

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2019] NZERA 170
3034611

BETWEEN

VICKRAMJEET SINGH
Applicant

AND

ROY WILLIAM EDWARDS as
Trustee of
QUICKANDEASYFIND TRUST
(2010)
Respondent

Member of Authority: Eleanor Robinson

Representatives: Arunjeev Singh, Counsel for the Applicant
Roy Edwards, Representing the Respondent

Submissions received: 12 March 2019 from Applicant
21 March 2019 from Respondent

Investigation Meeting: 11 March 2019

Determination: 22 March 2019

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Mr Vickramjeet Singh, claims that he was unjustifiably disadvantaged by the Respondent, QuickandEasyFind Trust (2010) (QEFT).

[2] Specifically Mr Singh claims that he was offered employment by QEFT and provided with an individual employment agreement; however he did not carry out any work for QEFT and did not receive any remuneration.

[3] QEFT denied that there was any intention of Mr Singh performing work for QEFT, and that the provision of an employment agreement was a 'sham' for immigration purposes.

The Authority's investigation

[4] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[5] The issues requiring investigation and determination are whether or not:

- Mr Singh was an employee of QEFT?

If so:

- Is Mr Singh owed any monies by QEFT?
- Has there been a breach of Good Faith by QEFT?

Background

[6] Mr Singh came to New Zealand to undertake a period of study during which time he undertook some seasonal work at a Kiwifruit orchard in Katikati. At the conclusion of his studies he was issued with a graduate job search visa from 13 March 2015 to 13 March 2016.

[7] QEFT had been established by Mr Edwards and a colleague in 2003 to assist companies and individuals with information searches. Mr Edwards, who is a trustee of QEFT, said that he occasionally used office facilities located in Queen Street, Auckland with the permission of Gurpreet Singh, an Immigration advisor.

[8] Mr Vickramjeet Singh said he had been advised by one of his friends that Gurpreet Singh could help him obtain employment and he met with him at Gurpreet Singh's office in Queen Street, Auckland. During the meeting he was introduced to Mr Edwards by Gurpreet Singh and said Mr Edwards offered him employment with QEFT.

[9] Mr Edwards said he had been told by Gurpreet Singh that there was a young man who required assistance to obtain a work visa and he had been prepared to help him in the matter.

[10] Following the initial meeting at Gurpreet Singh's offices, Mr V Singh said he had been provided with a Job Offer letter dated 21 March 2016 and an individual employment agreement (the 2016 Employment Agreement).

[11] Mr Edwards said that the 2016 Employment Agreement had been prepared by Gurpreet Singh, and he and Mr V Singh subsequently signed it and dated it 14 February 2016.

[12] The terms of employment as set out in the Job Offer letter and the 2016 Employment Agreement included:

- the name of the employer: QuickandEasyFind Trust (2010);
- hours of work: 30 – 32 hour per week;
- remuneration: \$18.00 per hour;
- commencement of employment: based upon Mr Singh obtaining work visa approval;
- place of employment: QEFT offices in Albany, Auckland.

[13] Mr Singh said that on the basis of the job offer with QEFT he applied for, and was granted, a work visa by Immigration New Zealand. The work visa was valid from 10 May 2016 until 10 May 2018.

[14] After the work visa had been approved with a commencement date of 10 May 2016, Mr Singh said he had advised Mr Edwards who told him that he would not have any work for him until June 2018.

[15] Mr Edwards said that the employment position and the 2016 Employment Agreement were an: “*immigration scam*” set up by Gurpreet Singh and that the job offered to Mr Singh did not actually exist.

Work

[16] The 2016 Employment Agreement offered Mr Singh employment as an IT Support Technician/Web Administrator based at QEFT’s office in Albany, Auckland.

[17] Mr Singh said that QEFT had never provided him with any work to perform throughout the period from 10 May 2016 until 10 May 2018. He said he had asked Mr Edwards for work, but none was offered.

[18] The office in which he had occasionally seen Mr Edwards was bare, there had been no computers and there was no work for him to perform although he had requested work.

[19] At the time the offer of employment was made Mr Singh was living and working in Katikati but said he had a cousin living in Auckland with whom he believed he could stay. However he did not pursue this since the job commencement date had initially been delayed.

[20] Mr Edwards, despite having said that the job offer was an immigration scam nevertheless said when questioned that he had tried to offer Mr Singh some work to perform but without success as Mr Singh had made constant excuses and did not change his location address from Katikati throughout their relationship.

Payments

[21] When he contacted Mr Edwards at the beginning of June 2018, Mr Singh said he had been shocked to be told that he would be required to pay monies to Mr Edwards who would then transfer back the money into Mr Singh's bank account.

[22] Mr Singh said that he had paid the sum of \$1,152.00 either by way of a cash payment or by bank transfer to Mr Edwards, who then remitted the monies to his bank account and to the IRD as PAYE payments.

[23] When making the cash payments Mr Singh would travel to Auckland and usually meet Mr Edwards in a café.

[24] Mr Singh said he had made the payments to Mr Edwards because he was concerned about the impact of the non-payment of wages on his work visa.

[25] Mr Edwards confirmed that he had received cash or bank transfer payments into his personal bank account from Mr Singh and that he would remit these amounts back to Mr Singh as bank transfers in the name of QEFT into Mr Singh's nominated bank accounts with ASB and ANZ banks, and by making PAYE payments to the IRD.

[26] He said that Mr Singh had told him that he needed to have the payments made in that way so that the IRD could see that he had been working in accordance with his work visa requirements.

[27] Mr Singh said that whenever he raised the issue of the nature of the payments and lack of work, Mr Edwards would threaten him by saying that he would report Mr Singh to Immigration New Zealand and have him deported.

