

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2017] NZERA Wellington 128
3017051

BETWEEN ANTHONY DE VRIES
Applicant

AND BF7 TRADING LIMITED
(FORMERLY KNOWN AS
BISHOP FAMILY HOLDINGS
LIMITED)
Respondent

Member of Authority: Trish MacKinnon

Representatives: Applicant in person
No appearance for Respondent

Investigation Meeting: 8 December 2017

Submissions Received: On the day from the Applicant

Determination: 8 December 2017

**ORAL DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] Anthony de Vries signed an individual employment agreement with Bishop Family Holdings Limited on 23 June 2017. That company changed its name on 26 July 2017 to BF7 Trading Limited (BF7 Trading or the company). Mr de Vries commenced work on 26 June 2017 as the company's Regional Client Manager in Wellington. He was notified three weeks later that his employment had been terminated.

[2] Mr de Vries claims he was not paid during his employment. He seeks wage arrears for the three weeks and for one week's notice period, KiwiSaver contributions and reimbursement of expenses incurred in the course of his employment.

[3] BF7's statement in reply was lodged by Roy Bishop, a former director and shareholder of the company. It stated that Mr de Vries had been dismissed "*under the serious misconduct clause*". The company had decided to withhold payment from Mr de Vries and take legal action against him on the basis of alleged transgressions he had committed.

The Authority's investigation

[4] BF7 Trading did not lodge a statement in reply within the timeframe specified in the regulations. Mr Bishop attended, on behalf of the respondent, a telephone conference called by the Authority in the course of which BF7 Trading was granted leave to lodge its statement in reply outside the specified timeframe.

[5] Neither Mr Bishop nor any other representative of BF7 Trading attended the Authority's investigation meeting. When contacted by an Authority Officer, Mr Bishop claimed to have believed the meeting was scheduled for 19 December 2017 and asked that it be rescheduled.

[6] I considered that request but, after reviewing the communications between the Authority and the respondent, I was satisfied Mr Bishop had been properly and fully informed of the investigation meeting scheduled for 8 December 2017. There was no ambiguity regarding the date, which had been advised in a Notice of Investigation Meeting issued on 11 October 2017 with the date and time of the investigation stated in bold text and underlined.

[7] Accordingly, I commenced the investigation meeting without the respondent in accordance with clause 12 of Schedule 2 to the Employment Relations Act 2000 (the Act).

Evidence and discussion

[8] Following the telephone conference a Notice of Direction was issued, as part of which BF7 Trading was directed to file in the Authority and copy to Mr de Vries documents including wage and time, holiday and leave records in respect of Mr de Vries' employment.

[9] This was to be done by a date in November, which was erroneously referred to as 31 November. The Authority Officer corrected the date to 21 November,

following an email from Mr Bishop. He had asked, on 20 November, whether the Authority was waiting for any further information from the company. The Authority Officer apologised for the error and asked Mr Bishop to advise how soon he expected to file the information requested in the Notice of Direction.

[10] Mr Bishop did not respond to a further email from the Authority on 1 December noting that he had not supplied any documentation. He was asked to file all relevant evidence and written statements urgently. He did not do so despite having ample opportunity.

[11] Mr de Vries' evidence is that he was employed by the company from 26 June 2017. The terms of his employment agreement provided that his salary would be paid fortnightly. When he did not receive his first salary payment on 6 July as he expected Mr de Vries contacted his employer and was advised it would go through the following week.

[12] On 11 July Mr de Vries could not access his company email account and sought clarification from Mr Bishop of the reason for this. He did not receive a clear answer and commissioned an IT consultant to fix the problem on the assumption that it must be a technical failure.

[13] Mr de Vries' salary was not paid on 13 July as he had been advised it would be. On 14 July he received an email from Mr Bishop citing the 90-day Trial Period clause of his employment agreement and informing him that formal notice had been sent to him "*in writing via post on Wednesday*". Mr Vries has not ever received that notice.

[14] The email addressed the issue of salary by advising Mr de Vries that Mr Bishop was not sure what had happened and that he would ask "*the accounts teams to fix the issue as soon as practicable*." Despite further requests, Mr de Vries did not receive salary or the reimbursement of expenses provided for in his employment agreement.

[15] The Wages Protection Act 1983 provides that an employer shall, when any wages¹ become payable to a worker, pay the entire amount of those wages to that

¹ The interpretation section of the Wages Protection Act 1983 provides that wages means salary or wages.

worker without deduction.² In this instance BF7 Trading has failed to pay Mr de Vries any of the salary to which he is entitled.

[16] He has itemised the monies he is owed. His employment agreement records his salary as \$80,000 per annum and his notice period as one week. He was entitled to have KiwiSaver contributions paid by his employer at 5%. I find Mr de Vries worked for three weeks and was entitled to one week's notice period. He is also entitled to holiday pay on the remuneration for that period and to payment of KiwiSaver contributions on those amounts owing.

[17] The expenses for which he requests reimbursement relate to petrol, mobile phone usage, and parking at Auckland airport when his employer required him to attend a meeting. Mr de Vries gave evidence, which I accept, that he had provided his employer with receipts for those expenses. I am satisfied from his evidence, his employment agreement, and from sighting the receipts, that he is entitled to reimbursement of those expenses.

[18] Mr de Vries also sought reimbursement in respect of expenses relating to business cards he provided at the request of his employer. That claim, and a claim for reimbursement of interest on his overdraft, were declined. The business cards were produced by a company of which Mr de Vries is the director, and the invoice is from the printing company, and is not a personal expense of Mr de Vries.

Orders

[19] I order BF7 Trading Limited to pay Mr de Vries within 14 days of the date of this determination:

1. remuneration owing to him in the sum of \$6,153.85 gross;
2. holiday pay on that amount in the sum of \$492.31 gross;
3. reimbursement of expenses incurred in the course of his employment as follows:
 - a) for petrol, \$150.70;
 - b) for mobile phone, \$37.00; and

² Section 4.

c) Auckland airport parking, \$29.50

4. Interest on the above amounts is to be calculated and paid at the rate of 5% per annum from 17 July 2017 until those amounts are paid in full.

[20] I further order BF7 Trading Limited to pay Mr de Vries' KiwiSaver contribution at 5% on items 1 and 2 above.

Costs

[21] Mr de Vries represented himself and therefore did not incur legal fees. He did, however, incur the cost of the Authority's filing fee and I order the respondent to reimburse him the sum of \$71.56.

Trish MacKinnon
Member of the Employment Relations Authority