

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2012] NZERA Auckland 115  
5360162

BETWEEN

DONNA SCHRIJVERS  
Applicant

AND

STEPHANIE BONNER  
TRADING AS WOMAN HAIR  
SALON  
Respondent

Member of Authority: Rachel Larmer  
Representatives: Applicant in person  
Respondent in person  
Investigation Meeting: 02 March 2012 at Tauranga  
Determination: 02 April 2012

---

**DETERMINATION OF THE AUTHORITY**

---

- A. **Ms Donna Schrijvers was an employee of Stephanie Bonner trading as Woman Hair Salon, so the Authority has jurisdiction to investigate her employment relationship problems.**

**Employment relationship problem**

[1] Ms Schrijvers filed a statement of problem which raised a number of employment related claims. Ms Bonner denied that Ms Schrijvers was an employee so claimed the Authority did not have jurisdiction to hear her claims.

[2] By agreement, the Authority dealt with the status issue in a preliminary investigation meeting. This determination relates to the preliminary status issue only.

## Legal test

[3] Section 6 of the Employment Relations Act 2000 (“the Act”) defines an employee as “*any person of any age employed by an employer to do any work for hire or reward under a contract of service*”.<sup>1</sup>

[4] When determining whether a person is employed under a contract of service, the Authority is required to determine the real nature of the relationship between the parties.<sup>2</sup>

[5] In determining the real nature of the relationship the Authority must:

- (a) consider all relevant matters, including the intention of the person; and
- (b) not treat as determinative any statement by the persons describing the nature of their relationship.<sup>3</sup>

[6] The leading case on s.6 is the Supreme Court decision in *Bryson v. Three Foot Six Limited*.<sup>4</sup> The Supreme Court in *Bryson* held the reference to “*all relevant matters*” in s.6(3) of the Act included:

*“The written and oral terms of the contract between the parties, which will usually contain indications of their common intention regarding the status of their relationship. They will also include any divergences from or supplementation of those terms and conditions which are apparent in the way in which the relationship has operated in practise. It is important that the Court or the Authority should consider the way in which the parties have actually behaved in implementing their contract. How their relationship operates in practice is crucial to a determination of its real nature. All relevant matters equally clearly requires the Court or the Authority to have regard to the features of control and integration and whether their contract or person has been effectively working on his or her own account (the fundamental test), which were important determinants on the relationship at common law. It is not until the Court or Authority has examined the terms and conditions of the contract, and the way in which it actually operated in practice, that it will usually be possible to examine a relationship in light of the control, integration and fundamental test.”*

[7] Industry practice is another factor which may be considered by the Authority when determining the real nature of the relationship between the parties.<sup>5</sup>

---

<sup>1</sup> Section 6(1) ERA

<sup>2</sup> Section 6(2) ERA

<sup>3</sup> Section 6(3) ERA

<sup>4</sup> [2005] ERNZ 372

<sup>5</sup> Ibid 4

## **Background**

[8] Ms Schrijvers is an experienced hairdresser who worked for Ms Bonner at the Woman Hair Salon in Papamoa for approximately eleven months until she resigned in August 2011.

[9] Ms Schrijvers obtained work at the Woman Hair salon by approaching Ms Bonner on a number of occasions inquiring about work opportunities. On the last occasion Ms Schrijvers approached Ms Bonner for work, the salon had been left short staffed because one of the other hairdressers had not turned up for work as expected.

[10] This timing lead Ms Bonner to offer Ms Schrijvers one day's work on a trial basis. The trial day went well and Ms Bonner decided to offer Ms Schrijvers ongoing work. Ms Bonner's practice was to engage hairdressers as independent contractors, she said she did not employ any employees.

[11] Ms Bonner's intention was to offer Ms Schrijvers an independent contractor position, whilst Ms Schrijvers believed she was being offered employment as an employee, because that is what she had been seeking. Neither party discussed Ms Schrijvers' status at the time they entered into the hairdressing arrangement.

[12] Ms Bonner proceeded on the assumption that Ms Schrijvers was engaged as an independent contractor and Ms Schrijvers proceeded on the assumption that she had been employed as an employee who would be working in the salon on an as required basis.

[13] Ms Schrijvers and Ms Bonner formed a friendly working relationship and during the Authority's investigation meeting they described each other as having been good friends. Unfortunately that friendship broke down when Ms Schrijvers resigned to work for a competitor hair salon located across the road from Ms Bonner's hair salon. There appears to have been considerable bad blood between the parties since then.

