

**CONTRACTUAL BENEFIT CLAIM
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

CITATION : 2020 WAIRC 00304

CORAM : SENIOR COMMISSIONER S J KENNER

HEARD : TUESDAY, 2 JUNE 2020

DELIVERED : WEDNESDAY, 3 JUNE 2020

FILE NO. : B 33 OF 2020

BETWEEN : CRAIG WILLIAM MILLS
Applicant

AND

CONCEPT CABINETS
Respondent

Catchwords : Industrial Law (WA) - Contractual benefits claim - Claim for final week's pay – Applicant had resigned - Whether applicant worked the hours claimed – Claim for denied contractual benefit upheld – Order issued

Legislation : *Industrial Relations Act 1979 (WA)*

Result : Upheld and order issued

Representation:

Applicant : In person

Respondent : Mr T Micari

Reasons for Decision

- 1 The applicant was employed by the respondent between 28 February 1996 and 17 January 2020, latterly as the respondent's manager. The respondent is engaged in the business of cabinet making. Whilst the manager of the business, the applicant was also required to attend client premises and perform some "hands-on" work. For a variety of reasons, the applicant gave the respondent notice of termination of his employment on 17 January 2020. He did not work thereafter. The applicant claims he has been denied contractual benefits under his contract of employment with the respondent. Whilst the applicant initially claimed amounts regarding pay in lieu of notice, long service leave and one week's wages, at the outset of the matter, the applicant only proceeded with his claim for payment for his final week of work, preceding 17 January 2020.
- 2 The evidence in relation to this claim on behalf of both the applicant and the respondent is scant. The applicant testified that the respondent's business was appearing to wind down and he was trying to finalise a kitchen job for a customer in Roleystone. There were issues with this project. According to Mr Micari, the owner of the business, the customer made complaints in relation to the quality of the work performed. The Roleystone job was supposed to have been completed towards the end of 2019. It was the applicant's evidence he was endeavoring to resolve those issues before his resignation on 17 January 2020.
- 3 According to the applicant, he was at the client's premises at Roleystone attending to tasks in relation to the kitchen job, including a bin replacement; installation of new power points; duct covers; base units and the kickboards. Also, the customer was not happy with the quality of the glass doors fitted in the kitchen.
- 4 The customer complaints were confirmed by Mr Micari in his evidence when he said that the customer withheld the final payment of \$8,000, because of concerns about the quality of the job performed. Despite the efforts of the applicant to satisfy the customer concerns, Mr Micari said that the client was still not happy with the outcome.
- 5 As to the claim for his final week's pay before his resignation, the applicant maintained that he did perform work during that week on behalf of the business and should be paid for it before his resignation. The respondent maintained that the applicant still has some of the respondent's property in his possession, including a computer hard drive which contains business records. This was denied by the applicant who maintained that he does not know of the whereabouts of such equipment. It became clear during the course of the hearing that the reason the respondent had refused to pay the applicant for his final week

of work with the business, was Mr Micari's opinion that the applicant retained in his possession the computer hard drive.

- 6 I am satisfied on the evidence that the applicant was employed by the respondent as its manager. The evidence is that the applicant was paid at the rate of \$1,109 net per week for a notional 38-hour week. I am satisfied that the applicant resigned effective on 17 January 2020 and thereafter did not return to the respondent's business. Therefore, the applicant only may be paid until the date of his resignation. I am satisfied on the evidence that the applicant did perform work for the Roleystone customer in the week before 17 January 2020. It is not open to the respondent to refuse to pay the applicant's wage for his last week of employment, because there was a dispute with the customer in relation to the work performed, and because the applicant had allegedly failed to return some computer equipment. The question of rectification of works and recovery of property of the business is a separate question to the applicant's entitlement to be paid under his contract of employment for his final week of work.
- 7 The Commission would order that the applicant be paid for his final week of employment by the respondent in the sum of \$1,109 net.