

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Clara Irene Blackwell (Applicant)
AND Wairau Stone Limited (Respondent)
REPRESENTATIVES Clara Irene Blackwell In person
No appearance for Respondent
MEMBER OF AUTHORITY Y S Oldfield
INVESTIGATION MEETING 8 December 2005
DATE OF DETERMINATION 12 December 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] Ms Blackwell worked for the respondent as its Marketing Manager from late February 2003 until 24 June 2005. Towards the end of this time payment to her became erratic. By 24 June she was owed for nine weeks work and decided that she could not continue to work for the respondent. She now seeks payment for those nine weeks plus outstanding holiday pay.
- [2] When the statement of problem was first sent out to the respondent, at the registered address then recorded on the Companies' Register, Courier Post (to whom the Authority delegates the task of service) was not able to effect service. Ms Blackwell however advised that she remained in personal contact with a director of the respondent Mr Roderick Harrison so, pursuant to Regulation 16(3) (a) (iv) I directed that service upon the respondent company should be effected through personal service on Mr Roderick Harrison, and that this should be arranged by the applicant.
- [3] In due course Ms Blackwell advised that she had done so. Ms Blackwell attended my investigation meeting with Mr Pundol, who had worked with her for the respondent and who has lodged a similar employment relationship problem with the Authority. Mr Pundol and Ms Blackwell are now in business together and have an office at 2/133 Bairds Rd Otara. Ms Blackwell told me that she handed the statement of problem to Mr Harrison when he visited 2/133 Bairds Rd Otara at approximately 2.00pm on September 20, 2005. I am satisfied that this constituted service on the respondent company.
- [4] Subsequent to this, the Authority support officer checked the Companies' Register again and found that a change of registered office had been recorded. The notice of investigation meeting was therefore served on the new address. There was no statement in reply or other response from Wairau Stone Ltd, and no appearance from the respondent on the morning of the investigation meeting. Courier Post has provided confirmation of service of the notice of

investigation meeting and on that basis I have proceeded to investigate and determine the matter in the respondent's absence.

- [5] However, this has not resulted in a determination in Ms Blackwell's favour. After considering what she told me about her working arrangements I have concluded that she was engaged pursuant to a contract for services rather than a contract of service. My reasons for this follow.

Contractor or Employee?

- [6] Ms Blackwell told me that she started work for the respondent in February 2003 when it purchased a stonework business for which she had worked for many years. She had provided services to the previous owners through one of her limited liability companies. From February 2003 she continued to provide the same services and to charge the same amount, \$1,000.00 per week plus GST. However this was paid not to her company, but directly into her personal bank account, where it was appeared as "Wairau Stone Wages."
- [7] From then until June 2005 Ms Blackwell worked for the respondent while simultaneously running two businesses of her own using two companies of her own. One was a finance company and the other did home renovations. These businesses complemented that of the respondent in a way which was to mutual advantage. During a normal day Ms Blackwell worked for each and any of them as necessary, often providing services to the same clients from all three companies, but billing them separately of course.
- [8] Ms Blackwell said that she paid GST and claimed it back on expenses including petrol and car maintenance and the costs of her home office, although during the week when she was not seeing clients she worked out of the respondent's premises. Her GST returns were prepared with the assistance of her accountant.
- [9] Ms Blackwell told me that at Christmas 2003 the respondent did not pay her any holiday pay. When she queried this Mr Harrison told her that it was because she was a contractor.
- [10] Ms Blackwell has continued her own business ventures since ceasing work for the respondent.
- [11] Section 6 (2) of the Employment Relations Act 2000 requires that (in deciding whether a person is employed under a contract of service) I must determine the real nature of the relationship between them. From what Ms Blackwell has told me, I consider the real nature of her relationship with the respondent was not that of an employee.
- [12] Although she was required to work from the respondent's premises, she was free to run her own businesses as she saw fit, and did so. Payment was made to a personal account and labelled "wages" but she received GST on this money. With the assistance of her accountant she furnished GST returns and claimed on expenses, making no distinction between expenses incurred in running her other businesses and those incurred working for the respondent. She was already in business on her own account and the work she did for the respondent formed a complementary part of her other business activities.
- [13] I conclude that Ms Blackwell's problem is outside the jurisdiction of the Authority. She must look elsewhere for assistance with it.