[14] The parties have attended mediation, but that was unsuccessful. At the conclusion of the evidence presented to the investigation meeting on the status issue, I encouraged the parties to attempt to resolve their differences by agreement given their previous close relationship and their ongoing proximity due to their current work

locations. Unfortunately that encouragement did not result in the parties resolving their differences and both indicated that further mediation would be unlikely to assist.

[15] I have therefore proceeded to determine the status issue.

### **Written terms**

[16] There were no written terms which record the relationship between the parties.

### **Oral terms**

[17] I find that the only oral terms agreed between the parties were that:

- (a) Ms Schrijvers would work for Ms Bonner at the Woman Hair Salon in Papamoa;
- (b) She would be paid \$13 gross per hour;
- (c) She would be paid at the end of each week;
- (d) Ms Schrijvers would work on an as required basis, so she had no set days or hours of work;
- (e) Both parties committed to growing the business;
- (f) Both parties agreed that Ms Schrijvers' hours of work would increase as the business grew.

### **Common intention**

[18] I find that the complete lack of communication between the parties at the outset of their arrangement regarding Ms Schrijvers' status meant there was never any common intention between the parties regarding the status of their relationship. Each party made assumptions which contradicted the other party's unstated intention regarding the status issue.

### **Written documentation**

- (i) *Remittance advice*

[19] Ms Bonner says that she provided Ms Schrijvers with what she called a weekly "*remittance advice*" which recorded her pay for the week. This was a

computer generated document which Ms Bonner said she had created herself and which she alleged had been given to Ms Schrijver each time she was paid. The evidence of how and when it was given to Ms Schrijver was unclear and therefore unsatisfactory.

[20] Ms Bonner showed the Authority a copy of one example of a remittance advice which was stated to cover the pay period ending 7 September 2010. She said that copies of the other remittance advices she had given Ms Schrijvers could not be located because of IT issues, which had meant Ms Bonner was unable to retrieve the necessary information from her computer.

[21] This “*remittance advice*” recorded Ms Schijvers’:

- (a) ordinary hours of work,
- (b) her rate of pay,
- (c) the number of hours worked,
- (d) her gross earnings;
- (e) a tax code 20% which was deducted from her gross earnings;
- (f) total take home pay which was paid by cheque.

[22] Ms Schrijvers says she never received any of the alleged remittance advices.

[23] There is obviously a conflict in the evidence, which I have to resolve on the balance of probabilities. I have resolved that conflict in Ms Schrijvers’s favour because Ms Bonner did not produce any other documentation to corroborate her evidence that she provided Ms Schrijvers a remittance advice every week.

(ii) *Pay slip*

[24] Ms Bonner said that in March/April of 2011 her computer broke down so she was no longer able to access her ACE payroll. That meant that when Ms Schrijvers asked for proof of her earnings to give to WINZ, Ms Bonner was unable to access the remittance advice documents from her computer. Ms Bonner said that instead of that she wrote Ms Schrijvers’ pay details down on some wage receipt slips that she had taken out of a wage receipt booklet she had purchased from Warehouse Stationery.

[25] These documents were marked as “*wage receipts*” and they recorded that PAYE had been deducted from Ms Schrijvers’ total gross earnings. Ms Bonner said that she not realise the significance of the reference to PAYE on the wage receipts, but that if she had she would not have used them.

[26] I find that the use of these wage receipts would have reinforced Ms Schrijvers’ own belief that she was working as an employee, as per her understanding of the arrangement. The payment of what Ms Bonner had identified as “*wages*” to Ms Schrijvers and the deduction of PAYE from her total earnings are both features of an employment relationship, not of an independent contracting arrangement.

[27] I consider this evidence tips the balance in favour of Ms Schrijvers being an employee.

### **Operation in practice**

[28] The evidence of the way the parties operated their arrangement in practice was not clear or decisive. Each party believed that the arrangement was being operated consistently with their own unstated belief and assumptions regarding Ms Schrijvers’ status.

[29] I have dealt with some of the key issues Ms Bonner identified as being indicative of an independent contracting arrangement under separate headings. I have therefore focused in this section on how the work was allocated and on the days and hours of work.

[30] Ms Bonner said she told Ms Schrijvers she did not know how many hours of work she would need someone for on any particular day or in any given week, so her actual days and hours of work would fluctuate in line with needs of the business.

[31] Ms Schrijvers agreed that her actual hours and days of work would fluctuate as per the needs of the business but she said that the parties agreed she would be offered not less than 20 hours work per week, on days and at times set by Ms Bonner.

