

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI Ā TARA**

[2025] NZERA 35  
3306240

BETWEEN	SIOBHAN SQUIRES Applicant
AND	PLAYMAKER LABS LIMITED Respondent

Member of Authority:	Davinnia Tan
Representatives:	Applicant in person No appearance for the Respondent
Investigation Meeting:	27 November 2024 (in Wellington and via AVL)
Submissions received:	None received
Determination:	24 January 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Ms Squires' claim is that she was employed by Playmaker Labs Limited (PLL) and is due outstanding wages for the period from 20 May 2023 to 5 December 2023.

[2] Ms Squires is seeking to be paid the sum of \$56,000.00 which she says is based on an average 40-hour work week multiplied by 28 weeks, at \$50.00 an hour.

## **The Authority's investigation**

[3] By way of context, this application was heard together with another application<sup>1</sup> lodged by Mr Daniel Ryan against Playmaker Labs Limited under s 221 of the Employment Relations Act 2000 (the Act).

### *Process leading up to the investigation meeting*

[4] PLL has to date, not participated in the Authority's proceedings. Its representative, Peter Andrew Dowell, has not attended any of the scheduled case management conferences (CMC) or attended the investigation meeting in person or through the audio-visual link.

[5] Following receipt of Ms Squire's Statement of Problem on 1 July 2024 the Authority contacted Mr Dowell via an email that was provided by Ms Squires. The Authority did not receive a response by 3 July 2024 so it couriered a copy of the Statement of Problem to PPL's registered address as set out on the New Zealand Companies Register. The Authority also sought a Statement in Reply within 14 days upon receipt of the Statement of Problem. The Authority received confirmation it was delivered on 9 July 2024. PLL did not provide a Statement in Reply. The Authority then couriered a copy of the Statement of Problem to Mr Dowell's residential address as set out on the New Zealand Companies Register. The Authority received confirmation it was delivered on 15 July 2024. No Statement in Reply has been received by the Authority.

[6] On 19 August 2024, an Authority Officer contacted both Ms Squires and Mr Dowell via email to arrange a CMC. Mr Dowell responded to this email on 19 August 2024 stating:

[...]

Something that will need to be discussed with Siobhan is were her and Jesse working for an entity "Oasis" which would have in turn had an applied contract for work

Some compensation has been allowed for in shares on playmaker which I believe Locky Mulholland holds for both Siobhan & Jesse  
These shares were gifted and which I paid 50cps each.

I am happy to keep you both in the loop as I endeavour to works towards a solution for the company

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<sup>1</sup> *Daniel Ryan v Playmaker Labs Limited* [2024] NZERA 755.

[7] The Authority Officer advised on 22 August 2024 that she was happy to set a case conference that suited Mr Dowell whilst he was in India. He did not reply. As such, by 28 August 2024, the Authority Officer set a case management conference down for 4 September 2024.

[8] The CMC took place on 4 September 2024. There was no attendance on behalf of PLL. In my Notice of Directions dated 4 September 2024, I directed the parties to mediation and set an investigation meeting down for 27 November 2024.

[9] Unfortunately, Mr Dowell never responded to Mediation Services. Consequently, the next step in the process was for the matter to proceed to an investigation meeting.

[10] Having reviewed both Ms Squires' and Mr Ryan's applications, I considered there was merit to hear two applications joined together and sought the parties' comment before proceeding.

[11] Both Mr Ryan and Ms Squires replied separately by email and agreed to have the matter heard together on 27 November 2024. Mr Dowell did not respond to the Authority on this point.

[12] On 6 November 2024, Mr Dowell emailed the Authority but only addressed his email to Ms Squires is as follows:

My understanding was that both you and ... worked with ... under the banner of "Oasis" which was looking to provide services and potential IP to the playmaker business so there was no individual contracts agreed to the start

I questioned who Oasis was but never really got a clear answer as it wasn't a registered company

...

