

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** Roberto Brady (Applicant/Respondent)  
**AND** Athlete Management International Limited  
(Respondent/Applicant)  
**REPRESENTATIVES** T Castle for Applicant/Respondent  
M Matthew for Respondent/Applicant  
**MEMBER OF AUTHORITY** G J Wood  
**INVESTIGATION** By way of submissions received by 11 October 2005  
**MEETING**  
**DATE OF** 13 October 2005  
**DETERMINATION**

**DETERMINATION OF THE AUTHORITY**

1. This determination deals with a removal application by Mr Brady in respect of an employment relationship problem he believes he had with the respondent (“Athlete Management”). It also deals with Mr Brady’s application for costs against Athlete Management in respect of a previous claim by Athlete Management against him for alleged breaches of his employment agreement, which was withdrawn.

**The Background**

2. Athlete Management, an Australian-based sports talent agency, engaged Mr Brady in various capacities between 2003 and 2005. By September 2004 his position was as general manager of the “start-up” New Zealand operation.
3. Mr Brady severed his ties with Athlete Management early in 2005. Subsequently Athlete Management brought an employment relationship problem to the Authority (WEA281/05) alleging serious breaches by Mr Brady of his duties to it both before and after the termination of the relationship.

4. In Mr Brady's statement of reply to the Authority, his representative denied all the allegations in the statement of problem and claimed that through its principal's actions (Mr Greg Keenan), Athlete Management had repudiated its contract with Mr Brady. It was also questioned whether or not Mr Brady was ever an employee of Athlete Management.
5. Subsequently, following mediation, which was unsuccessful, Mr Brady applied for removal of the matter to the Employment Court on the basis of alleged important questions of law. However, following a conference call with the Authority, Athlete Management withdrew its application to the Authority *in toto*. Subsequently I understand that similar proceedings have been issued by Athlete Management against Mr Brady in the High Court.
6. Following this, Mr Brady, in a separate application to the Authority (WEA372/05), claimed certain remedies for alleged serious breaches of the employment agreement by Athlete Management. In conjunction with this application, proceedings were filed in the Employment Court pursuant to s.6 of the Employment Relations Act seeking a declaration that Mr Brady was an employee.
7. Mr Brady has also filed an application for the removal of the application before the Authority to the Employment Court. The parties assured me that as mediation on the issue had already taken place, further mediation would not be constructive given the fundamental differences between them. I also agreed to the parties' wish that the matter be determined before any statement in reply is filed.

### **The Removal Application**

8. This application is made on the basis that there is an important of law likely to arise in the matter other than incidentally, being the true nature of the relationship between the parties (i.e. is it one of employer/employee or not). Mr Brady also claims that the Court already has before it proceedings between the same parties which involve the same or similar or related issues, namely whether Mr Brady was an employee of Athlete Management or not.

9. On behalf of Mr Brady, Mr Castle also submitted that the seriousness of the allegations made by Mr Brady against Athlete Management was such that a formal Court of record should hear and determine them. On behalf of Athlete Management, Ms Matthews neither supported nor opposed the application for removal.
10. I accept that there are grounds for removal because the Court already has before it in the form of proceedings for a declaration as to whether Mr Brady was an employee or not of Athlete Management, proceedings between the same parties involving the same issues (although as a subset of the issues before the Authority), which supports removal (section 178(2)(c) refers).
11. While I do not accept that the issue of whether or not a person is an employee or not is a question of law, see *Bryson v. Three Foot Six Ltd* (Supreme Court, SC CIV-24/2004, 16 June 2005), or that simply because serious allegations are made they have to be heard in a Court of record, I do accept that the seriousness of the issues between the parties is a factor supporting removal.
12. Given that there are no particular factors supporting the Authority dealing with the matter instead of the Court, I accordingly remove the whole of the proceedings WEA372/05 between Roberto Brady and Athlete Management International Limited to the Employment Court, for the Court to hear and determine it without the Authority investigating the matter.

### **Costs**

13. Mr Brady sought significant costs in respect of Athlete Management's original application, which was withdrawn. Given that the application was withdrawn at a very early stage (after only one conference call), that the matters are now being dealt with in the High Court, and that much of the costs incurred in respect of Athlete Management's application have saved Mr Brady further costs in terms of preparation of his own application, I determine that costs should lie where they fall in this instance.
14. Mr Brady also seeks costs to be reserved in respect of his removal application. Leave is so reserved, but I note that given that Athlete Management did not oppose the

application and that it was one to suit the interests of Mr Brady, it may be again that costs should lie where they fall.

**G J Wood**  
**Member of Employment Relations Authority**