[32] Ms Bonner disputed that any agreement was reached regarding minimum hours. I prefer Ms Schrijvers’ evidence, on the balance of probabilities, that she would not have agreed to work at all if she was not going to get a minimum of 20 hours because she had to support a child and make childcare arrangements.

Ms Schrijvers started on a minimal hourly rate so I consider there was some merit in her evidence on that point.

[33] Ms Bonner said that she specifically told Ms Schrijver that she would be offered days and hours of work but she did to have to accept any work which was offered. Ms Schrijvers strongly disputed that. She said her understanding was that Ms Bonner would tell her which days and times to work, not that she would be offered work she could refuse if it did not suit her.

[34] I have preferred Ms Schrijvers' evidence on that point on the basis it is more likely to be correct. There was no other evidence supporting Ms Bonner's claim in that regard. Given that Ms Bonner was so lax regarding setting out the agreed arrangement I consider it unlikely she emphasised Ms Schrijvers' ability to turn down work. There was also no evidence of any work having been offered but then being turned down.

### **Remuneration**

[35] Ms Schrijvers (as did all of the other hairdressers in the salon) wrote her hours of work on a wall chart which recorded which clients she had seen and how much she had sold in terms of products and services. Ms Bonner would then use that information to compile the weekly pays. There was no invoicing arrangement which is often a feature of an independent contractor arrangement.

[36] Ms Schrijvers said that after a few months she was given the opportunity to earn commission. Ms Bonner said commission was given a couple of weeks, not months, after Ms Schrijvers started work. Ms Schrijvers said she earned 20% commission on the amount of services she sold. Ms Bonner said she got 20% commission on everything (i.e. services plus products) she sold.

[37] I do not need to resolve those conflicts because they are immaterial. Suffice to say that some time after beginning work Ms Schrijvers began to be paid commission. I find that commission was not discussed at the outset of the arrangement, i.e. before Ms Schrijvers had started work at the salon.

[38] Ms Schrijvers was paid by results in that the more she sold the more she could earn. However, her ability to profit from her own endeavours was limited because

Ms Bonner set her hours and days of work. I do not consider the payment of commission in this situation was indicative of an independent contractor relationship.

### **Other outside work**

[39] Ms Bonner alleged that Ms Schrijvers had pursued her own hairdressing business from her home outside of the hours she worked at the Woman Hair salon. I consider the evidence in support of that allegation was scanty and relied solely on unsubstantiated hearsay.

[40] Ms Schrijvers denied she had ever operated or undertaken her own hairdressing business from her home or elsewhere. She explained that she had done her mother's hair, her son's hair and her landlord's hair, all at no charge. She told me that any other hairdressing she did was always performed at the Woman Hair salon and it was charged in accordance with Ms Bonner's usual pricing structure.

[41] Ms Schrijvers said she told her previous clients to come into the Woman Hair salon for their appointments so both parties benefited from that. Ms Bonner agreed that Ms Schrijvers bought business from previous clients into her salon. I consider such actions would have been inconsistent with Ms Schrijvers running her own hairdressing business from home.

[42] I therefore find that the evidence did not satisfy me that Ms Schrijvers had been engaging in or running a hairdressing business on her own account outside of the Woman Hair salon.

### **Tax arrangements**

[43] Ms Schrijvers said that she had previously worked in other hairdressing situations both as an independent contract and as an employee. She said she knew the difference between each of these arrangements and was quite certain she was an employee in this case.

[44] Ms Schrijvers told me that she would have arranged her financial affairs differently if she had known that she was being taxed as if she was an independent contractor. I accept her evidence about that because of her reaction when she found out from the Inland Revenue Department ("IRD") that Ms Bonner had been deducting withholding tax from her pay.

[45] Ms Schrijvers said she found out that withholding tax and not PAYE was being deducted by Ms Bonner as a result of a chance communication with IRD. This information greatly troubled Ms Schrijvers because she knew that as an employee she should have been paying PAYE, not withholding tax. Ms Schrijvers initially believed the tax issue was a simple mistake on Ms Bonner's part, so she immediately raised it with her so it could be remedied.

[46] Ms Schrijvers spoke to Ms Bonner to alert her that she should have been deducting PAYE and not withholding tax from her take home pay. Ms Bonner admitted that Ms Schrijvers raised concern about her tax code which she said was the catalyst for their first discussion regarding Ms Schrijvers' status.

