

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 268/08
5126509

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| BETWEEN | MARK SWITZER Applicant |
| AND | STING GAS SERVICES LIMITED First Respondent |
| | THE STING SAFETY CENTRE LIMITED Second Respondent |

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| Member of Authority: | R A Monaghan |
| Representatives: | M Switzer, in person for Applicant M Sinclair, advocate for Respondents |
| Determination: | 25 July 2008 |

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mark Switzer says he is owed wages and holiday pay for work done between 29 January and 25 March 2008. The amount sought is \$3,844.56 (nett).

[2] Peter Sinclair, the director of both respondent companies, has not denied that the sum is owed.

Attempts to resolve the problem

[3] No statement in reply was received. By the time he filed his statement of problem Mr Switzer had made several approaches to Mr Sinclair regarding payment, but had not been paid. In the circumstances I concluded that mediation would be unlikely to resolve the matter and set it down for an investigation meeting.

[4] The meeting was scheduled for 17 July 2008.

[5] On or about 10 July 2008 Mr Sinclair contacted a member of the Authority's support staff to advise that the money would be paid. He was asked to formally confirm the position, but did not do so. In a subsequent conversation he indicated he had not previously had the funds to make the payment, but that funds were now becoming available. In a conversation on 16 July 2008 Mr Sinclair announced he intended to pay an amount lower than the amount owed, but agreed to provide a cheque to the Authority, to be forwarded to Mr Switzer. On the afternoon of 16 July he sent the Authority a facsimile copy of a completed cheque in the sum of \$3,800 with the original to be provided to the Authority the next day. In reliance on that arrangement, the investigation meeting was cancelled.

[6] The original of the cheque was not provided. A support officer made several attempts to contact Mr Sinclair. She succeeded on or about 23 July. Mr Sinclair could either send the cheque to the Authority as arranged, or make payment by direct credit into Mr Switzer's bank account. Mr Sinclair advised that payment would be made by direct credit. The support officer asked him to provide confirmation of the payment.

[7] Mr Sinclair purported to provide the confirmation. However it transpired that payment was made by depositing a cheque into Mr Switzer's account. The cheque has been dishonoured.

[8] I therefore order that Sting Gas Services Limited and The Sting Safety Centre Limited, both jointly and severally, make immediate payment to Mark Switzer of the sums of:

(a) \$3,844.56 (nett); plus

(b) \$70 in costs.

R A Monaghan

Member of the Employment Relations Authority

