client wrote to the respondent's then solicitor saying:

Diane has not contacted Chris Elles as requested to arrange repayment of the loan that she owes the company.

The company formally demands payment of the loan, which amounts to \$71,230.39 (without interest).

If payment in full is not made within seven days of the date of this letter (or an agreed arrangement is made to repay the loan), then we advise Diane that debt recovery proceedings will be commenced without further notice to her. If it is necessary to do so, legal costs will be sought.

[14] The Authority is of the view that this is simply a debt recovery operation for money lent to the respondent over an extended period of time. There is no dispute that the respondent was employed by the applicant until her employment ceased due to redundancy on 19 June 2008. However, the debt in question has accumulated over time with the knowledge, though clearly not with the full approval, of the applicant company and its Managing Director.

Determination

[15] This matter does not fall within the jurisdiction of the Employment Relations Authority. The Authority is unable to give judgment in respect of an unpaid loan. Fora exist in other jurisdictions in which the applicant company may pursue and obtain judgment and the Authority recommends the applicant initiates proceedings in such for a.

[16] The application is dismissed for want of jurisdiction.

Costs

[17] Costs are to lie where they fall.

Paul Montgomery
Member of the Employment Relations Authority