[47] Ms Bonner said that she was the one to first raise the status issue by asking Ms Schrijvers if she thought she was an employee because of her belief that she should have been paying PAYE. Ms Schrijvers unequivocal position was that she was. Ms Bonner responded with her view that Ms Schrijvers was an independent contractor, not an employee.

[48] This impasse resulted in Ms Schrijvers' mother having a telephone discussion with Ms Bonner about the fact that Ms Schrijvers was an employee and not a contractor. During this conversation Ms Bonner said that she was happy to change Ms Schrijvers status from a contractor to an employee, but that Ms Schrijver would need to sign a written individual employment agreement ("IEA") before that could occur.

[49] Ms Bonner adopted the firm position that she was not going to change the tax arrangements until Ms Schrijvers had signed an IEA. This resulted in Ms Bonner's husband, Mr Alex Bonner meeting with Ms Schrijvers in a café to discuss an IEA Ms Bonners had prepared and given to Ms Schrijvers to sign.

[50] During this discussion Ms Schrijvers identified a number of problems with the proposed IEA, the result of which was that she and Mr Bonner agreed to maintain the status quo. However, they both admit that they did not discuss what the status quo was. Nor did they specifically discuss the status of Ms Schrijvers' arrangement with Ms Bonner. This meant that each party had a different understanding as to what the status quo was. Mr and Mrs Bonner believed that Ms Schrijvers would continue on as an independent contractor, because the proposed IEA had not been acceptable to her.

[51] Conversely, Ms Schrijvers believed that she would continue on as an employee, on the basis of the verbal key terms and conditions regarding remuneration and hours of work, which had been agreed at the outset of her engagement. Ms Schrijvers said there was nothing in the IEA she was given which caused her to believe that she had been treated throughout her previous work with Woman Hair salon as an independent contractor.

### **Flexibility**

[52] Ms Bonner suggested that Ms Schrijvers had flexible working arrangements which were consistent with her being an independent contractor, and not an employee.

[53] Ms Bonner alleged that whilst working in the salon Ms Schrijvers would sometimes do her own hair and would use the salon's telephone to call friends or to organise her son's birthday party without asking. Ms Bonner said if she was an employee there would have been a structure put in place around Ms Schrijvers' use of the telephone and use of time whilst in the salon to do her own hair.

[54] Ms Schrijvers said that any time that she was in the salon she was ready, willing and available to work and did whatever work was assigned to her in addition to servicing the clients that had been booked in with her. She said that any downtime whilst she was at the salon was normal downtime that would have applied to any other employee.

[55] I do not consider that the very limited evidence I heard about Ms Schrijvers occasionally attending to personal matters during her normal work hours indicated she was an independent contractor.

### **Tools of trade**

[56] Ms Schrijvers used her own tools of trade such as brushes, scissors, razors and clips. Ms Bonner provided everything else such as cleaning products, shampoo and conditioner, styling products, towels, colour treatments, perming solutions and other salon related plant.

[57] Ms Schrijvers said that it was usual practice for hairdressers to use their own cutting tools regardless of whether they were an employee or an independent contractor.

[58] I find that in this particular case the use of her own tools is not a decisive factor one way or another. I find that the majority of tools provided to enable Ms Schrijvers to do her job were supplied by Ms Bonner, which tips the balance slightly in favour of Ms Schrijvers being an employee.

### **Holidays Act 2003 entitlements**

[59] Ms Schrijvers apparently worked from July 2010 until August 2011 but was not paid for any sick days, public holidays, or annual holidays over that period.

[60] Ms Schrijvers said that she did not take any sick leave over that period so paid sick leave was not an issue. Ms Schrijvers told me she did not realise she was entitled to be paid for public holidays because she thought she only got paid for the days and hours she worked. She also did not expect to get paid annual leave until she had worked for one year.

[61] I find that Ms Schrijvers' failure to claim her minimum statutory Holidays Act 2003 slightly tips the balance in favour of her being an independent contractor, but it is not decisive because I accept Ms Schrijvers' evidence that she (like many employees) was not aware of her public holiday entitlements.

[62] I note that Ms Schrijvers did demand to be paid holiday pay when she left Woman Hair salon, which would apply to an employment relationship but not in a contracting arrangement.

### **Availability to work**

[63] Ms Bonner said that Ms Schrijvers would mark herself as unavailable in the appointment book when she did not want to take clients. Ms Schrijvers said she only did that when she had sought and obtained the approval of Ms Bonner to be away from the salon, for example to attend medical appointments or appointments involving her son and the like.

