

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN David George Kerr (Applicant)
AND Corporate Media and Publications Limited (Respondent)
REPRESENTATIVES Applicant in person
No appearance for Respondent
MEMBER OF AUTHORITY Alastair Dumbleton
INVESTIGATION MEETING 5 July 2005
DATE OF DETERMINATION 6 July 2005

DETERMINATION OF THE AUTHORITY

[1] Although the investigation meeting held by the Authority on 5 July 2005 was attended only by the applicant Mr David Kerr, from the oral evidence he gave I was satisfied that the respondent company Corporate Media and Publications Ltd had been given advance notice of the meeting. That notice was sufficient to give it a reasonable opportunity to attend if it had wished.

[2] Mr Kerr left the Notice of Investigation Meeting at the registered office of the respondent (referred to as "CMP") on 20 June 2005. It may safely be assumed that the respondent chose not to attend the meeting. It was nevertheless able to proceed as if the company or its representative was present, as provided by clause 12 of Schedule 2 of the Employment Relations Act 2000.

[3] I am satisfied that earlier this year Mr Kerr responded to an advertisement for a Business Development Manager. The remuneration was specified to be "\$40K basic, plus car allowance plus phone, OTE 100K." Mr Kerr was interviewed by a woman called Stevie Michel and engaged in a position of employment, I find.

[4] Although his first week on the job was intended to be a trial, Mr Kerr obtained the agreement of CMP to be paid for the time. Upon completion of the trial he was asked to return for a second week and continue working.

[5] I am further satisfied that it was reasonable for Mr Kerr to regard himself as having been constructively dismissed by the employers failure to provide him with the promised support and other organisation necessary for the job to be performed. His salary was also not paid on 8 March 2005 as promised and has not been paid since despite his written demand of 9 March sent to Ms Michel.

[6] From the evidence given to me by Mr Kerr it is clear that he has an employment relationship

problem and that CMP, his former employer, is legally responsible for rectifying that as far as is now possible.

[7] I find from the uncontradicted evidence of Mr Kerr that he is entitled to the following contractual and statutory payments for the performance of his employment and the unlawful termination of it;

- \$769 - salary for first week of employment
- \$769 - salary/wages in lieu of notice for second week of employment
- \$1,000 - commissions (@ 50% of sale) on Minchem Industries Ltd and New York Bagel sales
- \$218.75 - petrol and car allowance for 350 kms @ 62.5 cents
- \$152.28 - annual holiday pay @ 6% of total gross remuneration of \$2,538
- \$5,000 - compensation for unjustified dismissal, under s.123(c)(i) of Employment Relations Act 2000
- \$70 - Authority lodgement fee

[8] CMP is ordered to pay the above amounts to Mr Kerr.

A Dumbleton
Member of Employment Relations Authority