

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI A TARA ROHE**

[2025] NZERA 667
3263719

BETWEEN MELANIE ROLFE
Applicant

AND BEYONDER LIMITED
Respondent

Member of Authority: Geoff O'Sullivan

Representatives: Melanie Rolfe in person
Patrick Anderson, counsel and Sophie Fraser-McKenzie,
for the Respondent

Investigation Meeting: 24 June 2025 at Tauranga

Submissions Received: Up to and including 22 July 2025

Determination: 22 October 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Melanie Rolfe claims she is owed unpaid wages, holiday pay, benefits and other entitlements as a result of being employed by Beyonder Limited (Beyonder) for a 70 week period. She also claims she was unjustifiably dismissed from that employment, which she says was humiliating. Ms Rolfe accepts these are claims she could only be entitled to make if at all relevant times she was an employee of Beyonder.

[2] Beyonder resists the claims. It says Ms Rolfe was hired as an independent contractor and presented herself as such throughout the entire engagement. It says she was offered contract work each week dependant on the needs of the business, which she could either accept or decline. Further, Ms Rolfe could and did accept contract work from other clients and the work provided by Beyonder was not exclusive. Beyonder

accepts that there was no written agreement between the parties, but says both parties always acted on the basis of an independent contractor arrangement.

[3] As a preliminary issue it was agreed the Authority would determine whether Ms Rolfe was an employee of Beyonder or acted as an independent contractor. This determination deals with that issue only, namely whether at all material times Ms Rolfe was an employee of Beyonder or an independent contractor.

[4] In order to properly dispose of the matter the Authority has heard evidence from Ms Rolfe, her partner Nicholas Beyer, and Claudine Mulvaney, a person with whom Ms Rolfe had worked for in the past. Ms Rolfe was working with Ms Mulvaney immediately prior to taking up her role with Beyonder. For the respondent, evidence was by Hayley Saunders, one of two directors of Beyonder, her partner being the other. Evidence was also given by Katie-Anne Manfield by AVL. Ms Manfield had provided services to and worked for Beyonder during the relevant period.

[5] The issues the Authority is required to determine at this preliminary stage are:

- (a) What was the status of the relationship between the parties at the commencement of the relationship?
- (b) If the relationship was that of independent contractor and principal, did that change during the course of the relationship?

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence in submissions received.

The law

[7] Section 6 of the Act provides:

6 Meaning of employee

(1) In this Act, unless the context otherwise requires, employee—

- (a) means any person of any age employed by an employer to do any work for hire or reward under a contract of service; and

...

(2) In deciding for the purposes of subsection (1)(a) whether a person is employed by another person under a contract of service, the court or the Authority (as the case may be) must determine the real nature of the relationship between them.

- (3) For the purposes of subsection (2), the court or the Authority—
 - (a) must consider all relevant matters, including any matters that indicate the intention of the persons; and
 - (b) is not to treat as a determining matter any statement by the persons that describes the nature of their relationship.

[8] Accordingly, the Authority's ultimate enquiry must be focussed on determining the real nature of the relationship at the time it ended. Also at issue is what the real intention of the parties was when they entered into the relationship.

Background

[9] Prior to entering into a working relationship with Beyonder, Ms Rolfe had been providing on-call cleaning services at Bachcare Properties, managed by Claudine Mulvaney, working directly for Ms Mulvaney. There was no written agreement.

[10] The relationship was described by Ms Mulvaney as very casual and only as required.

[11] In March 2022 Ms Rolfe's partner, Mr Beyer, met Ms Saunders, the director of Beyonder, and after a short discussion in which Ms Saunders mentioned she was looking for a cleaner for her property management business, Mr Beyer gave her Ms Rolfe's details.

[12] On or about 3 April 2022, Ms Rolfe advised Ms Mulvaney she would no longer be able to provide any further property cleaning services because she had accepted a position with Beyonder.

[13] Ms Rolfe commenced working for Beyonder in April 2022 at a rate of \$30.00 per hour. Ms Rolfe invoiced Beyonder for the hours she worked.

[14] Initially the relationship between the parties was positive and in June 2022 when Ms Rolfe and her partner were approached to manage two properties on their own, they made a decision to hand them on to Beyonder. Ms Rolfe says this was because both she and her partner believed that they would be integrated into the business. An arrangement was made through Mr Beyer to give the couple a profit share from these properties. The exact details of this arrangement were unclear, however, Mr Beyer and Ms Rolfe were paid a sum much smaller than they expected to receive, in the vicinity of \$500.00.

[15] In October 2022, Ms Rolfe was approached by Ms Mulvaney regarding overseeing some 22 houses, through her involvement with Bachcare. Ms Rolfe had further discussions with Ms Saunders regarding her prospects, which ended with Ms Rolfe believing she had received an assurance she would receive the majority of hours Beyonder had available and there was a possibility of her growing within the company.

[16] On 9 August 2023, following an alleged incident involving Ms Rolfe's partner, Ms Saunders provided an email terminating Ms Rolfe's services.

Relevant matters

Entering into an agreement

[17] The evidence from all parties did not differ in any material respect regarding how the relationship commenced. Prior to taking up her role with Beyonder, Ms Rolfe had been an independent contractor offering services to Ms Mulvaney.