[64] I reviewed some pages out of the appointment book which included days on which Ms Schrijvers had recorded that she had medical related appointments. The evidence did not satisfy me that Ms Schrijvers had marked herself as unavailable at her own convenience. I accept, on the balance of probabilities, Ms Schrijvers'

evidence that she was only ever absent from work during allocated work hours with Ms Bonner's prior approval or express consent.

[65] Ms Bonner referred to a wedding party which had been booked in on 5 March 2011 and said Ms Schrijvers had told her she was unavailable that weekend, so Ms Bonner had to work that weekend along with her other hairdressing contractors to do the hair for the wedding party.

[66] Ms Schrijvers had a different account of this event. She said that she had asked Ms Bonner for time off, she did not just say that she would not be working.

[67] Ms Bonner agreed in response to my question that she did not require Ms Schrijvers to work that weekend and that she had reluctantly agreed Ms Schrijvers could go away for the weekend. Ms Bonner said she only agreed because she believed Ms Schrijvers was a contractor so she could not tell her she had to work the wedding weekend. I find that Ms Bonner never expressly communicated that view to Ms Schrijvers.

[68] This lack of communication set up a situation where Ms Schrijvers thought she had asked for and been granted the weekend off, whilst from Ms Bonner's perspective she had not been required to work that weekend because Ms Bonner believed Ms Schrijvers was an independent contractor, so could thereby choose whether or not she wanted to be available to work.

[69] I do not consider this example assisted me to determine the status issue either way. I see this situation as another example of a communication breakdown, rather than as evidence of any common intention regarding Ms Schrijvers' status.

### **Business cards**

[70] Ms Schrijvers was provided with business cards which she handed out to potential clients and others in the community. This had Ms Schrijvers' name and the name of the Woman Hair salon. There was nothing on the card to indicate Ms Schrijvers was an independent contractor. This factor supports there being an employment relationship.

**Non return from Christmas**

[71] Ms Bonner said that after Christmas 2010 Ms Schrijvers texted her from Auckland (where her partner lived) to say she would not be available to work the week after Christmas as scheduled because her partner had sustained a back injury and she had to look after him.

[72] Ms Schrijvers said that she knew the hair salon was extremely quiet so believed her absence would not be an issue for the business. She also said that she advised Ms Bonner of her predicament and Ms Bonner did not require her to be at work.

[73] Ms Bonner said she did not require Ms Schrijvers to attend work because she believed as an independent contractor Ms Schrijvers could chose when she did and did not want to work. However, she accepts she did not expressly tell Ms Schrijvers that.

[74] On balance I consider this is a factor in favour of there being an independent contracting arrangement, rather than an employment relationship.

**August holiday**

[75] Ms Bonner relied on the fact that in August 2010 Ms Schrijvers told her (not requested) that she was going on holiday for four weeks so would not be available to work.

[76] Ms Schrijvers' evidence was that she requested permission to take leave and her request was granted. I do not consider this factor assists as it is yet another example of the parties' ongoing miscommunication.

**Friday afternoon and Saturday issue**

[77] Ms Bonner said that in July 2011 she took a two week break during which Ms Schrijvers promised she would be available on Friday afternoons and on Saturdays so that the other contractor hairdresser would not have to work in the salon on her own. However, Ms Bonner said she later found out that Ms Schrijvers had left work early on the Fridays and did not work the Saturdays as she had promised. Ms Bonner relied on that as evidence Ms Schrijvers was a contractor.

[78] Ms Schrijvers said she only left work when there was no work to do and after the other hairdresser said she was happy for Ms Schrijvers to leave. I consider this factor weighs in favour of there being an independent contractor relationship.

### **Attendance at work**

[79] Ms Bonner said Ms Schrijvers could come and go from the salon as she pleased. She presented hearsay evidence from a business associate who owned the shop next door that Ms Schrijvers had a spray tan or her nails done at the beauty salon next door when she was supposed to be working in the hair salon.

[80] Ms Schrijvers said that happened on one occasion only for a ball and it was only done because she had no other work to do in the hair salon.

[81] I see this as an example of flexibility that may apply to some employees in circumstances when they are not busy. The evidence did not satisfy me that Ms Schrijvers could come and go from the salon as she pleased. I therefore consider it a neutral factor when determining the real nature of the relationship.

### **Tax arrangements**

[82] I find that Ms Schrijvers did not arrange her tax affairs in a manner which could benefit her which would have been usual for an independent contractor to do. This factor supports there being an employment relationship.

