

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 394/10
5301316**

BETWEEN

ISAAC SMITH
Applicant

AND

L TAYLOR PAINTING &
PROPERTY CARE LIMITED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Applicant in person
No appearance for Respondent

Investigation Meeting: 31 August 2010

Determination: 31 August 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 26 November 2009 the applicant, Mr Smith, commenced work for the respondent, L Taylor Painting & Property Care Limited (“the company”), in a Painter and General Handyman capacity.

[2] Mr Smith has brought an application to the Authority in which he claims that while employed in that capacity by the company, he was not paid for any of the hours worked by him.

[3] Mr Smith’s claim is to recover \$2,466.00 in unpaid wages

Background Facts

[4] Mr Smith, and Mr and Mrs Taylor, Directors of the company, signed an Individual Employment Agreement (“the Agreement”) on November 2009. Under clause 3 (a) of the Agreement, Mr Smith was to be paid at an hourly rate of \$18.00, payment to be made in respect of hours notified to, and recorded by, the receptionist of the respondents. Clause 4 (b) of the Agreement stated that “*Wages shall be paid mid-month , two days after the 15th and two days after the end of the month ...*”

[5] Mr Smith duly notified his hours as required, keeping his own separate copy of his hours in a book he kept specifically for that purpose.

[6] The first payment was due on or about 2 December. Mr Smith says that Mrs Taylor had explained to one of the boys working under Mr Smith’s supervision and who was related to Mrs Taylor, that payment would not be made at that stage but that the hours worked would be included and paid on the next payment date. Mr Smith says that when this information was passed on to him, he was comfortable with it as he had only worked a few days at this stage.

[7] On 18 December the next wage payment was due. When no payment was received, Mr Smith says that he tried to speak to Mrs Taylor but she went into a room and would not speak to him.

[8] Mr Smith told the receptionist that it would be his last working day.

[9] Mr Smith subsequently called the company to ask about his wages but the receptionist told him that Mr and Mrs Taylor did not want to speak to him.

Determination

[10] Mr Smith applied to the Authority for wage arrears. The company has taken no steps at any time in relation to Mr Smith’s application.

[11] Notice of Mr Smith’s application was given to the company when the Statement of Problem was served on it at its registered office on 6 April 2010. Its

failure to lodge a Statement in Reply meant, after the prescribed 14 day time period had elapsed, that the company could only respond or reply to the application with the leave of the Authority. No such leave has been sought.

[12] A Notice of Investigation Meeting was also served on the company on 31 May 2010, informing them of an investigation meeting to be held on 31 August 2010.

[13] At that meeting there was no attendance by, or on behalf of, the respondent company and nothing was heard from it or its directors, Mr and Mrs Taylor.

[14] The meeting therefore proceeded, as the Notice of Investigation Meeting had warned it could, in the absence of any party.

[15] From the evidence of Mr Smith, the Authority is satisfied that Mr Smith was an employee at the material times. There is a written employment agreement and although there are no wage or time records as required to be kept by the employer presented, Mr Smith has kept a careful note of his hours. The total hours are 137 which at \$18.00 per hour, the agreed rate of pay as set out in the employment agreement, come to \$2,466.00.

[16] I am satisfied that Mr Smith has not received the wages due to him. The company, being fully aware of his claim, has disregarded it.

[17] Pursuant to c 131 of the Employment Relations Act 2000 the Authority orders L Taylor Painting & Property Care Limited to pay Mr Isaac Smith the sum of \$2,466.00 arrears of wages.

[18] Mr Smith seeks interest on the outstanding amount. I order L Taylor Painting & Property Care Limited to pay to Mr Isaac Smith, pursuant to s 11, Sch 2, Employment Relations Act 2000, interest at a rate not exceeding the 90-day bill rate plus 2%, until such time as the outstanding wage arrears are paid out

[19] Mr Smith wishes to recover the \$70 filing fee paid on his application. L Taylor Panting & Property Care Limited is ordered to pay that amount of \$70, in addition to the arrears of wages and interest.

[20] I order under s221 of the Act that the above amounts are to be paid to Mr Smith by the company within 14 days of the date of service on it of this determination.

Eleanor Robinson
Member of the Employment Relations Authority