

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 93/09
5040450

BETWEEN GRAEME JOHN FRASER
 Applicant

AND HERITAGE EXPEDITIONS
 LIMITED
 Respondent

Member of Authority: Paul Montgomery

Representatives: Graeme Fraser in person
 No appearance for the Respondent

Investigation Meeting: 4 June 2009 at Christchurch

Determination: 3 July 2009

SUPPLEMENTARY DETERMINATION OF THE AUTHORITY

[1] Following receipt of correspondence from the applicant's solicitors and further supporting documents from the Companies Office, the Authority reopened its investigation of Mr Fraser's personal grievance at its own motion with specific reference to the identity of the applicant's employer at the relevant time.

[2] A notice of reopening was forwarded to Heritage Travel Group Limited of 53B Montreal Street, Christchurch, by courier on 20 May 2009.

[3] On 25 May 2009 the Authority received the notice of investigation meeting and minute to the parties returned with an unsigned covering letter which stated:

*Dear Sirs
Please be advised that Heritage Travel Group ceased operations on
31 May 2008. This letter was received at 53B Montreal Street and
opened in error.*

[4] The matter was originally lodged with the Authority citing Rodney Russ, Director, Heritage Expeditions as the respondent in the proceedings before it.

[5] In a statement in reply, Mr Russ submitted a cover page which adjusted the identity of the respondent. It reads:

Fraser
v
Heritage Travel Group Limited, Rodney Russ
(Not Heritage Expeditions as claimed by Fraser in his statement of evidence dated 6th May)

[6] There was at the time, no challenge to this formal statement identifying the employer's identity. It was when Mr Fraser sought to enforce the Authority's orders against Heritage Travel Group Limited through the District Court at Christchurch, that a Court Collections Officer was told by Mr Russ that Heritage Travel Group Limited had been wound up.

[7] The company's details downloaded on 20 May 2009 established at that date the company was still registered. The document states:

The Registrar of Companies is satisfied that this company has ceased to carry on business and has instigated actions to remove the company from the Register.

[8] The Companies Office confirmed with Mr Fraser's solicitor an application to wind up this company was received in early February 2009. As is clear from this, Mr Russ lied to the Court Collections Officer who was unable to enforce the distress warrant.

[9] A review of documents lodged with the Authority leads to the inescapable conclusion that Mr Fraser was employed in mid June 2005. The individual employment agreement's intituling states the agreement is made between Heritage Expeditions New Zealand Limited (the employer) and Graeme Fraser (the employee).

[10] Under the heading *Titles and Duties* the document states:

The position is that of Manager, Wild Earth Travel (a division of Heritage Expeditions New Zealand Limited).

[11] Under questioning by the Authority, Mr Fraser was adamant he signed only one employment agreement during his employment with the employer. At the time the organisation restructured into two divisions and Mr Russ introduced the name *Heritage Travel Group*, Mr Fraser says Mr Russ and his co-director David Shackleton retained total control of all strategic decision making for both divisions. Further, Mr Fraser says his role did not change, no explanation behind the change was ever given,

and I was never provided with a new employment agreement involving the *Heritage Travel Group* name.

Determination

[12] I find the correct employer of Mr Fraser during the time of his employment was Heritage Expeditions Limited. His employment was never with Heritage Travel Group Limited.

[13] As a result of this finding I order Heritage Expeditions Limited to pay the applicant the sum set out in the original determination, namely

- Lost remuneration in the sum of \$6,346.18 gross
- Compensation in the sum of \$7,500 net

[14] Further, I order payment to be made within seven days (not working days) of the date of issue of this determination.

Costs

[15] In pursuing his claim in the face of his former employers' cynical disregard for his rights, Mr Fraser has incurred legal costs. He is entitled to recover at least a contribution to those costs which I find were reasonably incurred in bringing this action to the Authority.

[16] Actual costs incurred with Young Hunter, Barristers and Solicitors, totalled \$2,042.50 while his filing fee for the distress warrant issued on 28 November 2008 was \$55. Loss of wages due to Mr Fraser attending mediation are excluded from his claim.

[17] Given the behaviour of Mr Russ and Mr Shackleton in attempting to evade their responsibilities to Mr Fraser, I have no hesitation in awarding the applicant the full amount of \$2,097.50 in costs.

Paul Montgomery
Member of the Employment Relations Authority