

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Terrence Daly (Applicant)
AND Athlete Management International Limited (Respondent)
REPRESENTATIVES T Castle for Applicant
K Muir for Respondent
MEMBER OF AUTHORITY G J Wood
INVESTIGATION By way of submissions received by 9 February 2006
MEETING
DATE OF 17 February 2006
DETERMINATION

DETERMINATION OF THE AUTHORITY

1. This determination relates to an employment relationship problem between Mr Daly and the respondent (Athlete Management) that Mr Daly has filed with the Authority. Mr Daly claims that he was unjustifiably dismissed by Athlete Management on 11 February 2005. Amongst other things, there is a dispute about whether or not Mr Daly was an employee of Athlete Management or instead an independent contractor. The differences between the parties have not been the subject of mediation.
2. Mr Daly has made an application for removal of the whole of the matter to the Employment Court. He makes the application on the grounds that there is an important question of law likely to arise in this matter other than incidentally, namely the nature of the relationship between the applicant and the respondent. Mr Castle on Mr Daly's behalf also submits that the matter should be removed because Mr Daly is an involved, affected and an interested party in extant proceedings already before the Employment Court in Wellington under WRC32/05 and WRC37/05. These matters involve Athlete Management and Mr Roberto Brady, a close associate of Mr Daly's, who was previously the general manager of the New Zealand arm of Athlete

Management. WRC32/05 involves, I understand, an application for determination by the Court as to whether or not Mr Brady was an employee of Athlete Management. WRC37/05 is an employment relationship problem between Mr Brady and Athlete Management raising similar issues to those raised by Mr Daly in this employment relationship problem. That case was removed to the Employment Court by me on 13 October 2005. In my determination I accepted that there were grounds for removal as the Court already had before it in WRC32/05 proceedings between the same parties involving the same issues.

3. The Employment Court declined to join Mr Daly as a plaintiff to the above set of proceedings, even although it accepted that Mr Daly's relevant circumstances may be closely connected to those of Mr Brady. The Court noted that what was required on Mr Daly's behalf was an application to the Employment Relations Authority combined with an application for removal to the Court. The Court noted that if and when Mr Daly's grievance was removed, the usual provisions for filing a statement of defence would have to be undertaken by Athlete Management.
4. In all these circumstances Athlete Management does not oppose the application and does not intend to file a statement in reply to that statement of problem, as it considers that it will be necessary for Mr Daly to file an amended statement of claim. I agree with Mr Muir's submission on this point and have declined to require the statement in reply before the determination on removal is made. I further note that there has been no mediation in this matter, but given that the Employment Court is to hold a call over on Mr Brady's case on 3 March 2006, I have determined to also leave the issue of mediation until after the determination of the application for removal.
5. I find that there are appropriate grounds for removal of this matter because, pursuant to s.178(2)(d), I am of the opinion that in all the circumstances the Court should determine it. I make this determination on the basis that although determining whether a person is an employee or not is not a question of law and simply because serious allegations are made they do not have to be heard in a court of record, I do accept that the seriousness of the issues between the parties is a fact for supporting removal, as in *Brady*.

6. Clearly, for the reasons the Court has already given, the Court does not have before it proceedings which are between the same parties. They do, however, involve the same or similar or related issues. Thus it is the inter-relation of the proceedings, rather than any important questions of law, that supports the removal of the application.
7. The removal of this employment relationship problem would therefore allow the Court to decide whether all matters between the parties should be consolidated and thus effectively dealt with by one judicial body at the same time. Given that there is no opposition to removal and there are no particular factors supporting the Authority dealing with this particular employment relationship problem at first instance instead of the Court, I find that the Court should, in all the circumstances, determine the matter.
8. I therefore remove the whole of the proceeding WEA3/06, between Terrence Daly and Athlete Management International Limited, to the Employment Court for the Court to hear and determine it without the Authority investigating the matter.

G J Wood
Member of Employment Relations Authority