

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Brian Maxwell Tu'inukuafe
AND Yvonne Fuima'ono
REPRESENTATIVES Applicant in Person
No appearance by Respondent
MEMBER OF AUTHORITY Dzintra King
INVESTIGATION MEETING 27 March 2007
DATE OF DETERMINATION 27 March 2007

DETERMINATION OF THE AUTHORITY

The respondent has failed to supply a Statement in Reply and did not appear for the Investigation. Attempts by the Authority to contact her were unsuccessful.

The applicant seeks payment of wages by the respondent. Mr Tu'inukuafe said he was employed by the respondent, Ms Fuima'ono, to drive a courier van. Ms Fuima'ono was contracted to Now Couriers and Parcels Limited. The applicant said he had been looking for employment and had been told by the head office of Now Couriers and Parcels Limited that Ms Fuima'ono was looking for a driver. Ms Fuima'ono told him he would be driving a van which belonged to her and her husband and that his job was to go to the Glenfield depot of Now Couriers and Parcels Ltd at 6am on his working days and collect the items for delivery and deliver them. The working day was to end at 6pm. He was to be paid \$400 a week. He had to wear a uniform supplied by the respondent. The petrol for the van was paid for by the respondent. Mr Tu'inukuafe did not provide invoices and was not GST registered. There was no employment agreement and he said there had been no discussion about his being a contractor and that he understood that he was an employee.

Only one payment was made to the applicant. He was paid \$280 in cash. He says he is owed \$1,320.

I have considered whether the applicant was an employee or a contractor and find that he was an employee. He was not in business on his own account: he did not own the van and he worked in accordance with the respondent's instructions and was paid a set rate for his work.

The respondent is to pay the applicant the sum of \$1,320 being wages owed to him. Interest on that money is to be paid from the date of termination being the

end of May 2006 at the rate of 7.9%, the interest to run from the end of May 2006 until the amount owing is paid in full.

The applicant also seeks payment of his \$70 filing fee. The respondent is to pay the sum of \$70 in addition to the wages arrears and the interest.

Dzintra King
Member
Employment Relations Authority