

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN	TES Enterprises Limited (Applicant)
AND	Peter Junior Tuiavii (Respondent)
REPRESENTATIVES	Vanessa Milham for Applicant No appearance by Respondent
MEMBER OF AUTHORITY	Leon Robinson
INVESTIGATION MEETING	21 November 2006
DATE OF DETERMINATION	21 November 2006

DETERMINATION OF THE AUTHORITY

The Authority determines that this employment relationship problem shall be resolved by the following orders:-

- A. The Authority finds that Peter Junior Tuiavii is indebted to TES Enterprises Limited in the sum of \$1,084.44¹.
 - B. Peter Junior Tuiavii is ordered to pay to TES Enterprises Limited the sum of \$70.00 being the lodgement fee on this application.
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The problem

[1] The applicant company TES Enterprises Limited ("TES") applies to the Authority for an investigation into sums it alleges the respondent Mr Peter Junior Tuiavii ("Mr Tuiavii") owes to it. It now claims in debt against Mr Tuiavii.

[2] Mr Tuiavii did not attend the investigation meeting today. Nor has he taken any steps previously to defend the claim against him.

[3] TES lodged its statement of problem in the Authority on 2 October 2006. That statement of problem was served on Mr Tuiavii on 3 October 2006. Mr Tuiavii failed to lodge his statement in reply within the prescribed period and by letter dated 18 October 2006, an Authority support officer enlarged the time for Mr Tuiavii's reply to 24 October 2006. Mr Tuiavii did not avail himself of the indulgence granted to him and so by memorandum of 25 October 2006 I fixed the time for investigation meeting to today and directed that Mr Tuiavii be personally served with a notice of today's investigation meeting and my memorandum. I also directed that an affidavit of service be lodged evidencing personal service on Mr Tuiavii.

[4] Ms Vanessa Milham ("Ms Milham"), a director of TES attends the meeting today. She provides a signed statement from her husband Mr Tony Milham attesting to personal service on Mr Tuiavii on 13 November 2006. Although that document is not in accordance with my direction, I am satisfied that Mr Tuiavii has had notice of today's meeting.

[5] Mr Tuiavii spoke with an authority support officer at 7.30 am this morning. He left a message advising he could not attend the meeting today because he "could not get time off work". He left a mobile telephone number. I regarded this development as sufficient proof of service.

[6] I attempted to contact Mr Tuiavii at 10.25 am today to verify the message he had left. The number apparently relayed by him was not in service. I telephoned Mr Tuiavii's residence and was provided with a further mobile number for him. When I telephoned that other number I left a message for Mr Tuiavii to make contact with me. I telephoned unsuccessfully again at 11.10 am.

[7] Mr Tuiavii has not sought leave to defend the claim against him out of time. My attempts to contact him today were directed at facilitating any application by him to obtain that leave. I am satisfied I have taken more than reasonable steps to enlist Mr Tuiavii's involvement. Accordingly, I proceed on the basis that the matter is undefended.

¹ This is a "judgment sum", at least for the purposes of clause 11 Schedule 2 *Employment Relations Act 2000*.

[8] Because of Mr Tuiavii's failure to take any steps, the parties have not attended mediation.

The facts

[9] Ms Milham gives evidence on oath today for TES and that evidence is unchallenged.

[10] Mr Tuiavii commenced employment with TES on 11 July 2005 initially as an assistant furniture remover. He signed an individual employment agreement on 29 November 2005. That agreement is produced to the Authority.

[11] TES recognised Mr Tuiavii had potential and he was promoted to driver in or about July this year. TES agreed to pay for Mr Tuiavii to obtain his Heavy Transport licence and he successfully obtained the same later that month.

[12] On 13 August 2006, Mr Tuiavii advised TES that he would not be returning to work. He failed to give the requisite contractual notice.

[13] TES now claims Mr Tuiavii is indebted to it for the following sums:-

HT Licence	\$853.80
Cell phone replacement	\$349.00
Replacement cards	<u>\$25.00</u>
Total	\$1,227.80

[14] TES made formal demand of Mr Tuiavii for this sum reduced by a credit for an amount in his favour, by letter dated 30 August 2006 ("the demand").

[15] Mr Tuiavii failed, omitted or neglected to comply with the demand.

The merits

[16] I have sighted an original document entitled *HT Licence Agreement* dated 31 July 2006 and signed by Mr Tuiavii that materially states:-

As discussed and agreed the company has paid for: all course fees, time to attend the course, associated assessments and the actual licence itself purchased at VINZ 3rd July, 2006.

Additionally discussed and agreed was that you will be liable for all costs associated with the licence as listed below should you terminate your employment with Tes Enterprises Ltd within 6 months of the licence being issued.

You will also be liable for all costs should Tes Enterprises Ltd need to terminate you(sic) employment due to serious misconduct within the same 6 month period.

The costs are as follows:

<i>Labour (course attendance) 16.5 hrs</i>	<i>\$214.50</i>
<i>Passrite Course</i>	<i>\$595.00</i>
<i>VINZ Licence</i>	<i>\$44.30</i>
<i>Total</i>	<i>\$853.80</i>

Should either of the above occur within the 6 month period the above amount will be deducted from your final wage payment.

(the emphasis is mine)

[17] Mr Tuiavii was issued with a company cell phone. He agreed to pay the rental of the phone and his personal calls. In July this year he damaged the phone and it was returned to TES beyond repair.

[18] I have sighted an original document entitled *Company Cell Phone Agreement* dated 20 January 2006 and signed by Mr Tuiavii that materially states: -

You have been approved as a designated holder of a Company cell phone. The cell phone is the property of Tes Enterprises Limited and as such is supplied to you on the following conditions:

A monthly account of \$38.25 incl. is payable to Telecom and will be deducted from your wages monthly.

All calls and messages, except those which are company related are also payable by you and this amount will also be deducted from your wages.

Reasonable wear and tear is acceptable but every effort must be made to ensure it is kept in good working condition.

If the cell phone is lost or damaged through your own negligence you will be responsible for the replacement of a phone of the same type.

If lost or stolen please ensure you report the loss immediately to the Manager.

The cell phone should be covered by your own personal household insurance.

The cell phone must be returned to the Manager on termination of employment.

Please sign below as having read and understood that it is your personal responsibility to comply with these conditions.

(the emphasis is mine)

[19] Mr Tuiavii failed to return a company access card for storage facilities in Avondale. TES was obliged to replace all five of its issued access cards at a cost of \$25.00.

The determination

[20] I accept TES' unchallenged evidence and I am satisfied of the veracity of its claims against Mr Tuiavii. It is entitled to the orders it seeks against Mr Tuiavii. Mr Tuiavii is entitled to a credit of \$143.36 being the balance of his severance pay. That sum shall be deducted from the total claim of \$1,227.80 to yield a debt owing of \$1,084.44.

The resolution

[21] **The Authority finds that Peter Junior Tuiavii is indebted to TES Enterprises Limited in the sum of \$1,084.44 calculated as follows:-**

HT Licence	\$853.80
Cell phone replacement	\$349.00
Replacement cards	<u>\$25.00</u>
Less balance of severance pay	\$143.36
Total	\$1,084.44

[22] TES does not seek interest.

Costs

[23] As TES was not represented by professional representative, there will be no order for Costs. It shall however, be reimbursed its lodgement fee of \$70.00. **I order Peter Junior Tuiavii to pay to TES Enterprises Limited the sum of \$70.00.**

[24] Finally, I commend this employer for the exemplary way it has recorded the terms of the employment relationship.

Leon Robinson
Member of Employment Relations Authority