[13] I convened another case management conference with all the parties together to clarify the process ahead for the investigation meeting now scheduled for 27 November 2024. The case management conference was scheduled for 21 November 2024 and communicated via email to the parties (including Mr Dowell). Mr Dowell did not attend despite being in receipt of the notice. As noted above, he had been communicating with the Authority but never directed his communications on the Authority's processes, nor

did he request to have the case conference rescheduled or tender apologies for non-attendance.

[14] My notice of direction was issued that day to all parties, detailing what had been discussed including the procedure for the investigation meeting for 27 November 2024.

[15] On 26 November 2024 at 5:03PM, the Authority received an email from Mr Dowell stating:

Hello ...

I am in the middle of a structure deal that will like mean the survival of the company and as such happy to deal directly with Dan on this matter

I'm going to need another 2 weeks so I can work through processes with the potential partners

Hence I think we should postpone the call accordingly

[16] As this email was received outside office hours, I did not receive notice of the email until after the investigation meeting concluded. I consider that as he had not heard back from the Authority Officer and had the AVL link she previously provided to him for the investigation meeting, he had every opportunity throughout the day of 27 November 2024 to join in by AVL to request an adjournment of proceedings had he required one. In any case, his email was directed to Mr Ryan and not Ms Squires. I note as an aside apart from this one email, all other emails from Mr Dowell had included Mr Ryan and Ms Squires as recipients.

[17] For the avoidance of doubt, I consider that all notices, letters, emails and documents were properly served on PLL in accordance with regulation 16(3) of the Employment Relations Authority Regulations 2000. In reaching this view, I have taken into account Mr Dowell's communications and conduct with the Authority since Mr Ryan's application was lodged with the Authority. This shows that Mr Dowell has had opportunity to participate in the Authority's proceedings in accordance with its directions, but chose not to do so. Mr Dowell has been selective with his communications, choosing to respond to certain emails and ignoring others where a response was expressly required. This includes his non-compliance with the direction to mediation by ignoring Mediation Services' communications, non-attendance in all case conferences, refusal to provide a Statement in Reply, and his non-attendance at the investigation meeting.

### *Investigation meeting*

[18] There were three witnesses in attendance. Two of whom (one attended by audio visual link) were witnesses for Ms Squires. They were Jesse Drysdale and Locky Mulholland. The third witness was for Mr Ryan.

[19] All witnesses (including Ms Squires) answered questions under oath or affirmation from me.

[20] All material from the parties was fully considered. However as permitted by s 174E the Act, this determination has not recorded all evidence and submissions received.

### **The issues**

[21] The issues requiring investigation and determination were:

- (a) Was Ms Squires an employee or a contractor of PLL?
- (b) If she was an employee, is she owed wages and holiday pay from PLL?

### **Was Ms Squires an employee and if so, are there any wages outstanding?**

#### *Verbal discussions*

[22] Ms Squires stated that in March 2023, she was in discussions with PLL regarding its business strategies and she was asked to perform tasks for PLL in its business development which included her providing “intellectual property” as part of creating an additional revenue stream for PLL. Ms Squires’ witness, Mr Drysdale, also met with PLL together with Ms Squires. Mr Drysdale stated that PLL had liked “their ideas” so they were both invited to a meeting in Chennai, India to pitch their ideas to the team based in India.

[23] Ms Squires stated that the agreement was for her and Mr Drysdale to travel to India in May 2023 with Mr Dowell and the “tech team” of PLL who were comprised of the “Indian CEO”, PLL’s then chief executive Erin Walshe, director Locky Mulholland (one of the witnesses in the investigation meeting who was contracting to PLL); and another person. She also described this team as the “leadership team” of “CricHQ”. Mr Dowell is the sole director of CricHQ New Zealand Limited (CricHQ).

The parent company of CricHQ is PLL.<sup>2</sup> Ms Squires said that Mr Dowell agreed that PLL would pay her \$150,000.00.

[24] She said that PLL had organised “business employment visas” for her and Mr Drysdale. I did not see proof of the visas.

