

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Murray Carson Clarkson (Applicant)

AND Brendon Barns, Toni Barns and Ryan Barns, trading in partnership
as Barns Partnership (Respondent)

REPRESENTATIVES Murray Clarkson in person
Brendan Barns on behalf of the respondent

MEMBER OF AUTHORITY James Crichton

INVESTIGATION MEETING Ashburton 19 September 2006

DATE OF DETERMINATION 2 November 2006

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Clarkson) alleges that he has a personal grievance with the respondent (the Barns Partnership) by reason of a number of unjustifiable actions of the Barns Partnership to Mr Clarkson's disadvantage. In particular, Mr Clarkson complains about not being able to work out his notice, about being short-paid his salary and allowances and not being paid his wet weather allowance.

[2] The Barns Partnership through Mr Brendon Barns, say that in fact Mr Clarkson's claim is without merit as the reality is that, far from being underpaid, Mr Clarkson was overpaid and the Partnership's records were produced at the Authority hearing to support that view.

[3] At the conclusion of the investigation meeting, which was conducted on the basis of separate interviews, first with Mr Clarkson and then with Mr Barns, I arranged to pass to Mr Clarkson the material which Mr Barns had assembled in relation to Mr Clarkson's employment.

[4] Mr Clarkson was to review this material and make whatever submissions he felt inclined to make within a five week period following the investigation meeting. Mr Clarkson has chosen not to avail himself of that opportunity.

[5] The material I have just referred to comprises a copy of the wage book as it applies to Mr Clarkson, together with various other documents which particularise aspects of Mr Clarkson's employment. The thrust of that material is to disclose that, far from Mr Clarkson being owed money by the Barns Partnership, in fact Mr Clarkson owes the Barns Partnership money.

[6] Indeed, Mr Barns said at the investigation meeting that, the Partnership had determined not to press Mr Clarkson for reimbursement of the moneys owed by him to the Partnership before receiving notice of his statement of problem.

[7] Mr Clarkson has not chosen to exercise his right to respond further to the Authority in relation to his claim, having had the opportunity of reviewing the material from Mr Barns and reflecting on it for a significant number of weeks. I intend to deal with the matter on the basis of the material before me both by way of the oral evidence given by the parties at the investigation meeting on 19 September 2006 and the other written evidence that is available to me. I foreshadowed my intention to proceed on this basis in a Notice of Direction dated 26 September 2006 wherein I gave Mr Clarkson the opportunity to reflect on Mr Barns' material and make further submissions.

[8] Mr Clarkson was employed on the Barns Partnership dairy farm as a Shed Manager from 27 November 2003.

[9] There was no employment agreement at the commencement of the employment relationship, but with effect from 15 December 2003, a casual employment agreement on Federated Farmers standard template applied.

[10] Mr Clarkson says that he was interviewed by Mr Brendon Barns and his wife, Toni Barns, he thinks in early November 2003 and he says that he was offered the job on the spot.

[11] Mr Clarkson said that the farm had been set up to milk 500 cows. The Barns Partnership was putting through significantly more than that number and they had decided that a Shed Manager would enable these volumes to be processed more adequately.

[12] Mr Clarkson said that he was effectively in charge of the management of the dairy shed. There were three young people also working alongside him at various times and they took orders either from himself or from the Barns Partnership direct.

[13] Mr Clarkson's initial period of employment was on an hourly rate basis where he was paid \$12 per hour excluding holiday pay. He worked 112 hours a fortnight. Some of this arrangement is confirmed by the terms of the casual employment agreement document that I referred to earlier.

[14] With effect from 19 April 2004, Mr Clarkson went on to a salary which, as is common in dairy farm employment agreements, had a remuneration component and an accommodation component. The value of the package as a whole was \$42,280 gross.

[15] The relationship came to an end because Mr Clarkson had decided to take up a new position in a different industry. Mr Clarkson advised the termination of his employment on 8 July 2005.

[16] In October 2005, Mr Clarkson wrote to the Barns Partnership raising a personal grievance and setting out a number of concerns on which that personal grievance was allegedly based. Critically, Mr Barns told me that he had never received this letter and the first indication he had of any problem in respect to Mr Clarkson's employment was the initial contact from the Authority that a statement of problem had been filed.

[17] Mr Clarkson alleges the following deficits in his remuneration:

- (a) He says he was prevented from working out his notice and lost money in consequence.
- (b) That he was not paid his wet weather allowance since he went on to a salary basis in April 2004.
- (c) That the salary that he was paid was not the salary that was agreed.
- (d) That the calculation of power and telephone costs which were deducted at source by the employer were wrong.

[18] Mr Barns denies the veracity of each of these claims except for the wet weather allowance which he readily agrees was not paid to Mr Clarkson since Mr Clarkson was put on to a salary basis for his remuneration. Mr Barns describes this situation as "a definite oversight".

[19] In all other respects, Mr Barns says that Mr Clarkson was paid what he was entitled to and the documentation that he rendered to the Authority was designed to support that contention.

[20] The Authority's own analysis of Mr Clarkson's claim suggests that his contention that he was not paid the salary he was due is mistaken and Mr Clarkson accepted that during the course of the investigation meeting.

[21] The effect of the material provided by Mr Barns is to create a reasonable doubt that there is any money owed by Mr Barns to Mr Clarkson. On the face of it, Mr Barns' file of material suggests that Mr Clarkson is indebted to Mr Barns and in the absence of any rebuttal from Mr Clarkson, it is difficult for me to reach any conclusion other than one that finds for the Barns Partnership.

[22] Mr Clarkson himself accepted the analysis that the salary paid to him was correct and while Mr Barns acknowledged his failure to pay Mr Clarkson the wet weather allowance, the total amount owing under that head of \$340 per annum is greatly exceeded by the various other overpayments as detailed in Mr Barns' material.

[23] In the absence of any submission from Mr Clarkson that those quantified overpayments are incorrect in any way the Authority can only conclude that Mr Clarkson's claim is not made out.

Determination

[24] Mr Clarkson's claim, in the absence of any further submission from him finding fault with the calculations made by Mr Barns in his submissions, fails in its entirety.

Costs

[25] Given the fact that neither party was represented there will be no order for costs. Costs are to lie where they fall.

James Crichton
Member of Employment Relations Authority