

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2016] NZERA Wellington 121
5617260

BETWEEN STAN SPENCE
 Applicant

AND BRADLEY McLAREN t/a KIDZ
 WORKZ BOUNCY CASTLE
 HIRE
 Respondent

Member of Authority: Michele Ryan

Representatives: Applicant in person
 No appearance by or for Respondent

Investigation Meeting: 3 October 2016 at Masterton

Determination: 3 October 2016

ORAL DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Mr Stan Spence seeks payment unpaid wages of \$422.53 plus reimbursement of the filing fee (\$71.56) paid to bring his claim. A request to have the Authority give consideration to whether he was unjustifiably dismissed was withdrawn at the investigation meeting.¹

The Authority's investigation

[2] Mr Spence lodged his statement of problem on 23 March 2016. The respondent Mr Bradley McLaren trades as 'Kidz Workz Bouncy Castle Hire'. No reply to the statement of problem has been received nor has Mr McLaren responded to various voice messages left for him by the Authority's support staff.

¹ Para 1.2 Statement of Problem

[3] A sworn affidavit confirms Mr McLaren was personally served on 26 August 2016 with a 'Notice of Investigation' setting out the date, time and location of the Authority's meeting.

[4] Neither Mr McLaren nor anyone on his behalf attended the investigation meeting. At 10.45am on 3 October 2016 the Authority's support staff called Mr McLaren on his mobile phone but the phone went unanswered. No information has been furnished to explain why he did not attend the Authority's investigation. Pursuant to clause 12 of Schedule 2 of the Act, I proceeded with the investigation as if he had attended or been represented.

Are wages owed?

[5] Mr Spence is a superannuitant. In February 2016 he was looking for extra income and something useful to do, and responded to an advertisement for a driver. On 25 February 2016 he accepted an offer of casual employment from Mr McLaren. He was told wages would be paid into his bank account on Thursdays and he would be able to access the funds on Fridays.

[6] On Friday 4 March 2016 Mr Spence called Mr McLaren when he realised he had not received wages for the previous weekend. He says Mr McLaren apologized and told him the matter would be "sorted out". \$302.53 was deposited by cheque into his bank account that afternoon.

[7] Mr Spence worked the following day.

[8] On Monday 7 March 2016 the wages cheque was dishonoured.

[9] Numerous text messages were exchanged between Mr Spence and Mr McLaren over the following 10 days. It is apparent that matters quickly deteriorated between them. Mr Spence increasingly demanded he be paid immediately. Mr McLaren said he would pay Mr Spence sometime in the near future, "*when I have it*".

[10] Aa at the date of the Authority's investigation Mr Spence is yet to be paid.²

[11] Section 132 of the Act states that where any claim is brought before the Authority for the recovery of wages (or other money payable to the employee), in the

² Comprising in total \$302.53 for work between 26-28 February 2016 and \$120 for work performed on 5 March 2016

absence of clear records the Authority may, unless the employer proves the claims are incorrect, accept the claims as proved.

[12] In the absence of wage records or information to prove Mr Spence's claim is incorrect I have no reason not to accept Mr Spence's claim.

Orders

[13] I order Bradley McLaren t/a Kidz Workz Bouncy Castle Hire to pay Mr Stan Spence the sum of \$422.53³ in wage arrears, and \$71.56 for the filing fee.

[14] Should the ordered payments not be made within a reasonable period of time Mr Spence may file an application in the District Court for enforcement of this determination by the Court's bailiffs,⁴ or seek a compliance order in the Authority.⁵

Costs

[15] Mr Spence was self-represented and an order for costs is not warranted.

Michele Ryan
Member of the Employment Relations Authority

³ Section 131 of the Act
⁴ Section 141 of the Act
⁵ Section 137(1)(b) of the Act