[25] Both Ms Squires and Mr Drysdale travelled to India on or around 28 May 2023, and worked there until on or around 6 June 2023. Prior to the trip she was given work tasks by Mr Dowell on 20 May 2023 to “redo” a presentation for the purposes of a meeting in India.

[26] During the investigation meeting, I noted that Mr Dowell’s emails had referred to ‘Oasis’ and asked her what this related to. Ms Squires stated that ‘Oasis’ was a “personal project” that she had developed prior to meeting Mr Dowell or undertaking work for PLL and that ‘Oasis’ was separate to work she had undertaken for PLL and it was an application that she had in development with Mr Drysdale known as ‘Oasis’. ‘Oasis’ is a technology-based application, designed to work as an interactive community rewards application. The ideas that had been pitched to PLL during the initial discussions included sharing some of the features of this existing application, ‘Oasis’, as part of the upcoming Cricket World Cup to create a revenue stream for PLL. It was agreed that both Mr Drysdale and Ms Squires would develop further ideas for that purpose.

[27] When I asked Ms Squires whether the agreed \$150,000 was for herself, or both her and Mr Drysdale, or solely for the “intellectual property” (in relation to developing ideas of a revenue stream for PLL) that she was bringing with her, Ms Squires was unclear in her response as to how much of it related to the work she said she was employed to do for PLL. However she recalled that during her discussions, there was a reference to \$50.00 an hour for work tasks she agreed to undertake for PLL.

[28] Ms Squires stated that since beginning work with PLL she has not been paid any wages despite asking to be paid via WhatsApp text messages to Mr Dowell. Ms Squires stated that business expenses were paid with a business card Mr Dowell provided, but no wages were paid.

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<sup>2</sup> CricHQ is owned by the company, My Action Sport Limited, which is 100% owned by PLL as registered on [The New Zealand Companies Office](#) register.

[29] Mr Drysdale stated that unlike Ms Squires, he was acting in the capacity of a contractor to PLL, but Ms Squires had, separately agreed to undertake additional work for PLL which was separate to the development of ‘Oasis’. He also stated that after the meeting in Chennai, no further development on ‘Oasis’ for PLL took place.

*No written agreement between the parties*

[30] There was no written agreement signed between Ms Squires and PLL reflecting the discussions above that she would be paid \$50.00 an hour for a 40-hour work week. Ms Squires provided a template and unsigned document titled “engagement agreement” which she said she received. This document stated that PLL<sup>3</sup>:

... engages XXX... to provide the Services and Deliverables on the terms of the agreement...

Services and Deliverables

...to include:

- a. Recommendation for consolidation of overall group governance
- b. To understand current cash flow and revenue generating areas...and work with Peter Dowell to supply a model for growth requirements from a financial perspective as been formed to date
- c. Position an executive and SLT team to assist PML to better perform its own strategic planning from all current holdings...
- d. Where agreed engage competent internal or contracted personal [sic] along with outside organisations to assist with structure and growth of PML...
- e. As each project is identified ensure reporting structure and outcomes are agreed...
- f. To advise Peter Dowell on strategic thinking to maximise growth across PML
- g. To allow PML to use XXXX’s contacts and IP and both commercial and government sectors for the advancement of PML...

Intellectual

... All intellectual property rights ...are owned by PML...

Fees

PML must pay the Fees for providing the Services and Deliverables...

The invoice must include...

Independent contractor

... XXX is an independent XXXX of the company... No other relationship (e.g. employment...) exists under the Agreement...

[31] There is no indication that this template was produced by PLL nor does Ms Squires claims that it was created by Mr Dowell.

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<sup>3</sup> References to “XXX” are taken from the template; I have not made any changes or redactions to the template as provided by Ms Squires.

*Nature of work*

[32] When asked what her job title was, Ms Squires stated that someone at PLL had asked her to state “Marketing Lead/Business Development” on her LinkedIn profile but there was no evidence this was a requirement by Mr Dowell.

[33] Whilst in India in March 2023, she worked in her hotel room, staying in touch with other team members online. As far as she knew, PLL did not have a designated office in India. Ms Squires said she worked at all hours while in India, receiving tasks from Mr Dowell via email and text messages, but would typically work an average of 40 hours a week. Ms Squires state she would often work additional hours to complete presentations that were needed to present to investors.

