

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2020] NZERA 166  
3068432

BETWEEN

MARK SINTON  
Applicant

AND

COATESVILLE MOTORS  
2013 LIMITED  
Respondent

Member of Authority: Vicki Campbell

Representatives: Paul Mathews, advocate for Applicant  
Paul McBride, counsel for Respondent

Investigation Meeting: On the papers and by telephone

Additional information and submissions received: 20 April 2020 (via telephone conference)

Determination: 24 April 2020

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**DETERMINATION OF THE AUTHORITY**

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- A. Mr Sinton's application is declined.**
- B. Mr Sinton is ordered to pay to Coatesville Motors the sum of \$380 in damages for his failure to return company property at the end of his employment within 30 days of the date of this determination.**
- C. Other claims by Coatesville Motors 2013 Limited are declined.**
- D. Costs are reserved.**

## **Employment Relationship Problem**

[1] Mr Sinton is a qualified mechanic and worked for Coatesville Motors 2013 Limited from 5 March to 21 December 2018. Coatesville Motors is a small business employing a total of two full time and one part time worker. There was no written employment agreement between the parties.

[2] Mr Andrew Krinkel is a director and shareholder of Coatesville Motors. He works full time in the business. His partner, Ms Karen Gardner, also works in the business mainly undertaking administrative tasks.

[3] In a statement of problem lodged with the Authority in July 2019 Mr Sinton claimed one or more conditions of his employment had been affected to his disadvantage by the unjustified actions of Coatesville Motors, that he had been unjustifiably dismissed and that he was owed arrears of wages for an unlawful deduction made from his final pay.

[4] Coatesville Motors 2013 Limited lodged its statement in reply on 12 August 2019 denying Mr Sinton's claims and raising counter-claims against him for breaches of duties owed by Mr Sinton when he failed to return company property, failed to pay his parts account and failed to reimburse Coatesville Motors for a warrant of fitness training course undertaken by him. It seeks damages from Mr Sinton in relation to the breaches.

[5] An investigation meeting was scheduled for 29 November 2019. On 22 November Mr Sinton advised the Authority that he was withdrawing his claims except for his claim that Coatesville Motors had made an unlawful deduction from his final pay.

[6] The parties had attended mediation prior to Coatesville Motors lodging and serving its statement in reply. This meant the parties had not attempted to resolve the counter claims against Mr Sinton with the benefit of mediation. Given that, and given that Mr Sinton's claims had been significantly narrowed, I exercised my discretion under s 159 of the Employment Relations Act 2000 (the Act) and directed the parties to return to mediation.

[7] In February 2020 Mr Sinton lodged an amended statement of problem reflecting the withdrawal of his previous claims and clarifying the issues needing investigation and determination. The Authority was also advised that mediation had not been successful in resolving all matters between the parties.

[8] The Authority attempted to secure a date for an investigation meeting in March 2020 but this process was interrupted by the Covid-19 lockdown. In order to progress matters, during a case management call with the parties on 19 March 2020, it was agreed the matter could proceed to be investigated and determined on the papers before the Authority.

[9] During the course of drafting my determination questions arose which could not be answered on the papers alone. I convened a conference call on 20 April 2020 where, having satisfied myself as to the identity of the witnesses present, I confirmed the evidence set out in witness statements that had previously been lodged with the Authority. Questions were asked and answered and the representatives were given a brief opportunity to make oral submissions.

[10] As permitted by s 174E of 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 as a result. While I have not referred to all evidence or submissions received from the parties in this determination I have carefully considered everything.

### **Employment Agreement**

[11] There was no written employment agreement between the parties. The requirement to provide a written employment agreement is a long established part of employment law in New Zealand. Employers are expected to know of their obligations and to adhere to them.

[12] As will become apparent, the lack of a written employment agreement setting out the rights and obligations of the parties to this employment relationship has created difficulties for both parties in pursuing their respective claims.

