

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

Determination Number: AA 371/07
File Number: 5095241

BETWEEN Safeway Scaffolding (NZ) Ltd

AND Peter Kiwara

Member of Authority: Janet Scott

Representatives: Gary Mansell for applicant
No appearance for respondent

Investigation Meeting: 28 November 2007 in Auckland

Determination: 29 November 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant company seeks to recover from a former employee monies spent by it in respect of training the worker and for a leather vest the worker did not return when he left the company's employment without notice.

[2] The sum sought \$2925.73 net being \$2251.54 spent by the company in respect of a training course attended by the worker (fees, wages, bonus, holiday pay and travel costs) and \$148.44 to reimburse the company for a leather vest not returned by Mr Kiwara when he left the company's employment.

Note: There was no appearance for or on behalf of the respondent. I am satisfied that the respondent was served with the Statement of Problem and with the Notice of Investigation meeting. As I am satisfied the respondent has been given the opportunity to defend the matter before me and that he has been advised of the consequences of a failure to attend the hearing I have proceeded to hear and determine the matter in accordance with the provisions of Clause 12 of the Second Schedule to the Act.

Background

[3] Mr Kiwara was employed by the company as a scaffolder under an IEA dated 9 May 2006. The IEA contained the following provision at Clause 14.4:

All issued company property is to be returned and any money owed to the company repaid before final payment of wages is made. If this provision is not

complied with, the value of any unreturned property and any debts to the company will be deducted from the final payment.

[4] Between August and October 2006 the respondent attended an Advanced Scaffolding course at Tai Potini Polytech. Prior to attending that course he signed an agreement with the company to repay all costs associated with the course if he left the company's employment within 2 years of completing the course.

"This is to confirm that should I leave Safeway Scaffolding's employment within two years of completing my Advanced Scaffolding course I will re-pay all Safeway's costs for Tai Potini tuition and my wages while attending the course

Peter Kiwara 24-7-06"

[5] Mr Kiwara also signed the following undertaking with the company in respect of a vest which was issued to him.

"Received one Safeway oilskin on loan.

I understand that if I lose this I may be asked to repay all or part of the cost. Cost price \$148.44 each.

Peter Kiwara 4-7-06"

[6] It is the respondent's evidence that the respondent abandoned his employment without notice at Christmas 2006. The original claim made on the respondent included the cost of a harness issued to him. The company advises that item was returned to it.

Discussion

[7] The applicant's witness was credible and the documentation supports the company's claim that the respondent entered into clear agreements to reimburse the company for the sums sought if he failed to comply with the bargain reached regarding the training costs incurred by the company or if he failed to return gear issued to him.

[8] I am satisfied the respondent should be directed to pay to the applicant the sum sought.

Determination

[9] The respondent Peter Kiwara is directed to pay to the applicant company – Safeway Scaffolding – the sum of \$2925.73 net.

Janet Scott

Member of the Employment Authority