[34] Ms Squires stated that there was no specific place of work, whether she was working in New Zealand, India or elsewhere, but that she would receive instructions from Mr Dowell via WhatsApp messaging or email to undertake tasks, and she would do those tasks, expecting to be paid upon completion.

[35] Although Ms Squires stated she believed she was hired as an employee, she did not explain why she did not seek regular payment of her wages for the period she says she was employed. Ms Squires attributes this to the trust she had in Mr Dowell, as he had been, until December 2023, in regular communication with her and Mr Drysdale. Hence she believed she would have eventually been paid for the work she undertook for PLL.

[36] Ms Squires’ other witness, Locky Mulholland, stated that he was a contractor for PLL but has not been paid by PLL. He was also in India together with Ms Squires and Mr Drysdale, and did not work set hours. Mr Mulholland stated that Ms Squires undertook ‘executive assistant’ tasks. However he could not speak to the terms of her agreement with PLL and stated he ceased working with PLL in October 2023.

*End of relationship with PLL*

[37] Ms Squires stated that in August 2023, she returned to India with Mr Drysdale undertaking tasks for PLL. During that time she and Mr Drysdale again worked from their hotel rooms. Ms Squires stated that sometime between August 2023 and December 2023, Mr Dowell stopped contacting them in India. As such, by early December 2023 Ms Squires decided to leave India and ceased performing tasks for him or PLL. Ms

Squires says she left because Mr Dowell incurred debt in India and this led to people in India chasing her for his debts, and that Mr Dowell failed to pay her or her and Mr Drysdale's expenses as agreed. Ms Squires stated that as no monies were received from PLL, she sought financial assistance from her father who lived in the United Kingdom, who paid for her flight back to the United Kingdom from India.

[38] On 4 January 2024, Ms Squires sent Mr Dowell a WhatsApp text message which stated:

[...] they think the business is a bit of a con...we don't have enough to return to NZ. When do you think this will be sorted.

[39] Mr Dowell replied on the same day stating

It's not a con just market very slow to engage...I have tried to keep you up to date on all fronts as have to investors out of India...

[40] On 26 January 2024, Ms Squires again messaged Mr Dowell asking if there was a "chance" he could get "some funds" to her and Mr Drysdale. He replied, "sure I'll get you some funds. Is 2K ok"; and Ms Squires replied "Yes please- only if that's okay and viable for you..."

[41] Ms Squires stated that despite the promise to send funds, she was not paid.

### **Analysis**

[42] In assessing whether a person is an employee, s 6(2) of the Act requires the Authority to determine the real nature of the relationship. Such assessment informs consideration of whether the relevant person is employed do work for hire or reward under a contract of service.<sup>4</sup> All relevant matters must be considered, including those indicating the intention of the parties.<sup>5</sup> However, any statements describing the nature of their relationship are not determinative.<sup>6</sup>

[43] Section 6 of the Act requires that the Authority consider all relevant matters. In *Bryson v Three Foot Six Ltd* Blanchard J commented on what "all relevant matters" includes, and referred also to the relevant common law tests as to the assessment of whether a person is an employee:<sup>7</sup>

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<sup>4</sup> Employment Relations Act 2000, s6(1).

<sup>5</sup> Employment Relations Act 2000, s6(3)(a).

<sup>6</sup> Employment Relations Act 2000, s6(3)(b).

<sup>7</sup> *Bryson v Three Foot Six Limited (No 2)* [2005] NZSC 34, at [32], Blanchard J on behalf of the Court.

All relevant matters” certainly include the written and oral terms of the contract between the parties, which will usually contain indications of their common intention concerning the status of their relationship. They will also include divergences from or supplementation of those terms and conditions which are apparent in the way in which the relationship has operated in practice. It is important that the Court or 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 features of control and integration and to whether the contracted person has been effectively working on his own account (the fundamental test), which were important determinants of the relationship at common law....