[83] I accept Ms Shrivjers' evidence that she genuinely thought she was an employee, because as soon as she found out she had not had PAYE deducted she raised that with Ms Bonner and spent considerable time and effort trying to get that issue resolved, without success.

### **Control test**

[84] In terms of the level of control that was exercised over Ms Schrijvers, I prefer her evidence that she was told what days and hours she needed to work and that she attended the salon and was ready and available to work at those times. I saw text messages from Ms Bonner to Ms Schrijver which set her days and hours of work.

[85] I also accept Ms Schrijvers' evidence that she was generally only absent from the salon with Ms Bonner's permission. This indicated Ms Bonner had a high level of control over Ms Schrijvers' work, which is a feature of an employment relationship.

[86] Ms Schrijvers was engaged as a senior stylist, so was expected to work autonomously on her own clients. I do not consider that Ms Bonner exercised a high level of control over the manner in which Ms Schrijvers' actually cut and styled her clients' hair but I attribute that to the senior nature of her role, not to the status of the relationship.

[87] I find that the control test favours Ms Schrijvers being an employee because Ms Bonner held the most control because she and not Ms Schrijvers set the days and hours of work, and therefore Ms Schrijvers' ability to profit from her own endeavours.

### **Integration test**

[88] The focus of the integration test is on the extent to which Ms Schrijvers was, in all respects, an integral part of the hair salon. I find that Ms Schrijvers was performing a role that was part and parcel of the hair salon, it was not obviously a stand alone or external role.

[89] Clients using the salon would not have known that Ms Schrijvers was not integral to the salon. In so far as those who received her business card were concerned, they would have expected her to have been integrated with the salon.

[90] I consider that integration test indicates Ms Schrijvers was more likely to have been an employee, than an independent contractor.

### **Fundamental or economic reality test**

[91] The question in terms of the fundamental test is whether Ms Schrijvers engaged herself to perform her services for the salon as a person in business on her own account. I find that she definitely did not, so that is a strong factor in favour of there being an employment relationship.

[92] The commission component was not part of the original arrangement, which indicates that at the time she entered into the arrangement Ms Schrijvers was not expecting to be able to profit from her own endeavours in the way someone who was running their own business would expect to be able to.

[93] The commission arrangement was an incentive programme which encouraged further sales, which in turn was of benefit to both parties, so I do not see it as an example of Ms Schrijvers profiting from being in business on her own account. There was no evidence that Ms Schrijvers had assumed the costs, liabilities or risks associated with being in business on her own account.

[94] I consider the fundamental or economic reality test points strongly to Ms Schrijvers being an employee not an independent contractor.

### **Industry practice**

[95] The evidence about industry practice was minimal, so I am hesitant to draw any conclusions from it. I therefore consider industry practice to be a neutral factor.

### **All relevant matters**

[96] Given the ambiguity of the arrangement between the parties and the unsatisfactory nature of some of the evidence, it is important to stand back after considering all of the facts and the various legal tests in order to reflect on the real nature of the relationship.

[97] After doing so I have concluded that the balance lies in favour of the real nature of the relationship being one of employer and employee, rather than a true independent contractor business arrangement.

[98] I consider it significant that Ms Schrijvers was not given the opportunity to set up her business affairs in a way that would have maximised any benefits associated with her being an independent contractor. I also accept that Ms Schrijvers had sought work as an employee, and that there had not been any discussion of her being an independent contractor.

[99] I consider that Ms Bonner should not have unilaterally assumed that Ms Schrijvers was an independent contractor, in circumstances where Ms Schrijvers had not taken any steps to convey that her intention was to operate in business on her own account.

[100] Ms Bonner had offered Ms Schrijvers ongoing work and she had set her hours of work and had engaged with her without ever expressing the view that the

arrangement was an independent contracting arrangement<sup>6</sup>. Ms Bonner had also acted consistently with there being an employment relationship by providing wage receipts which indicated PAYE was being deducted from Ms Schrijvers' total gross earnings.

### **Outcome**

[101] I have concluded, on the balance of probabilities, that the real nature of the relationship between Ms Bonner and Ms Schrijvers was likely to have been one of an employer and employee. Accordingly, the Authority does have jurisdiction to investigate Ms Schrijvers' claims because I find that the parties were in an employment relationship.

[102] The Authority will be contacting the parties to arrange for Ms Schrijvers' substantive claims to be progressed.

**Rachel Larmer**  
**Member of the Employment Relations Authority**

---

<sup>6</sup> Until the IRD issue arose.