

2. If an employee, was he engaged for a fixed term or of a finite, but unspecified, period as claimed by Mr Kidd?

Background

[4] The respondent runs a farming business which engages a fluctuating number of staff. At the height of the season there may be up to forty persons working in the business of whom, in a normal season, around twenty will be employees and the rest contractors. Staffing is arranged, on the respondent's behalf, by a Mr Bill Reid.

[5] The respondent's assistant manager, a Brazilian, had returned to his homeland for a holiday. There were difficulties with his visa and questions arose over when, or maybe even if, he would return. It was clear that he was not going to return on the originally planned date and Mr Reid was asked to address the issue.

[6] As a result Mr Reid started looking for alternatives. During a casual conversation with a neighbouring farm manager he heard that Mr Mason was looking for work. Indeed, Mr Mason was, at the time, considering three possibilities.

[7] Mr Reid rang Mr Mason and asked if he was interested in some work. He described the tasks, the main one of which was to be feeding stock. Mr Reid says he advised the role was temporary as it was to cover the absence of the assistant manager until he either returned or, if that was not to occur, a replacement was found. He says he asked if Mr Mason was interested, to which the later responded by advising that he was looking for 50 hours a week at a rate of \$20 per hour. The issue of tenure was also raised with Mr Mason advising that one of the options he was considering gave ten weeks work. Mr Mason sought something similar, especially as it met his then current needs. Mr Reid says he considered the work that may be available and said no, nine was the maximum but it remained a case of "up to".

[8] Mr Reid says he raised his understanding that Mr Mason was primarily a self employed fencing contractor and that he was GST registered. He says that when Mr Mason confirmed that, he said "fine – we'll pay \$20 per hour plus GST" (or words to that effect) and Mr Mason agreed. He says they then agreed to meet at the cow shed to discuss details of work to be performed.

[9] Mr Mason, when asked, said Mr Reid's portrayal of the conversation was accurate and agreed he had entered into the agreement as stated. He was also asked, by Mr Reid, whether "*it had always been a case of up to nine weeks*", to which Mr Mason answered "*yes, but that changed at the cow shed*". This is a reference to the meeting the two had arranged to discuss the details of the work (see 8 above and 10 below).

[10] As events transpired Mr Reid did not attend the 'cow shed' meeting. Present were Mr Kidd's son Geoff and the farm manager, Chris. Mr Mason says they outlined the duties and confirmed the payment arrangements. Ms Mason says he said ok as long as he was guaranteed ten weeks work.

[11] Mr Mason says Geoff and Chris considered that, and the work they had scheduled and advised that would not be possible - there was sufficient to keep Mr Mason going till mid October (2009), which was, at that time, nine weeks away. They do not appear to have mentioned the "up to" proviso and Mr Mason say he responded by saying "fine".

[12] As events transpired, the assistant manager returned a week later and although he and Mr Mason worked together for another fortnight the arrangement was terminated by Mr Kidd on the evening of Thursday 27 August 2009. Mr Kidd says he simply did not have sufficient work to justify Mr Mason's retention and there are absolutely no qualms about the quality of Mr Mason's work.

[13] During the time he was there, Mr Mason acted in accordance with the agreement in respect to payment. He prepared and forwarded GST invoices and once these were paid, the GST was properly accounted and forwarded to Inland Revenue.

Determination

[14] The answer to the first issue is, in my view, clear. Mr Mason is a contractor and not an employee. At the time of the engagement he was:

1. A self employed contractor running a legitimate GST registered business.

2. Offered work as a contractor;
3. Accepted that offer; and
4. Thereafter acted on that agreement by proffering GST invoices and reconciling his tax appropriately.

[15] Mr Mason does not suggest that arrangement outlined in 14 above changed during his discussion with Geoff and Chris. The change was, according to Mr Mason's evidence, limited to the issue of tenure.

[16] The conclusion that Mr Mason was a contractor means the Authority does not have jurisdiction to deal with his substantive grievance, namely the alleged early termination of the arrangement and that I can not provide an answer to the second issue. If Mr Mason wishes to pursue the issue, he must do so in another forum.

Orders

[17] For the reasons given I conclude that the Authority has no jurisdiction in this matter. Accordingly, Mr Mason's claim is dismissed.

Costs

[18] I did not seek comment from the parties about costs but in the interests of bringing this matter to a conclusion, I choose to address the issue. Both parties were self represented and therefore the only litigation cost incurred was the filing fee paid by the unsuccessful party. That cost is not, given the outcome, recoverable. Both parties were local and neither incurred inordinate travelling costs that might, in other circumstances, have to be considered. In these circumstances I believe it appropriate to conclude that any costs that may have been incurred lie with the party concerned and I will make no order in this respect.

Mike Loftus
Member of the Employment Relations Authority