[44] In *Leota v Parcel Express Limited*<sup>8</sup>, the Court stated:

An employee works for the employer, and the employer’s business, to enable the employer’s interests to be met. An independent contractor is an entrepreneur, providing their labour to others in pursuit of gains for their own entrepreneurial enterprise.

[45] I now consider the tests set out above.

#### *Control*

[46] Typically an employer has a level of control over an employee’s activities, including how, when, and where the work is to be done. Such control suggests an employment relationship. The more control the employer exerts over the worker’s work, the more likely the worker is an employee. However in these circumstances, it did not matter where Ms Squires worked. The evidence showed that Ms Squires was not required to work in the PLL offices in Wellington, nor was she required to stay in Wellington to work. Ms Squires was free to perform work at hours of her own convenience. Hence, although Ms Squires received tasks from Mr Dowell and travelled to India as requested, there was no direction as to where she had to undertake them, provided the tasks were done. At best, the control PLL had over Ms Squires was limited.

#### *Integration*

[47] Where an employee’s work is central to the employer’s operations and the worker is part of the employer’s workforce, they are more likely to be an employee. The more a worker is part of the employer’s overall business structure (e.g., working

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<sup>8</sup> *Leota v Parcel Express Limited* [2020] NZEmpC 61.

alongside other employees, using the employer's resources), the more likely the person is an employee rather than a contractor.

[48] Although Ms Squires provided screenshots taken from presentations of her listed as a 'business lead' for PLL and provided excel spreadsheets she created showing hours of work she performed on various projects for PLL, this only went so far as demonstrating she performed work for PLL over a specific period of time. The information provided was scattered and there was no evidence of consistency or continuity that would be indicative of an ongoing employment relationship.

[49] I also did not see evidence that she was part of PLL's workforce using the employer's facilities and tools, notwithstanding that she may have been part of a small group of people who went to India to pitch an idea on behalf of PLL, that was based on ideas she and Mr Drysdale had shared with PLL in their initial meeting earlier in March 2023. When asked what her role was for PLL, there was little specificity and her tasks typically included putting together a presentation (which she would undertake in consultation or in conjunction with Mr Drysdale), marketing research, incidental work, contacting people and paying bills. While I accept that the aim of the trip was to successfully obtain a revenue stream for PLL, the tasks Ms Squires undertook in furtherance of that aim did not go far enough to establish Ms Squires as being central to the PLL's core operations.

#### *Mutual Obligation*

[50] An employment relationship is characterised by mutual obligations: the employer is obligated to provide work (and pay for that work), and the employee is obligated to perform the work. This contrasts with an independent contractor relationship, where the contractor is typically free to accept or decline work as they choose.

[51] I was not persuaded by the evidence that Ms Squires received a separate offer (to what had been discussed with regard to the Oasis platform) to perform regular work during specified hours in exchange for a salary or a wage. On the contrary, the evidence would suggest that the whole business relationship started as a discussion about 'Oasis' which Ms Squires controlled and owned together with Mr Drysdale; and discussions with Mr Dowell related to leveraging ideas associated with their development of 'Oasis' as an additional revenue stream for PLL. Such ideas were the basis for driving the

working relationship between Ms Squires and PLL, therefore suggesting an independent contractor status. This is not the same as an employee who is providing pure labour for his or her employer solely for the employer's gain in exchange for a wage.

#### *Economic Dependency*

[52] This test considers whether the worker is economically dependent on the employer. Employees are generally economically dependent on their employer for their livelihood, whereas independent contractors often have multiple clients or customers and are not as reliant on one source of income.

[53] Although Ms Squires had discussions with Mr Dowel in March 2023 and travelled in to India, Ms Squires' claim only relates from the period of May 2023; this is because May 2023 is the first time she can demonstrate that she was tasked with PLL work (to do a presentation).

[54] Ms Squires stated that until December 2023, Mr Dowell had paid for expenses in India and It was unclear how Ms Squires supported herself when performing tasks for PLL despite not being paid a wage during the entirety of the time she says she was an employee for PLL.

