

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 98/07
5053888

BETWEEN FREDERICK MORETON
Applicant

AND ACANTECH LIMITED
Respondent

Member of Authority: James Crichton

Representatives: Mr Moreton in person
Walter Guan for Respondent

Investigation Meeting: Interview with Mr Moreton 23 July 2007
Interview with Respondent 6 August 2007
At Christchurch

Determination: 9 August 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant (Mr Moreton) alleges that he was employed by the respondent, Acantech Limited (Acantech) as a builder handyman, that he did significant work, including purchasing materials, and was neither paid for his labour nor for the materials that he purchased.

[2] Acantech resists this claim and contends that Mr Moreton was not an employee but a contractor and that Mr Moreton has been paid in full for his work and for the materials that he purchased.

[3] The relationship between the parties was troubled and each was reluctant to meet with the other. Because there was a preliminary issue about whether there was an employment relationship or not, I determined to interview the principal protagonists separately to form a view about whether the Authority had jurisdiction.

[4] Having met with both Mr Moreton and with Mr Guan of Acantech, and having carefully read the material which both parties have filed in the Authority, I am satisfied on the balance of probabilities that the relationship between these two parties is one of contractor and principal and not one of employer and employee.

[5] I reached this conclusion because it is clear that Mr Moreton has incurred expenditure in his own name for which he seeks reimbursement from Acantech and it is also clear that while the parties spoke about an hourly rate of \$20, that \$20 was, in my view, more likely to be a component part of a contractual rate than an hourly rate pursuant to an employment situation.

[6] Acantech had no control over Mr Moreton in any respect, Mr Moreton could work for other parties if he chose to, Mr Moreton introduced a relative to assist him in the work contemplated (who also purchased materials in his own name) and there was never any arrangement to deal with PAYE.

[7] Although Mr Moreton never rendered an invoice for the work that he had done, he did provide Acantech with copies of the invoices for materials that he had purchased. Mr Guan, for Acantech, also draws my attention to documents that Mr Moreton provided to him which suggested or implied the possibility of a joint venture arrangement between the parties.

[8] Having reached the conclusion for all the foregoing reasons that this is a contractual relationship rather than an employment relationship, it follows that the Employment Relations Authority is unable to assist the parties in the resolution of their ongoing dispute. I note that Mr Moreton claims he is still owed money by Acantech and that Acantech believes that it has paid all of the moneys it thinks are owed to Mr Moreton.

Determination

[9] Given the absence of an employment relationship, the Authority is unable to assist the parties further.

James Crichton
Member of the Employment Relations Authority