

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN **IBT International New Zealand Limited** (Applicant)

AND **Elizabeth Duncan** (Respondent)

REPRESENTATIVES **Therese Kelly for the Applicant**
Elizabeth Duncan in person

MEMBER OF AUTHORITY P R Stapp

TELEPHONE CONFERENCES Wednesday 21 December 2005

DATE OF DETERMINATION 22 December 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The employment relationship problem lodged in the Authority related to the enforcement of a restraint of trade provision in an agreement between the parties.

[2] The Authority's role and what the parties were to do are covered in a memorandum dated 21 December 2005 recording one of the telephone conferences. That memorandum raised an issue about the Authority's jurisdiction on a contract for services.

Disposing of the employment relationship problem

[3] The parties are agreed that the contract presented to the Authority and applying between the parties is a contract for services, the respondent is an independent contractor.

[4] Arrangements had been put in place for the parties to attend mediation services provided by the Department of Labour prior to the contractor issue being identified. I have encouraged the parties to use this arrangement because there is a problem that requires sorting out and since a date and mediator have been organised. The parties are not prevented from using the services of the Department of Labour on a work-related relationship matter: see s144A applied. There is also the matter of any continuance of an undertaking given by the respondent. These are now matters requiring the parties' voluntary agreement.

[5] This application cannot be taken any further by the Authority. There will be no investigation meeting.

P R Stapp
Member of the Authority