### **Arrears of wages**

[13] Mr Sinton claims that on 21 December 2018 Coatesville Motors deducted \$2,066 from his final pay. He says he was told at the time the money was to pay for a

Warrant of Fitness (WOF) Inspector course he had undertaken while employed by Coatesville Motors. He claims payment of the \$2,066. In addition he claims payment of a fuel allowance in the amount of \$1,750 which he says was also owed to him when his employment ended.

[14] The documents produced to the Authority do not support Mr Sinton's claim that there was a deduction from his final pay. Ms Gardner has provided a clear breakdown of the calculation of Mr Sinton's final pay and a bank statement produced by Coatesville Motors shows Mr Sinton received full payment of his final pay including holiday pay.

[15] Mr Sinton says he was entitled to a fuel allowance totalling \$1,750 which was payable to him at the end of the employment relationship. He says he was not paid the fuel allowance, instead it was retained by Coatesville Motors as payment towards the \$2,066 it says he had to pay for the WOF training. He says this is the basis on which he claims money was withheld from him from his final pay.

[16] A handwritten note provided to the Authority showing the calculation of Mr Sinton's final pay includes two annotations: one for WOF training with the amount of \$2,066 stipulated and the second for fuel allowance with a corresponding amount of \$1,750 stipulated. The note is undated.

[17] Ms Gardner told me that Mr Sinton claimed he was owed the fuel allowance and after mediation, as an act of good faith, she paid the \$1,750 into Mr Sinton's bank account despite not believing he was entitled to it.

[18] Mr Sinton later returned the money by way of a bank cheque dated 19 May 2019. The bank cheque was received by Coatesville Motors in August with no explanation as to what it was for and no indication of where it had come from. By the time the bank cheque was received by Coatesville Motors these proceedings including the counter claims against Mr Sinton had been lodged in the Authority.

[19] As I have already recorded, there was no written employment between the parties. In the absence of a written term of employment requiring the payment of a fuel allowance I have considered whether there was a verbal agreement between the parties.

[20] In his written evidence Mr Sinton says that when he was employed he was promised a company vehicle and that he would be managing the workshop. Mr Krinkel

told me they did discuss Mr Sinton potentially developing into managing the business and that if that occurred they would possibly look at a company car. I have preferred Mr Krinkel's evidence on this point as being the most plausible. No car was provided and no claim has been made that Coatesville Motor's breached an obligation to provide one.

[21] I am satisfied there was no contractual requirement for Coatesville Motors to pay Mr Sinton a fuel allowance, and there was no deduction made from Mr Sinton's final pay. Accordingly his application is declined.

### **Counter-claim**

[22] Coatesville Motors claims that on termination of his employment Mr Sinton was obliged to return company property and to settle his employment-related debts. It seeks compliance orders and/or an order for damages together with interest.

#### ***Failure to return company property***

[23] Coatesville Motors claims Mr Sinton failed to return his company uniform and keys. At the beginning of his employment Mr Sinton was issued with two pair of shorts, two pairs of long trousers and five shirts as uniform items to wear during his employment together with a key to the workshop.

[24] Mr Sinton told me he returned the uniform items and the key in August or September 2019. He told me he put the uniform items in a plastic bag which he left hanging over Mr Krinkel's letter box and put the key inside the letter box.

[25] I have accepted the evidence from Coatesville Motors that it never received the uniform items or the key. Leaving the uniform in a bag hanging over a letter box provides no guarantee that they would remain there until Mr Krinkel or Ms Gardner returned from work or could access the letter box which is some 300 metres from their home. No explanation has been provided by Mr Sinton as to why he did not return the items to the worksite.

[26] Mr Sinton has provided no explanation as to why the items were not returned soon after his employment ended rather than about nine months later and after counter claims relating to the uniform and key had been raised. I am satisfied Mr Sinton was aware of the need to return the company property as he had been asked by Ms Gardner in a text message in January 2019, to do so.

[27] I find the requirement for Mr Sinton to return the company property at the end of his employment was an implied term of the employment relationship and his failure to ensure the items were returned and received by Coatesville Motors was a breach of this term.

