

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Anita Smith (Applicant)
AND Opetaia Apinelu (Respondent)
REPRESENTATIVES Anita Smith in person
Opetaia Apinelu in person
MEMBER OF AUTHORITY James Crichton
INVESTIGATION MEETING 14 September 2005
DATE OF DETERMINATION 22 November 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Ms Smith) alleges that she was employed by the respondent (Mr Apinelu) from 5 October 2004 down to 30 November 2004 and that she is due wages for that period. Her claim is exclusively in respect to these allegedly unpaid wages.

[2] Mr Apinelu denies both that he owes wages to Ms Smith and indeed that he employed her at all.

[3] Mr Apinelu in effect said that the claim was activated by malice because he and Ms Smith had previously been in a domestic relationship and he was now with someone else. In Mr Apinelu's words, the claim was *about her and me*.

[4] Ms Smith acknowledged that she had been in a domestic relationship with Mr Apinelu but she denied that she was simply bringing the claim because she was unhappy about the way that that relationship had ended.

[5] The employment relationship, if there was one, would have existed at the Santa Rosa Poultry Farm south of Christchurch. Ms Smith's evidence was that Mr Apinelu was engaged there as a contract cleaner and that she was employed by him to clean the poultry farm in company with others.

[6] Mr Apinelu denied on oath that Ms Smith did work for payment and even denied her understanding of the relationship between himself and the Santa Rosa Poultry Farm (Santa Rosa). Mr Apinelu's evidence was that the cleaners employed by Santa Rosa were employed on wages by Santa Rosa and that he was simply one of those waged cleaners at the time in question.

[7] Further, Mr Apinelu denied even associating with Ms Smith during calendar 2004 and said the last time they had worked together was calendar 2002.

[8] Mr Apinelu accepted that there was a time when he and Ms Smith were together at the poultry farm but he said this was not 2004 but 2002. Even at that earlier time, Mr Apinelu's evidence was that Ms Smith was there as a volunteer and was certainly not employed either by him or by Santa Rosa.

[9] There was unchallenged evidence before the Authority that Santa Rosa did not employ Ms Smith and had no record of her ever being employed by them. In order to determine whether Ms Smith has a wages claim against Mr Apinelu, the preliminary issue that must be resolved is whether in fact there was an employment relationship between Ms Smith and Mr Apinelu.

Was Ms Smith employed by Mr Apinelu?

[10] I am not satisfied on the evidence before me that there is an employment relationship between Ms Smith and Mr Apinelu. There is no documentary evidence whatever before the Authority of such a relationship existing and only Ms Smith's oral testimony that such a relationship existed. That oral testimony is of course countered by Mr Apinelu's oral testimony to the opposite effect.

[11] No oral evidence from any other source was available to the Authority to assist it in resolving the fundamental issue behind Ms Smith's claim. At the investigation meeting, the parties readily agreed to my suggestion that I should speak with two persons who were mentioned in evidence, one being a manager at Santa Rosa and the other being a union official which Ms Smith claimed to have spoken with.

[12] The Santa Rosa manager had, on inquiry, long since left the firm without a forwarding address and the union official that Ms Smith claimed to have spoken to was also not able to be found in the union in which she said that he had worked.

[13] In all the circumstances then, I am not persuaded that the applicant has made out her case that there was in fact an employment relationship between her and Mr Apinelu and that being the position, her wages claim must, of necessity, fail.

Determination

[14] I am not persuaded that there is sufficient evidence before the Authority to find an employment relationship between the applicant and the respondent and in consequence the applicant's wages claim fails.

Costs

[15] Costs are to lie where they fall.

James Crichton
Member of Employment Relations Authority