

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2019] NZERA 566  
3071232

BETWEEN JUSTIN WILSON  
Applicant

AND ACME PROJECTS LIMITED  
Respondent

Member of Authority: Anna Fitzgibbon

Representatives: David Feist, advocate for the Applicant  
No appearance for the Respondent

Investigation Meeting: 1 October 2019

Date of Oral Determination: 1 October 2019

Record of Oral Determination: 3 October 2019

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**RECORD OF ORAL DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant, Mr Justin Wilson, claims he was dismissed unjustifiably by the respondent, Acme Projects Limited (Acme) in June 2019. Mr Wilson says Acme stopped providing him with equipment to do his job and stopped paying him wages. He says he had no option but to terminate his employment, which he did.

[2] Mr Wilson says that the dismissal was unjustified and that he is entitled to remedies and is owed holiday pay which was not paid to him upon termination of his employment.

**Non Appearance by the Respondent**

[3] There was no appearance by or on behalf of Acme. Acme's director, Mr Faud Ali, sent correspondence to the Authority including on the date of the investigation meeting that

he would not be taking part in the investigation meeting. He said that Mr Wilson was never employed by Acme, rather he was employed by Civilx Limited (Civilx) up until its closure. I am satisfied that Acme was aware of the investigation meeting and had received the notice of investigation meeting. There could have been an appearance today by Civilx but there was not.

### **The Investigation Meeting**

[4] Mr Wilson gave evidence and swore on oath that his evidence was true and correct. This determination states findings of fact and law and makes conclusions on issues necessary to dispose of the matter.

[5] The issues:

- (a) Was Mr Wilson employed by Acme?
- (b) If he was employed by Acme was he dismissed? and if so;
- (c) Was the dismissal unjustified?

### **Background facts**

[6] Up until 1 September 2017, Mr Wilson owned his own company, 07Central Limited (07Central). He and his wife were joint directors and shareholders of that company. 07Central was in the business of installing ultrafast broadband fibre (UFB) in Wellington Central.

### **Civilx Limited**

[7] Civilx purchased 07Central and from 1 September 2017, employed Mr Wilson as its project manager. Mr Faez Anwar Ali was the sole director and shareholder of Civilx. On 31 August 2017, Mr Faud Ali, National Operations Manager of Civilx, sent an email to Mr Wilson setting out the terms of his employment by Civilx and terms in respect of the transfer of business from 07Central. Mr Wilson believes that Mr Faez Ali and Mr Faud Ali are brothers.

[8] Terms and conditions of employment included: an hourly rate of pay of \$25, the type of work that would be undertaken and similar employment arrangements. Mr Wilson worked approximately 50 hours per week on a regular basis for Civilx.

**Civilx Limited (In liquidation)**

[9] Civilx was placed into liquidation on 8 March 2019. However, Mr Wilson was not aware of this at the time.

**Acme Projects Limited**

[10] Mr Faud Anwar Ali is the sole director and shareholder of Acme Projects Limited. Mr Faud Ali was also the National Operations Manager of Civilx. In early to mid-March 2019 Mr Wilson met with Mr Faud Ali and was told that a lot of installation projects had been completed and that Acme would begin undertaking reinstatement and traffic management projects. This work would involve reinstating roads which had been dug to install UFB and to manage traffic associated with the road works. Mr Ali told Mr Wilson that he would be employed by Acme to do that work.

[11] On 22 March 2019, Mr Wilson received his final pay from Civilx. Mr Wilson began working for Acme and was being paid wages by it. Mr Wilson's bank statements show weekly wage payments by Acme to him from 28 March 2019 to 24 May 2019. Acme was not able to provide Mr Wilson with the level of hours that he was used to at Civilx, however he was regularly working 40 hours a week.

[12] In May 2019 Acme seemed to be in financial difficulty and often Mr Wilson was not paid fully for work performed. Mr Wilson sent texts to Mr Ali asking to be paid and in one email, in June 2019, was told by Mr Ali that funds had "dried up". Mr Wilson said he could not continue without being paid for his work and was forced to look for other work. He was hopeful that there would be work with Acme but this did not eventuate.

**Events leading to termination**

[13] Mr Wilson and his wife have a number of children to provide for and his wife was pregnant at the time of these issues. Mr Wilson was concerned that he would be unable to pay his mortgage and other bills and began actively looking for other work. Mr Wilson considers that the failure by Acme to pay him wages due amounted to a fundamental breach of his employment agreement.

[14] The answer to the first question is that in my view, Mr Wilson was employed by Acme at the time of the termination of his employment. He was informed by Mr Ali that he would be working for Acme and he was paid wages by Acme.

**Unjustified constructive dismissal**

[15] Mr Wilson in my view, was unjustifiably constructively dismissed by Acme. It failed to provide him with equipment to do his job and failed to pay his wages. This caused him financial hardship. Acme's actions in failing to pay Mr Wilson forced him to resign.

[16] Mr Wilson spoke about the stress he was under at the time. His marriage was under stress, his wife was pregnant and they were both worried about how they were to pay their mortgage payments and bills. Mr Wilson tried to obtain other work but was only able to find casual work.

**Remedies**

[17] I consider the constructive dismissal to be unjustified and that in the circumstances the sum of \$12,000 compensation under s 123 of the Employment Relations Act to be appropriate. I order Acme to pay Mr Wilson \$12,000 within 21 days of the date of this determination.

[18] Mr Wilson was not paid his holiday pay. He was paid a total of \$6,887.00 gross in wages by Acme. Eight percent of this gross amount amounts to \$550.99 gross.

[19] I order Acme to pay Mr Wilson the sum of \$550.99 gross within 21 days of the date this determination.

**Costs**

[20] The matter took approximately an hour and a half in the Authority to investigate. I consider costs in the sum of \$1,500 to be appropriate. Acme is to pay a contribution towards Mr Wilson's costs in the sum of \$1,500 within 21 days of the date of this determination.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**