

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** John Anderson  
**AND** CanWest RadioWorks Limited  
**REPRESENTATIVES** Applicant in person  
Clare Bradley for Respondent  
**MEMBER OF AUTHORITY** Yvonne Oldfield  
**INVESTIGATION MEETING** 3 November 2006  
**DATE OF DETERMINATION** 3 November 2006

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] For a period of approximately eighteen months until December 2005 Mr Anderson worked for the respondent (CanWest) as a technical engineer at "RadioWorks" which provides radio engineering services. ACC are now seeking to recover levies from him for that time on the basis that he was a self employed contractor. Mr Anderson disputes that he was self employed and asks the Employment Relations Authority for a declaration that he was an employee. His status is therefore the sole issue for my determination.

[2] In May 2004 CanWest supported Mr Anderson when he applied to New Zealand Immigration Service for a permit to work here. It is not disputed that such permits are for employment. Those wishing to set up in business in this country are asked to meet different requirements which do not include confirmation that they have a position to go to.

[3] Mr Anderson duly obtained his work permit and entered into a written contract in which he was described as an independent contractor. Notwithstanding this the contract provided that:

- i. Mr Anderson would give exclusive personal service;
- ii. He would work full time and from the respondent's premises;
- iii. He would receive a salary (from which CanWest deducted PAYE);
- iv. He would be bound by a comprehensive post-termination restraint of trade.

[4] Upon taking up his position, Mr Anderson was provided with the respondent's business card and was fully integrated into the organisation. He was treated like any other staff member until he resigned in late 2005.

[5] Ms Bradley has now confirmed CanWest's view that despite the label applied in the written agreement, it employed Mr Anderson pursuant to a contract of service. She has also provided me with a copy of a letter she wrote to ACC on 27 October, on the respondent's instructions, which states:

*"Mr Anderson rightly claims that he should not be liable for these levies as he was not properly a contractor to RadioWorks for the period for which he worked for RadioWorks- he was an employee.*

*...Having looked into the matter it is clear to me that Mr Anderson should never have been treated by RadioWorks as an Independent Contractor – he was at all times and for all material purposes an employee."*

Determination

[6] I conclude that, notwithstanding the label placed upon it, the real nature of the relationship between the parties was one of employment. It follows that Mr Anderson should not bear the tax responsibilities of a self employed person in relation to the work he performed for CanWest.

Yvonne Oldfield  
Member of Employment Relations Authority