[18] Beyonder was established in July 2021 and provided services to approximately 40 holiday homes in Mt Maunganui and Papamoa. Ms Rolfe was engaged to undertake cleaning duties. Ms Saunders says she utilised the services of independent contractors for this because work patterns were uncertain and could fluctuate depending on the season. If a cleaner turned work down, it was offered to someone else.

[19] Ms Saunders notes that no agreement was entered into and an employment agreement was never contemplated because Beyonder was a new business.

[20] Ms Rolfe confirmed that when she started her employment she understood herself to be an independent contractor. She always submitted invoices and accepted that she had not been forwarding GST payments to the IRD. She understood that was because at the early stages, when her earnings were low, she was not required to do this. However, in giving evidence before the Authority, Ms Rolfe stated she believed the relationship changed to that of employer and employee.

[21] As indicated above, Ms Rolfe accepted she was an independent contractor at the commencement of her engagement with Beyonder. In cross-examination she confirmed that her partner often helped her out when she was working. She confirmed that sometimes she invoiced her partner's hours separately, but sometimes added those hours to her own.

How the relationship operated in practice

[22] Ms Rolfe had worked as an independent contractor before taking up her role with Beyonder. She has some awareness of the differences between an independent contractor and an employee. In explaining why she worked with her partner, and how she accounted for his time, she explained she worked quicker when her partner was with her, thus could make more profit.

[23] Ms Rolfe accepted that there had been the odd occasion when she had worked for another entity but accepted she knew she could turn down work assignments if she wished. Again, in answer to a question in cross-examination, Ms Rolfe explained that at the beginning of the relationship she wasn't an employee. She said, however, that somewhere along the line the relationship changed. When asked how or when the relationship changed, Ms Rolfe explained that the job grew as time went on. In other words, she became more and more reliant on Beyonder as her major source of income. In answer to questions in cross-examination and from the Authority she confirmed, however, that the only real change which had occurred since the beginning of the relationship was that Beyonder was offering her more work.

[24] Ms Rolfe confirmed that she had her own vehicle and provided generally her own equipment. She did say, however, that Beyonder had given her three empty spray bottles. She confirmed she provided her own cloths for cleaning and never sought reimbursement. She confirmed that she did not charge for vehicle costs. In respect of her work obligations, Ms Rolfe confirmed that she was offered work each week and would decide whether to accept or decline jobs. She confirmed on occasions she declined work and confirmed that, in reality, Beyonder had little control over her work, for instance, bringing her partner to assist with a clean.

Analysis

[25] As has been noted by the Court, an inquiry is necessary to determine the real nature of the relationship. Whether or not Ms Rolfe is an employee or an independent contractor is an intensely fact-specific inquiry.

[26] On at least two prior occasions, Ms Rolfe carried out cleaning duties as an independent contractor. Prior to that time, Ms Rolfe gave evidence that she had occupied a position as a general manager and had a clear understanding of the differences between an independent contractor and an employee. Further, her partner

was a real estate agent and as indicated earlier, the couple brought two other properties into the Beyonder fold, clearly with the view of being more integrated into that business. The couple had considered managing their two properties themselves and although this did not happen, it indicates Ms Rolfe was aware of the differences between being an employee and being an independent contractor.

[27] Ms Rolfe also confirmed that she was disappointed because she expected something to change in the future which could result in a profit share. She was disappointed that she was not offered a different role but confirmed in her evidence that at no time during her engagement with Beyonder did she receive an offer of employment. She confirmed that she had been a general manager and very experienced in hiring employees. Ms Rolfe had a real understanding of the differences between an employment relationship and that of an independent contractor.

[28] The evidence that I have heard indicates that there was not a high level of control over her work. She had the flexibility to change her work days and take time off without consultation. She also had an ability to cultivate new and existing customers if she had wished to.

[29] Ms Rolfe also confirmed in respect of the treatment of her income and deductions from a tax perspective she acted as, and treated her business as, an independent entity with its own ability to make deductions and take on work.

[30] Ms Rolfe was not obligated to undertake work strictly within set hours and could clean the properties at a time of her own choosing and using the services of her partner.

[31] To a large degree she has supplied and maintained her own tools of trade. She was paid according to task completion and thus could benefit by using the services of her partner.

[32] Ms Rolfe was able to turn down work which she did for a variety of reasons and gave in her evidence the example of turning down work so she could go and see her daughter, or for other appointments.

[33] There was no evidence that Ms Rolfe and the services she provided were integrated into Beyonder's business. Indeed, the evidence was the opposite, she was dispensable to the business and if she was unavailable to do work, then Beyonder

offered that work to a different contractor or did it itself. The core purpose of the business was property management and Ms Rolfe played no part in that.

Conclusion

[34] Ms Rolfe was in business on her own account. She held herself out as an independent contractor and would provide cleaning services as and when required. She freely accepted that it was her intention to enter a relationship with Beyonder as an independent contractor and has been unable to provide any evidence showing that at some time between the start of the relationship and its termination, that it morphed into an employment relationship.

[35] It follows therefore that the Authority has no jurisdiction to deal with any claim Ms Rolfe may have regarding the termination of her independent contract. If she has indeed suffered loss or general damages, then she will need to pursue those in a different forum.

Costs

[36] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[37] If the parties are unable to resolve costs, and an Authority determination on costs is needed, Beyonder Limited may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum Melanie Rolfe will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[38] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.¹

Geoff O’Sullivan
Member of the Employment Relations Authority

¹ For further information about the factors considered in assessing costs see:
www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1