[28] Coatesville Motors seeks a compliance order and/or damages for Mr Sinton's failure to ensure the return of his uniform items and key. I have accepted the evidence of both parties that neither of them are in possession of the uniform items or key. Accordingly, a compliance order requiring Mr Sinton to return the items is unlikely to be effective. I have therefore turned my mind to the question of whether damages is a suitable alternative remedy.

[29] Coatesville Motors seeks damages in the form of reimbursement for replacement uniform items it had to purchase in February and for the costs associated with having to change its locks and alarm codes due to the failure by Mr Sinton to return his key.

[30] Coatesville Motors has produced evidence of the costs associated with the purchase of replacement uniform items. This totalled \$380. Ms Gardner says the uniform items had to be embroidered which cost a further \$66.00. The evidence supporting the costs incurred in embroidering the uniform items is dated 19 September 2019. I am not satisfied this payment relates to the uniform items purchased in February 2019.

[31] No documentary evidence has been provided by Coatesville Motors to support its claim that it incurred expenses to change the alarm codes and locks. As a consequence there is no evidence upon which to base a claim for damages.

[32] I am satisfied Coatesville Motors has established a claim for damages for the replacement uniform items but not for the embroidery and change of alarm codes and locks.

[33] Mr Sinton is ordered to pay to Coatesville Motors the sum of \$380 in damages for his failure to return company property at the end of his employment within 30 days of the date of this determination.

***Failure to pay employment-related debts***

[34] Coatesville Motors claims Mr Sinton left his employment without making payment of his personal parts account and the WOF training course he completed.

*Parts account*

[35] At the end of his employment Mr Krinkel says Mr Sinton had a debt of “about \$1,200” for parts he purchased through Coatesville Motors. It is common ground that Mr Sinton paid \$800 in cash as payment of the account when he left his employment. Mr Sinton says he understood this payment met the total balance owing on his account.

[36] Coatesville Motors says “over \$300” remains outstanding. No evidence of the parts purchased, when they were purchased or the actual amount due on the account has been provided by Coatesville Motors.

[37] I am not satisfied the Authority has jurisdiction to make the orders sought by Coatesville Motors in relation to this debt. While the parts account was made available to Mr Sinton as a result of the employment relationship the obligation to pay the account was not founded on an employment agreement.

*WOF Debt*

[38] It is common ground that Mr Sinton undertook training to become a qualified WOF Inspector while he was employed by Coatesville Motors. In his written evidence Mr Krinkel told me it is helpful to the business for its Technicians/Mechanics to be qualified as inspectors.

[39] Mr Krinkel says he and Mr Sinton discussed the cost of the course being in the region of \$2,000 and they agreed that if Mr Sinton left within 12 months he would repay the cost of the course. Mr Krinkel told me that when Mr Sinton left his employment he asked how and when the money for the course would be paid.

[40] Mr Sinton denies there was any discussion about repayment of the training fee. Although he acknowledges he undertook the training Mr Sinton denies there was any agreement for him to reimburse the costs of the training.

[41] Any agreement regarding the funding and reimbursement of the WOF training course was never reduced to writing. Coatesville Motors has not provided any

documentary evidence of the amount paid for the training course or the date on which the fee was paid. In the absence of this information, I decline to make the orders sought by Coatesville Motors.

### **Costs**

[42] Costs are reserved. I am of a mind to let costs lie where they fall. However, the parties are invited to resolve the matter between them. If they are unable to do so the parties shall have 30 days from the date of this determination in which to file and serve a memorandum on the matter. On receipt of the memorandum the parties shall have a further 14 days in which to file and serve a memorandum in reply. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[43] The parties could expect the Authority to determine costs, if asked to do so, on its usual “daily tariff” basis unless particular circumstances or factors require an adjustment upwards or downwards. This matter has largely been dealt with on the papers with about one hour of time spent on 20 April 2020 where questions were answered and brief oral submissions were made by the representatives.

Vicki Campbell  
Member of the Employment Relations Authority