

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 372/10
5298398

BETWEEN COLLEEN WRIGHT
Applicant
AND ENDUE LIMITED
Respondent

Member of Authority: Alastair Dumbleton
Representatives: Applicant in Person
Greg Billington, advocate for Respondent
Investigation Meeting: 19 August 2010
Determination: 20 August 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The Authority has investigated a claim brought by the applicant Ms Colleen Wright against the respondent Endue Ltd. Her claim is that from February 2007 for about 14 weeks as an employee she performed work for Endue Ltd. For this work Ms Wright claims she was entitled to be paid \$18 per hour.

[2] The Authority interviewed Ms Wright and Mr Greg Billington the General Manager of Endue Ltd. From the information given by them the Authority is satisfied that Ms Wright was not at any time in an employment relationship with the company. It does not appear that there was any contractual relationship of any kind at any time between the parties.

[3] Ms Wright's husband was an employee of Endue Ltd and the work the claim is based on was done by Ms Wright to help her husband do his job as Operations Manager. His computer skills were not at a level where he could efficiently do some

of the data inputting required so his wife who was skilled in that work helped him. Occasionally while doing so she visited the company's premises.

[4] Mr Billington knew about this arrangement and saw Ms Wright at the premises, but he was not asked to employ Ms Wright and, I find, did not offer to do so. Indeed, the company deliberately did not employ her as she was regarded as having something of a track record of bringing personal grievances. Mr Billington thought that by her visits to the company premises she was intent on insinuating herself into a position with the company.

[5] There is absolutely no documentary evidence of any kind to support the claim that Ms Wright was offered employment by Endue Ltd. I am satisfied from Mr Billington that although Endue Ltd's business was in the start-up phase, systems were in place to require an employment agreement to be given to anyone intended by the company to become an employee. In the case of hourly workers, such as Ms Wright seems to have regarded herself as being, workers were also required to fill in a timesheet.

[6] Entry by anyone into employment with Endue Ltd was usually handled by Mr Billington. I agree with him that it is quite remarkable that someone who believed they were an employee would work week after week without ever asking the employer where their pay was and would then wait nearly three years before raising it with the employer and bringing a claim to the Authority.

[7] Undoubtedly Ms Wright performed work and undoubtedly she has a strong and sincere belief that she was an employee of Endue Ltd, but there is no rational basis for her conclusion that the entity of Endue Ltd must therefore have had responsibility to remunerate her as an employee for that work. That responsibility can only be based on an employment relationship, which I am satisfied was not entered into by Endue Ltd or by Ms Wright.

[8] She believes Endue Ltd has evaded its legal obligations as an employer by failing to provide her with an employment agreement. I find that the reason why she received no employment agreement was because she was not offered employment and therefore no employment relationship was created or was intended to be created. By contrast, those such as Ms Wright's husband who were offered employment and who

accepted did receive, as the Authority has seen, a written employment agreement signed by either Mr Billington or Mr Henderson the Managing Director of Endue Ltd.

Determination

[9] Ms Wrights claim does not succeed and on that basis the Authority's investigation is concluded.

[10] As the parties' represented themselves there is no issue as to costs.

A Dumbleton
Member of the Employment Relations Authority