

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 168/10  
5315849

BETWEEN CAROLINE KIDSTON  
AND STEPHANIE ANDERSON  
Applicants  
AND ENERGY RESEARCH  
LABORATORIES NZ LIMITED  
Respondent

Member of Authority: G J Wood  
Representatives: Stephanie Anderson for the Applicants  
No appearance for the Respondent  
Investigation Meeting: 14 October 2010 at Wellington  
Submissions Received: 14 October 2010  
Determination: 20 October 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicants claim unpaid wages from the respondent company, Energy Research Laboratories NZ (Energy Research). Ms Anderson claims that over a period of 25 weeks' employment Energy Research had only ever paid her for two weeks. She therefore claims for the unpaid period, together with reimbursement of business-related air fares that she paid herself and expenses of \$70. Ms Kidston claims for reimbursement for the full period of 19 weeks of her employment.

[2] Energy Research was not represented at the investigation meeting. When contacted, Energy Research's sole shareholder, Mr William Cronje, claimed that he had a letter written on its behalf to say that he was too ill to attend the investigation meeting.

[3] On behalf of Energy Research, Mr Cronje had previously provided a statement in reply (although not within time), blaming the applicants as well as the failure of promised investors to materialise for the financial failure of Energy Research. At a case management conference he did not object to the investigation meeting date set.

[4] I was satisfied that no good cause for Energy Research's failure to attend or be represented had been shown. There was no medical certificate provided by Mr Cronje and he had not sought an adjournment beforehand, or even on the day when contacted by a Support Officer. Pursuant to clause 12 of Schedule 2 of the Employment Relations Act 2000, I therefore proceeded to act as fully in the matter as if Energy Research had been represented.

### **The Facts**

[5] I have determined the facts as set out below, based on the evidence of the applicants, the only witnesses in this matter. Having questioned them on their written statements of evidence and as against Energy Research's statement in reply, I have no reason to disbelieve their evidence. Both appeared to answer my questions fully and frankly and I have therefore accepted their evidence in full.

[6] Energy Research was set up as a research company to conduct approximately four projects. One of them was a product called Sailgen, which is effectively a horizontal wind turbine. Although a separate company was established to run this project, the company never operated.

[7] Ms Anderson was appointed by Mr Cronje as Energy Research's national operations manager in March 2010. On 29 March she commenced work. Her responsibilities at that time basically involved setting up the company. She was responsible, for instance for organising warehouse, showroom, office and other company facilities. She also approached central and local government for funding for the projects such as Sailgen. However, Mr Cronje blocked her from ever spending much money in support of these objectives.

[8] On 1 April 2010, Ms Anderson received a letter of appointment dated 25 March, confirming that she was on a salary of \$120,000 per annum, supplemented by a clothing allowance of \$75 per week.

[9] One of Ms Anderson's first actions was to appoint (with Mr Cronje's agreement), a former colleague, Ms Kidston, as marketing manager with Energy Research, focussing on Sailgen, on a salary of \$90,000 per annum, plus a weekly clothing allowance of \$75 as well.

[10] Even by May, Ms Anderson was having problems with issues of expenditure, including her salary. Ms Anderson was eventually paid for two weeks, but Ms Kidston never received any pay.

[11] On 11 May, Ms Anderson flew to Auckland, at her own expense of \$170.95, to deal with Mr Cronje over her trying to run the company without any money. On 17 May Ms Kidston started employment.

[12] Mr Cronje continued to inform Ms Anderson, throughout May and June, that she and Ms Kidston would be paid, that other bills would be met and that investors would soon be on board. Such discussions continued. In July all three company cellphones were disconnected because the bills had not been paid.

[13] Mr Cronje kept stalling on the matter of payment of salaries and other company debts throughout July and August, despite being threatened with legal proceedings by Ms Anderson and Ms Kidston.

[14] On 16 September 2010, Ms Anderson and Ms Kidston had had enough and resigned with immediate effect. They had not been doing a lot of work since their phones had been cut off and they had been locked out of their offices and Mr Cronje was difficult, if not impossible, to contact.

[15] However, until their resignations the responsibility still lay with Energy Research to pay Ms Anderson and Ms Kidston. Even if, as Mr Cronje alleges, they were in some way responsible for the failure of the company, they were employees and were still entitled to be paid. In any event I do not accept Mr Cronje's allegations, which were not backed up by evidence as he did not attend the investigation meeting. Furthermore, he was the sole shareholder in Energy Research and the applicants were not able to do their jobs because he, as the sole shareholder, did not provide them with the resources to do so.

[16] Ms Anderson and Ms Kidston are therefore entitled to the remedies they have formally sought.

[17] I therefore order the respondent, Energy Research Laboratories NZ Limited, to pay to Ms Stephanie Anderson 23 weeks' pay (being \$53,076.92 gross) together with \$1,875 gross for her clothing allowance, \$170.95 to reimburse her for business flights and the \$70 filing fee.

[18] I also order the respondent, Energy Research Laboratories NZ Limited, to pay to Ms Caroline Kidston 19 weeks' lost remuneration (being \$32,884.61 gross) together with \$1,425 gross for her clothing allowance.

**G J Wood**  
**Member of the Employment Relations Authority**