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## Maaroufe v Advanced Pipeline Christchurch Limited (Christchurch) [2017] NZERA 1002; [2017] NZERA Christchurch 2 (4 January 2017)

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## Maaroufe v Advanced Pipeline Christchurch Limited (Christchurch) [2017] NZERA 1002 (4 January 2017); [2017] NZERA Christchurch 2

Last Updated: 6 March 2017

### IN THE EMPLOYMENT RELATIONS AUTHORITY CHRISTCHURCH

[2017] NZERA Christchurch 2  
5571621

BETWEEN AMINE MAAROUFE Applicant

A N D ADVANCED PIPELINE CHRISTCHURCH LIMITED First Respondent

SEYED DERHAMY Second Respondent

SAAD SADIQ KHAYYAT Third Respondent

MOHAMMAD BASHIR RAHIMI

Fifth Respondent

Member of Authority: Trish MacKinnon

Representatives: Robert Thompson for Applicant

Seyed Derhamy for First Respondent

Second and Third Respondents self represented

Investigation Meeting: On the papers

Documentation Received: 18 October 2016 from the Applicant

27 September 2016 from the First and Second Respondents; 26 September 2016 from the Third Respondent

Date of Determination: 4 January 2017

#### **DETERMINATION OF THE AUTHORITY**

#### **Employment relationship problem**

[1] Amine Maaroufe claims he was employed by Advanced Pipeline Christchurch Limited (APCL) and says he was both unjustifiably disadvantaged and unjustifiably dismissed by his employer. He seeks remedies including lost wages and

compensation for the hurt and humiliation he sustained. Mr Maaroufe has other claims against his employer for which he seeks penalties.

[2] Mr Maaroufe originally cited four named individuals as the second to fifth respondents. In July 2016 he notified the Authority he wished to remove the fourth respondent, Akram Rajab Dilaimi. This resulted from information he had received that Mr Dilaimi had relocated to Iraq where service of documents was problematic.

[3] APCL says, through its sole director, Seyed Derhamy, that it did not employ Mr Maaroufe. Mr Derhamy says Mr Maaroufe's employer was Advanced Pipeline Services Limited. That company is noted in the Companies Register as being in liquidation. Its sole director is Mr Dilaimi who is apparently currently resident in Iraq.

[4] Saad Khayyat, the third respondent, also says Mr Maaroufe's employer was Advanced Pipeline Services Limited. There has been no contact from the fifth respondent, Mr Rahimi, whose views on the matter are unknown.

[5] In the course of a telephone conference with the parties it was confirmed that the Authority would need to determine the identity of Mr Maaroufe's employer as a preliminary issue before his claims could be heard.

#### **Background**

[6] Mr Maaroufe completed an employment application form on 26 March 2015 and was interviewed for employment by Mr Khayyat. The application form is headed "Advanced Pipeline Services Limited". It contains a "Statement of Loss Prevention Responsibilities" in which there are four other references to Advanced Pipeline Services Limited.

[7] The "Acknowledgement" section of the application form, which Mr Maaroufe signed, also refers to the employment being with Advanced Pipeline Services Limited. Mr Maaroufe says he was offered employment on a three-month trial basis at the end of which he would be given an employment agreement. He says he commenced his employment on 1 April 2015 and worked 6 days a week on shifts that included evenings and nights. Mr Maaroufe says that, despite frequently asking Mr

Khayyat for an employment agreement, he did not receive one.

[8] Mr Maaroufe had a number of issues during his employment which do not require elaboration for the determination of this preliminary matter. Those issues culminated in his resigning on 18 June 2015, after having been on sick leave from 10 June. Mr Maaroufe's written letter of resignation was addressed to "Advanced Pipeline Services, Leeds Street, Phillipstown, Christchurch" for the attention of "Saad". A handwritten note on the copy of the resignation Mr Maaroufe attached to his statement of problem recorded that his resignation had been accepted on 19 June by "SK".

