

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2014] NZERA Christchurch 46
5424729

BETWEEN ASHWINI JOTISHMA CHAND
Applicant

AND GO EZY LIMITED
First Respondent

AND GLOBALCAMPERS LIMITED
Second Respondent

Member of Authority: M B Loftus

Representatives: Melanie Douglas, Advocate for Applicant
Volkmar Wollenweber, for both Respondents

Investigation meeting: 25 March 2014 at Christchurch

Submissions Received At the investigation

Date of Determination: 26 March 2014

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Ms Ashwini Chand, claims she was unjustifiably dismissed. She also claims to have been unjustifiably disadvantaged and the victim of unlawful discrimination.

[2] The first respondent, Go Ezy Limited, disagrees. The second, GlobalCampers Limited, does not reply to the substantive allegations on the grounds it never employed Ms Chand.

Background

[3] Ms Chand was engaged to perform various administrative duties in August 2012. Her employment agreement names Go Ezy as her employer.

[4] On 25 April 2013 she was dismissed with one month's notice. Go Ezy cites redundancy as the reason.

[5] Ms Chand disagrees and claims the dismissal was a reaction to her recently announced pregnancy. She challenged the dismissal with her Statement of Problem (filed on 29 August 2013) identifying Go Ezy as the respondent.

[6] During a telephone conference to discuss advancing the matter in October 2013 it came to light Go Ezy had, by then, ceased trading and was bereft of assets. That gave Ms Chand cause to consider whether or not it was worth pursuing her claims.

[7] On 18 February 2014 she filed an amended Statement of Problem which identified GlobalCampers as the respondent. Go Ezy was no longer cited.

[8] Both companies have the same registered office, address for service, directorship (Mr Wollenweber) and shareholding.

[9] The changed citation was discussed during a further telephone conference where the parties agreed I determine the question of which of the two company's employed Ms Chand as a preliminary question. Both remain possibilities, with the agreement I determine who employed Ms Chand formalising Mr Wollenweber's consent to joinder.

Determination

[10] Section 65(2)(a)(i) of the Employment Relations Act 2000 requires the employer be identified in any written employment agreement. Ms Chand has a written agreement and it identifies the employer as Go Ezy Limited. Similarly the letter which confirmed the redundancy is on Go Ezy letterhead, as is a reference provided the same day.

[11] Ms Chand says she was always aware of the existence of both Go Ezy and GlobalCampers and the work she performed was for the benefit of both. She also accepts, notwithstanding performance of work for both companies, she was originally employed by Go Ezy. She is, however, of the view the arrangement subsequently changed.

[12] Originally Go Ezy operated in New Zealand, while GlobalCampers conducted similar operations in Australia and North America. It was, however, intended Go Ezy be wound up and GlobalCampers assume responsibility for the entire operation.

[13] In support of her contention the arrangement changed Ms Chand cites a meeting at which staff were told of the intended change to company structure and documents which reflect a move toward it. The documents include a reference given to Ms Chand for immigration purposes and a business card which had letterhead naming both companies. Reference is also made to a team photo including Ms Chand and appearing on a GlobalCampers blog and the fact Mr Wollenweber sent an e-mail to Ms Douglas in June 2013 which identifies him as being @GlobalCampers and makes no mention of Go Ezy.

[14] Mr Wollenweber accepts there was a plan under which Go Ezy would cease operating and staff had been advised of it. He is, however, adamant the plan had not been implemented at the time of Ms Chand's dismissal. Both entities remained extant and operated with staff engaged by Go Ezy. GlobalCampers then paid Go Ezy a management fee to cover the cost of work performed on its behalf. The operational amalgamation did not occur until the second half of 2013 and not all staff or contractors (both were used) were offered work with GlobalCampers.

[15] Ultimately Ms Chand carries the onus of establishing it more likely than not her employment arrangement changed. I conclude she has been unable to do so.

[16] As already said she accepts she was employed by Go Ezy yet required to perform work for both. There is no evidence of a formal change to either arrangement. Ms Chand accepts she continued working for both and there was no discussion about transferring her employment agreement to GlobalCampers. She was paid by Go Ezy throughout, but says funds were transferred from GlobalCampers to cover outgoings, including pay. Mr Wollenweber says yes, that occurred, but it is consistent with the management fee arrangement. He is correct and Ms Chand is otherwise unable to challenge the evidence cited in paragraph 14.

[17] Nor do the documents referred to in paragraph 13 assist Ms Chand. They might cite both companies in the letterhead but they do not attribute her employment to one or the other.

[18] In the circumstances I find it hard to ignore the written employment agreement. It says the employer was Go Ezy and in the absence of firm evidence of a change that must remain the situation, especially as the original filing appeared to indicate Ms Chand still considered Go Ezy the employer as late as August 2013.

Conclusion

[19] For the above reasons I conclude Ms Chand was employed by Go Ezy Limited.

[20] That conclusion raises the question of whether or not Ms Chand will continue with her claim. She is asked to advise the Authority of her decision as soon as practicable.

[21] Costs are reserved though I note they will most likely lie where they fall should Ms Chand choose not to proceed with her substantive claims. That outcome would effectively see the company defend the claim, albeit on a technicality, but as it was represented by one of its officers its recoverable costs are therefore negligible.

M B Loftus
Member of the Employment Relations Authority