

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN George Stanescu (Applicant)
AND Lyn Sparks (Respondent)
REPRESENTATIVES George Stanescu In person
Richard E Knapp, Advocate for Respondent
MEMBER OF AUTHORITY Helen Doyle
INVESTIGATION MEETING 26 May 2005
DATE OF DETERMINATION 27 May 2005

DETERMINATION OF THE AUTHORITY

The employment relationship problem

[1] The applicant, George Stanescu, lodged a statement of problem with the Authority in which he said that the employment relationship problem concerned recovery of unpaid wages and fees from the respondent for the period January to May 2004. He named Mr Lyn Sparks as the respondent. In his statement in reply Mr Sparks said that Mr Stanescu was employed by a company Business Immigration (N.Z.) Limited.

[2] The parties attended mediation but the matter was unable to be resolved.

[3] Following the unsuccessful mediation I held, on 17 February 2005, a telephone conference with Mr Stanescu and Mr Knapp who represented Mr Sparks. There was discussion about the disputed identity of the respondent. I advised Mr Stanescu and Mr Knapp that it was likely the Authority would be required to make a preliminary finding about the identity of Mr Stanescu's employer. As Mr Stanescu was unrepresented I encouraged him to seek some advice about this matter and set a date for a further conference after he had taken advice about the identity of the respondent.

[4] During the next scheduled telephone conference on 23 February 2005 Mr Stanescu confirmed that it was still his view that Mr Sparks was his employer. The Authority timetabled for relevant evidence and documents to be lodged and exchanged before an investigation of the preliminary issue.

[5] The Authority was available to hear the matter in March 2005. Mr Sparks was unavailable as he was overseas for March and much of April and early May so the matter could not be investigated until late May 2005.

[6] The issue for determination is whether Mr Sparks was Mr Stanescu's employer.

The circumstances of employment

[7] Mr Stanescu discussed a job opportunity with Mr Sparks in November 2003 with respect to recruiting staff for companies in New Zealand. Mr Sparks needed someone to work in the farming area and he knew that Mr Stanescu had relevant experience. Mr Stanescu is a Romanian and there was some staff recruitment undertaken in Romania by Mr Stanescu during his employment. A verbal job offer was made to Mr Stanescu but he did not actually commence employment until 12 January 2004.

[8] Mr Stanescu dealt almost exclusively with Mr Sparks throughout his employment. He was aware of the company Business Immigration (N.Z.) Limited and he told me that Mr Sparks did refer to the company and talked about *what it was representing*. Mr Stanescu said that he knew Mr Sparks was the *owner of the company since about 2001*. Mr Sparks is the managing director of Business Immigration (N.Z) Ltd which was incorporated on 16 December 1988.

[9] Mr Stanescu accepted that he was probably paid by Business Immigration (N.Z.) Limited cheque with respect to the weekly retainer of \$500.00 and a payment of \$1000.00.

[10] There was no employment agreement signed. A document headed up individual employment contract was given to Mr Stanescu. There is a dispute as to whether this was given to him before or after the Romanian trip. It is not a dispute I am required to resolve for the purposes of this preliminary determination. What is significant is that Mr Stanescu did not agree with the terms and conditions in the contract but there is no evidence he disputed the named employer on the front page of that document - Business Immigration (N.Z.) Ltd.

[11] Shortly after Mr Stanescu commenced employment business cards were prepared for him. The card prepared for Mr Stanescu has his name at the top and then Business Immigration (N.Z.) Ltd followed by Employment Marketing Consultant.

[12] Mr Stanescu was also aware and distributed to prospective clients a pamphlet which set out the company name and the services the company provided although I accept that this may not have been printed until after Mr Stanescu commenced employment.

[13] One of the significant issues for Mr Stanescu was that there was no reference within the email address he used to communicate with Mr Sparks to the company. Mr Stanescu felt that was unusual. It may be unusual but has to be considered along with other matters in terms of identifying who employed Mr Stanescu.

[14] There are some technical matters about companies that are not always easy to understand. A company is a separate legal entity from its directors. Although it has all the right and powers of a natural person its artificial nature means it can only enter into employment or other agreements by way of human agents.

[15] In this case I am satisfied that Mr Sparks as director of and on behalf of Business Immigration (N.Z.) Limited offered Mr Stanescu employment which Mr Stanescu then accepted. I am not satisfied that Mr Sparks ever intended to or in fact did employ Mr Stanescu. The documentary evidence and the evidence I heard during the investigation meeting does not support that. The evidence supports that Mr Stanescu was aware of the company. The company name was on his business cards and information he was distributing for his work. The fact Business Immigration (N.Z.) Limited was a company required Mr Stanescu to deal with its director Mr Sparks but that did not I find mean that he was employed by Mr Sparks.

Determination

[16] I find that Mr Stanescu was not an employee of Mr Sparks but was employed by Business Immigration (N.Z.) Limited.

[17] The proceedings against Lyn Sparks are dismissed. This does not prevent Mr Stanescu lodging a statement of problem against Business Immigration (N.Z.) Limited.

Costs

[18] I reserve the issue of costs. Mr Knapp has handed to the Authority and to Mr Stanescu details of costs which he seeks on behalf of the respondent. Mr Stanescu has 14 days from the date of this determination to lodge with the Authority and serve on Mr Knapp a response with respect to costs.

Helen Doyle
Member of Employment Relations Authority