

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2017] NZERA Christchurch 34
5647196

BETWEEN CALEB EVAN JONES
 Applicant

A N D TRULINE CIVIL LIMITED
 Respondent

Member of Authority: David Appleton

Representatives: Applicant in person
 Daniel Powell, for Respondent

Investigation Meeting: Determined by consideration of papers alone

Date of Determination: 15 March 2017

DETERMINATION OF THE AUTHORITY ON A PRELIMINARY MATTER

Employment relationship problem

[1] Mr Jones claims that he was dismissed from his employment with a company called Select Recruitment Limited through the agency of the respondent. The respondent asserts that Mr Jones was never employed by them and, effectively, disputes the Authority's jurisdiction to consider the claim against it.

Background

[2] Mr Jones was employed as a temporary employee by Select Recruitment Limited. Select Recruitment Limited is a recruitment consultancy providing services to third party clients. Under the terms of an individual employment agreement between Mr Jones and Select Recruitment Limited, Select Recruitment Limited could offer assignments to Mr Jones to work for the third party clients.

[3] The respondent is one of those third party clients of Select Recruitment Limited.

[4] On 7 December 2015 Mr Jones was engaged by Select Recruitment Limited to work on an assignment for the respondent carrying out hydro vacuum digging with another employee. Mr Jones was working under the direction of the respondent's site foreman.

[5] It is Mr Jones' case that he was dismissed from his employment with Select Recruitment Limited on 12 April 2016 following a statement received by that company from the respondent that he was "unproductive". Mr Jones attributes the instruction to dismiss him as emanating from the site foreman, about whom Mr Jones had complained less than three hours before, alleging that the site foreman had displayed racist behaviour towards other employees.

[6] The Authority having sought further information from Mr Jones as to the cause of action that he asserts exists against the respondent, his answer is that the site foreman of the respondent was a *de facto agent* for Select Recruitment Limited.

[7] One final fact of relevance is that the Mr Jones had originally also lodged proceedings in the Authority against Select Recruitment Limited, but that those proceedings settled at mediation on or around 2 March 2017.

Issue to determine

[8] The issue to determine is whether the Authority has jurisdiction to consider a claim for unjustified dismissal against the respondent.

Determination

[9] Mr Jones' claim of unjustified dismissal is a personal grievance under s.103(1)(a) of the Employment Relations Act (the Act). Section 103 makes clear that a personal grievance is a grievance that an employee may have against the employee's employer or former employer. Section 5 of the Act defines "employer" as "a person employing any employee". "Employee" is defined in s.6 of the Act. That states at s.6(1)(a) that an employee is "any person of any age employed by an employer to do any work for hire or reward under a contract of service". Section 5 defines an employment agreement as "a contract of service".

[10] It is clear from the individual employment agreement between Mr Jones and Select Recruitment Limited that he was employed by that company under a contract of service. Whilst it is possible for an employee to have two employers, that is not what Mr Jones is arguing. His argument is that he was dismissed at the behest of the respondent. He says that the site foreman working for the respondent acted as agent for Select.

[11] An agent is a person appointed to act as a representative of another. When acting in that capacity, the agent self-evidently does not act on his or her own behalf or on behalf of anyone else, other than the principal. Therefore, if, as Mr Jones asserts, the site foreman was acting as an agent for Select Recruitment Limited, then the correct respondent is Select Recruitment Limited. The proceedings against Select Recruitment Limited have, however, been settled at mediation. Therefore, Mr Jones' argument cannot succeed.

[12] On the basis of Mr Jones' evidence, and assertions, the Authority has no jurisdiction to consider any proceedings against the respondent on the basis of his agency argument.

[13] There exists, in common law, the tort of inducing a breach of contract. Mr Jones had not asserted such a breach and, in any event, the Authority has no jurisdiction to consider claims founded in tort. (I refer to s.161(1)(r) of the Act). Furthermore, Mr Jones does not seek the imposition of a penalty against the respondent pursuant to s.134 of the Act.

Conclusion

[14] I am satisfied that the Authority has no jurisdiction to consider the proceedings brought against the respondent by Mr Jones. I therefore dismiss them.

Costs

[15] It appears that the respondent has not engaged any external legal advice in lodging its statement in reply. Therefore, I make no order as to costs.