[9] On 9 July 2015 Mr Maaroufe raised personal grievances and other employment matters through his then representative, Melanie Douglas. Ms Douglas raised the issues by letter addressed to Mr Khayyat at Advanced Pipeline Christchurch Limited. In the same letter she requested wage and time records for Mr Maaroufe and a copy of his personnel file.

[10] The response to Ms Douglas' notification of Mr Maaroufe's employment issues came from a lawyer whose letter noted he was in receipt of instructions from Advanced Pipeline Christchurch Limited. The lawyer, Mr Murray, enclosed a copy of Mr Maaroufe's wage and time records, and a copy of "what our client understands to be (Mr Maaroufe's) "personnel file"".

[11] Mr Murray noted he was taking more detailed instructions regarding the specific allegations Ms Douglas had made in her letter of 9 July 2015. He ended his response by referring to the 10 days' sick leave the wage records showed Mr Maaroufe had been paid for, notwithstanding his lack of entitlement to paid sick leave "in the first three months probationary period of his employment...".

[12] The information supplied to Mr Maaroufe included weekly pay slips for the period from 6 April to 14 June 2015. At the top right of each pay slip the name "Advanced Pipeline Christchurch Limited" is recorded.

[13] Mr Khayyat filed a statement in reply in April 2016 on his own behalf as the third respondent. In it, he responded to various allegations Mr Maaroufe had made but did not directly comment on the identity of the company that had employed Mr Maaroufe. He did, however, make reference to "the company head office in Auckland", and to his own resignation from "Advanced Pipeline employment", stating that had occurred in September 2015 and that Advanced Pipeline Services

Limited had gone into receivership in late November 2015. Mr Khayyat also stated he had sent any correspondence he received from Mr Maaroufe and his representatives to Mr Dilaimi, "the Managing Director of the company" to deal with.

[14] Mr Khayyat provided an affidavit in September 2016 in which he stated he had worked for Advanced Pipeline Services Limited from 26 February 2012 to 4

September 2015. He said he was working for that company when it employed Mr Maaroufe. Attached to Mr Khayyat's affidavit was a tax invoice from a registered medical centre in Christchurch. Mr Khayyat said Mr Maaroufe had been referred by Advanced Pipeline Services Limited to undergo general medical examination and vaccination. The tax invoice was made out to "Advanced Pipeline Service".

[15] Mr Derhamy, the second respondent, filed two statements in reply: one on his own behalf as the second respondent, and the other on behalf of APCL, of which he is the sole director. In those documents he stated that Mr Maaroufe was interviewed and employed by Advanced Pipeline Services Limited. He said APCL made weekly payments (to Mr Maaroufe) on behalf of Advanced Pipeline Services. APCL had been incorporated on 27 February 2015 to be an agent for Advanced Pipeline Services Limited contracts. It was his evidence that all personnel were employees of Advanced Pipeline Services and APCL employed no one.

[16] Mr Derhamy also said APCL stopped trading completely about one month before Advanced Pipeline Services went into liquidation. At that time approximately

20 employees were owed wages and it is his evidence that all of them filed claims for their wages with the Advanced Pipeline Services Limited liquidator.

[17] In an affidavit provided to the Authority Mr Derhamy confirmed this information and added further details including minutes of the first meeting of directors of APCL. The minutes include the following under the heading of “Topics Discussed and decisions made”:

“Human Resource (HR), Marketing and administration will be performed by Auckland office to start with but will move towards strengthening Christchurch office towards becoming independent.”

[18] Mr Maaroufe does not accept Mr Khayyat and Mr Derhamy’s evidence that he was employed by Auckland Pipeline Services Limited. In his affidavit in reply to their evidence he referred to, and supplied, a copy of his bank statements showing that

his wages payments were made by “Advanced Pipe” and that his Income Tax Summary, a copy of which he provided, indicated his employer was “Advanced Pipeline Christchurch”.