[55] I was struck by Ms Squires continuing to undertake work notwithstanding that she has never been paid a regular wage by PLL. In her evidence, she did not state that she had an expectation to be paid a regular wage; instead, she would often complete a task at Mr Dowell's request, then ask to be paid. This would suggest that her intention was not necessarily to be employed, but simply, to be paid when tasks requested of her were completed.

#### *Intention of the Parties*

[56] I did not see evidence of a shared intention of an employment relationship. The template agreement provided was an engagement contract for services, and not an employment agreement. Further the relationship Ms Squires had with PLL began on the basis of the Oasis platform which leans slightly more towards a contractor relationship in so far as it is relevant.

[57] Ms Squires stated that Mr Dowell himself has acknowledged that there are monies owed to her for work undertaken for PLL. I do not disagree as I have seen an email from Mr Dowell which has suggested as much. However the distinction is that it was not work undertaken as an employee. On the contrary, despite Ms Squire's assertions that she had undertaken tasks as an employee separate to the provision of services or ideas as the founder of her development of 'Oasis', her evidence did not distinguish between the two. I was left unconvinced. Further, although Mr Dowell did not participate in the investigation meeting, his email to Ms Squires and the Authority of 6 November 2024 seems to indicate that Mr Dowell's understanding was that Ms Squires agreed to provide services and intellectual property in her capacity as founder of 'Oasis'.

[58] Furthermore, the messages exchanged between Ms Squires and Mr Dowell in January 2024 suggest a form of payment that is not consistent with that of an employment relationship.

#### *Provision of Equipment and Risk*

[59] Employees typically do not provide their own tools, materials, or equipment for the work, and they are generally not exposed to business risks like independent contractors. The employer usually provides the necessary tools and assumes financial risk.

[60] Ms Squires used her personal email when undertaking PLL work, she did not use PLL equipment such as a PLL-issued laptop or other equipment.

#### *Conclusion*

[61] After considering the tests above against the evidence, I do not consider that there was a genuine employment relationship between Ms Squires and PLL. Several factors have led me to this conclusion which include the following:

- a. Although not determinative, there was no concluded agreement between Ms Squires and PLL. The unsigned template agreement is unhelpful in this regard.
- b. Ms Squires used her personal email for her work with/for PLL;

- c. Unlike *Daniel Ryan v Playmaker Labs Limited*<sup>9</sup> [2024] NZERA 755, here there are no documents that can verify she was an employee of PLL;
- d. At no point was Ms Squires paid a regular salary or wage, but business expenses were paid from time to time;
- e. There was no specified place of work even though PLL had an office in Wellington (place of Ms Squire’s residence at the time);
- f. Ms Squires says she worked a 40-hour week, but she was not dictated what standard business hours were; and
- g. The relationship with PLL began as a result of discussions about the use and development of ‘Oasis’, and ideas which she explained as “intellectual property” designed to create a revenue stream for PLL.

[62] Although the evidence does show that Ms Squire undertook work for PLL which has not been paid for by PLL, this does not go far enough to establish an employment relationship within the meaning of the Act.

[63] Unlike Mr Ryan’s circumstances (whom I considered was employed by PLL within the meaning of the Act)<sup>10</sup>, I found the evidence in Ms Squire’s case vague. The nature of Ms Squires’ relationship with PLL was more of a business partner or a contractor. As such, while I do not doubt the work she performed in marketing and developing the business, there is little evidence to suggest that Ms Squires was *employed* in that capacity. Instead, I find that there was a contract of service rather than employment.

[64] Although I am sympathetic to Ms Squires’ cause, the evidence has led me to find that she was not an employee of PLL. Accordingly her case has not been made.

## **Orders**

[65] No orders are made.

Davinnia Tan

Member of the Employment Relations Authority

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<sup>9</sup> *Daniel Ryan v Playmaker Labs Limited* [2024] NZERA 755.

<sup>10</sup> *Daniel Ryan v Playmaker Labs Limited* [2024] NZERA 755.