Trip to India

[28] Mr Singh said he had borrowed monies from relatives and friends in order to make the payments to Mr Edwards; however he became short of funds and returned to India on 10 December 2016, returning to New Zealand on 31 March 2017. Upon his return in April 2017 the arrangement regarding monies paid and remitted had resumed.

[29] During the period November 2017 until February 2018 Mr Singh sent text messages to Mr Edwards in which he requested that QEFT provide him with a further job offer in order that he could apply to renew his work visa which was due to expire on 10 May 2018.

[30] Mr Singh said, and Mr Edwards confirmed, that he paid Mr Edwards the sum of \$3,100.00 for so doing. However whilst Mr Singh said that Mr Edwards had demanded the payment, Mr Edwards said that Mr Singh had offered him the payment to support his application.

[31] Mr Edwards said that Mr Singh's real interest was focused on a renewed job offer as a means to obtaining residency in New Zealand.

[32] Mr Edwards said he had accepted the payment of \$3,100.00 and issued the second employment agreement (the 2018 Employment Agreement) which stated that the remuneration would be at a rate of \$23.00 per hour. Mr Edwards also completed the necessary documentation required by Immigration New Zealand.

[33] Immigration New Zealand wrote to Mr Singh on 9 April 2018 stating that:

We have completed an assessment of your application and have identified the following issues which may have a negative impact on the outcome of your application:

Your Employer may not be complying with Immigration & Employment Laws.

[34] Immigration New Zealand requested further documentation including:

- a summary of earnings dated 01 April 2015 - 01 April 2018;
- 12 months personal bank statements (showing income payments);
- Performance related documents provided by your Employer; and
- 2017-2018 Employer Financial Report.

[35] Mr Singh said he had requested the documents from Mr Edwards but he had refused to supply them. On the basis that his application was likely to be refused by Immigration New Zealand due to the non-provision of the requested documentation, Mr Singh withdrew his work visa application and applied for a visitor visa.

Was Mr Singh an employee of QEFT?

[36] In deciding whether or not Mr Singh was working as an employee of QEFT, I apply s.6 of the Act which provides:

s.6 Meaning of employee:

(1) In this Act, unless the context otherwise requires, **employee-**

(a) means any person of any age employed by an employer to do any work for hire or reward under a contract of service; and

(b) includes –

(i) a homemaker; or

(ii) a person intending to work, ..

(2) deciding ... whether a person is employed by another person under a contract of service, the Authority-... must determine the real nature of the relationship between them.

(3) For the purposes of subsection (2)... or the Authority-

(a) must consider any relevant matters, including any matters that indicate the intention of the parties

(b) is not to treat as a determining matter any statement by the persons that describes the nature of their relationship

[37] Mr Singh was provided with an employment agreement by QEFT, signed on its behalf by Mr Edwards. Mr Singh's evidence is that he was employed by QEFT during the period May 2016 until April 2018, but did not in fact carry out any work during his period of association with QEFT.

[38] QEFT's evidence is that there was no employment relationship between it and Mr Singh and that the relationship it had with Mr Singh was a 'sham' set up to assist Mr Singh obtain a work visa and subsequently residency in New Zealand by providing false information to Immigration New Zealand.

[39] Accordingly the arrangement was set up whereby Mr Singh provided monies to Mr Edwards who in turn transferred the money either into Mr Singh's nominated bank accounts, identified in the bank statements as being received as deposits from QUICKANDEASYFIND, or to the IRD with gross income and PAYE being similarly identified.

[40] Text messages supplied to the Authority support the view that this was a commercial transaction in which the two parties colluded in a sham arrangement. I note in particular the text message sent by Mr Singh to Mr Edwards in June 2017 in which Mr Singh states:

I working your company every week 30 hour now
OK
Then you can put my account pay

[41] This text message clearly is at variance with Mr Singh's evidence that he did not perform any work for QEFT during the period from May 2016 to April 2018, but is consistent with his participation in an Immigration New Zealand deception in which he would be represented as working for QEFT and being remunerated in respect of that work.

[42] I also note the email sent to Mr Singh by Mr Edwards on 14 April 2018 which states: "*In answer to question received by you from NZ Immigration I wish to advise that the position applied for is different to that previously held. This is because of increased responsibilities led to an increase in salary*". However there could not have been an increase in Mr Singh's responsibilities since he had had no responsibilities in QEFT capable of increasing.

[43] Despite the alleged employment with QEFT being based in Auckland, I observe that Mr Singh did not relocate to Auckland during that period which would have been necessary had he performed any work for QEFT and that throughout the period his place of residence continued to be in Katikati.

[44] Further I observe that Mr Singh paid the sum of \$3,100.00 to Mr Edwards to secure a further written employment agreement to support a work visa application in full knowledge based on his previous experience that there would be no work performed in accordance with it. I find this supports my conclusion as to the joint nature of the deception.

[45] Mr Singh's evidence was that he needed to obtain a further work visa to gain good relevant work experience in line with his qualification gained in New Zealand before returning to India, is also at variance with a text message he sent to Mr Edwards stating: : "*You alrdy knows d rule ... you guys promise me to gona help me in residency ... I gave you all the money*"

[46] Having carefully considered the evidence I find that Mr Edwards' evidence that the arrangement between QEFT and Mr Singh was a sham to be supported by the pattern of dealing between the parties.

[47] I determine that Mr Singh was not an employee of QEFT and accordingly I cannot assist him further.

Costs

[48] There is no order for costs.

Direction

[49] Given the evidence in this matter that a sham employment relationship was entered into in order to obtain work visas and residency by deception, I direct that a copy of this determination is provided to the Deputy CEO of Immigration New Zealand.

Eleanor Robinson
Member of the Employment Relations Authority