#### **Who was Mr Maaroufe’s employer?**

[19] Mr Khayyat interviewed Mr Maaroufe for employment at the instigation of a friend of Mr Maaroufe’s. No information was provided to the Authority as to whether the position had been advertised and, if so, by which company.

[20] The available documentation does not provide a clear and consistent answer. The employment application form Mr Maaroufe completed indicates the employer was Advanced Pipeline Services Limited. His payslips indicate that Advanced Pipeline Christchurch Limited paid his wages. Neither of those factors is conclusive evidence of the identity of his employer although both are factors to be considered in determining the identity of the employer.

[21] Mr Maaroufe says he did not receive payslips during his employment, and he saw them only after Mr Murray supplied them in response to Ms Douglas’ request for wage and time records. It is unclear whether he knew there were two separate companies, Advanced Pipeline Services Limited and APCL, when he accepted and commenced employment. The documentation he completed in March 2015 referred only to Advanced Pipeline Services Limited. Mr Maaroufe’s bank statements record wage payments made by “Advanced Pipe”. That truncated version of the paying company’s name would not have alerted him to the possibility he was being paid by a different company from that which employed him.

[22] Mr Derhamy’s evidence is that APCL was established as a mechanism for providing funding to assist Advanced Pipeline Services Limited in its commercial activities and undertakings in Auckland and Christchurch. That company was engaged in the provision of underground pipework and infrastructure services. In February 2015, when APCL was incorporated, Advanced Pipeline Services Limited was engaged in Christchurch in earthquake recovery work to replace essential infrastructure services and pipelines. It had contracts with companies such as Fulton Hogan and Downers. Mr Derhamy’s evidence is that APCL held no contracts with those companies. No documentary evidence was provided to support his assertion.

[23] The minutes of the first meeting of the directors of APCL, who at that time included Mr Dilaimi, as the Managing Director, and Mr Khayyat and Mr Rahimi, convey an intention for that company to operate on an independent basis although initially HR, marketing and administration functions were to be performed by the Auckland office.

[24] I do not infer from the minutes that APCL would not employ staff. The directors' intention that the HR function would be performed from Auckland in the early stages of the company does not preclude APCL from being the employer. Nor does Mr Derhamy's assertion that APCL held no contracts for the work it was undertaking in Christchurch preclude that company from being the employer of those people performing the work.

[25] I do not consider the employment application form, which refers to Advanced Pipeline Services Limited, to be a definitive factor in identifying Mr Maaroufe's employer. I note that, at the time Mr Maaroufe was interviewed by Mr Khayyat and signed that form, APCL had been operational for less than a month. Given the directors' intention for the HR function to be carried out from the Auckland office initially it is possible there were no APCL application forms that could be used.

[26] I view the response from Mr Murray to Mr Maaroufe's notification of his employment relationship problems as a more significant factor in indicating the employer's identity. Mr Murray stated clearly in his letter that he "had instructions from Advanced Pipeline Christchurch Ltd" in respect of Ms Douglas' letter on Mr Maaroufe's behalf, and he enclosed the employment records she had requested. Mr Murray also noted he was taking more detailed instructions on the specific issues Mr Maaroufe had raised.

[27] Nowhere in Mr Murray's response is there any indication that APCL denied having been Mr Maaroufe's employer. If it rejected Mr Maaroufe's assertion that it was his employer, it is likely APCL would have instructed Mr Murray to make that clear in his response to Mr Maaroufe's representative. As far as I am aware from the documentation provided to the Authority, APCL's denial of having employed Mr Maaroufe was made several months after Advanced Pipeline Services Limited was put into receivership and then liquidation in November 2015.

## **Determination**

[28] On balance, following consideration of the factors referred to above, I find Mr

Maaroufe was employed by Advanced Pipeline Christchurch Limited.

[29] The Authority will shortly convene a further telephone conference with the parties in order to discuss the progression of Mr Maaroufe's claims.

## **Costs**

[30] The issue of costs is reserved.

Trish MacKinnon

Member of the Employment Relations Authority