

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2012] NZERA Wellington 64  
5358160

BETWEEN

MARUNUI GRAEME  
MEROITI  
Applicant

AND

LINDALE LODGE LIMITED  
Respondent

Member of Authority: P R Stapp

Representatives: Graeme Ogilvie, Advocate for the Applicant  
Allan Knowsley, Counsel for the Respondent

Investigation Meeting: 3 May 2012 at Wellington

Determination: 5 June 2012

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] This is an employment relationship problem involving the Meroiti family. It is over the real nature of Graeme Meroiti's employment at the Lindale Motor Lodge at Paraparaumu and termination of employment.

[2] Mr Meroiti alleges that he was employed to manage the Lindale Lodge motel complex owned by Lindale Lodge Limited (Lindale). His sister in law, Jill Meroiti is the company's sole director. Mr Meroiti claims that on 14 August 2011 he was verbally attacked and then physically pushed by his brother John Meroiti, apparently acting on his wife's behalf, and which brought to an end the relationship.

[3] Graeme Meroiti (I will refer to him as Mr Meroiti) claimed he was then summarily dismissed by John Meroiti.

[4] Lindale denied Graeme Meroitis' claims:

- (i) That he was an employee; and
- (ii) That he was unjustifiably dismissed.

[5] Lindale's defence relies on the existence of a written and signed contract for services that commenced on 12 October 2009 and was allegedly signed by Mr Meroiti on 9 November 2010. It was claimed by Lindale that the agreement was in place during the entire time that Mr Meroiti was providing services for Lindale. Mr Meroiti accepts that the signature on the agreement was his, but says that he never signed an agreement and had never seen the agreement before this matter occurred.

### **The Issue**

[6] Was Mr Meroiti an employee or an independent contractor?

### **The facts**

[7] The contract for services produced by John Meroiti (Annexure 1) purportedly was between Lindale Lodge and Graeme Meroiti ("the Contractor"). The agreement has Mr Meroiti's and John Meroiti's signatures on a page with numbering as "page 5 of 5 pages". Also, attached was another page referred to as "page 6 of 6 pages", which is a schedule of services and payment. Mr Meroiti denies ever seeing the agreement before now, and he denies ever signing it. Also, he denies that it had been sent to him by email at the time. He says he signed another piece of paper that included his list of duties in the presence of John Meroiti. The document has not been produced. The agreement purportedly commenced on 12 October 2009 and was to continue until termination. It included the following terms:

- (i) That the parties to the agreement agreed and acknowledged that their relationship was one of an independent contractor.
- (ii) That the contractor (Mr Meroiti) was responsible for charging for services (to get paid);
- (iii) That the contractor would provide detailed invoices for payment;
- (iv) That Lindale would pay all charges invoiced;
- (v) That the contractor was an independent contractor and would be responsible for his tax liability and Accident Compensation premiums;

- (vi) That either party was able to terminate the agreement on two weeks' notice in writing;
- (vii) That Mr Meroiti declared that he had read and understood the conditions of the contract and accepted them fully;
- (viii) That Mr Meroiti agreed that he had been advised to seek independent advice in relation to the agreement;
- (ix) That Mr Meroiti was able to work for other people.

[8] The contract for services also outlined the services to be provided by Mr Meroiti. Mr Meroiti was required to fulfil the responsibilities provided in a list of jobs provided by the owners of the business and listed in schedule 1 to the contract. This included the following:

*SERVICES*

*Grounds*

*Motel units & conferences as required*

*Help with conferences as required*

*Cover cleaner when available*

*Motel bookings*

*PAYMENT*

*\$350 per week*

*Responsible for own taxes*

*May undertake other work for other people*

[9] Lindale claims that Mr Meroiti did not have any authorisation to access or operate the bank account or to make deposits of monies received. Also he could not make any decisions with regard to room rates or conference pricing. I was informed by Jill Meroiti that on one occasion Mr Meroiti was allowed use of the business eftpos card to buy supplies, but because he bought personal items he was never permitted to use it again. This was not challenged. John and Jill Meroiti say that the booking system never required Mr Meroiti's full attention because bookings could be done on line. Mr Meroiti was not able to produce his list of duties and requirements and it was not pursued further by him in the Authority's investigation.

[10] Mr Meroiti was provided accommodation on the site. There was no particular provision for this in the contract for services. He says that he was on call 24 hours a day 7 days a week. This was disputed by Lindale.

[11] During the Authority's investigation both parties were questioned on aspects of their evidence. The following emerged:

- a. First Messrs John and Graeme Meroiti had a discussion about work at Lindale. There was common ground that there had been a discussion, albeit they say that their discussion related to entirely different matters; the duties list from Mr Meroiti and the agreement from John Meroiti.
- b. Second Mr Meroiti continued to deny that he has ever seen the agreement despite the following:
  - i. Mr Meroiti's signature was on the document. He accepted that it was his signature, but says he did not sign the agreement.
  - ii. Mr Meroiti could not provide any explanation about how his signature happened to be on a document he says he had never seen before.
  - iii. Mr Meroiti did accept he had signed some sort of document, which he has not been able to produce, and John Meroiti denied signing any other document other than the contract.
  - iv. John Meroiti never waived from his claim that Mr Meroiti did sign the contract.
  - v. John Meroiti provided a genuine explanation about how the signature page emerged, despite it not having a fold like the rest of the pages and different numbering between the document produced following an order from the Authority requesting it (page 5 of 6), and the original produced on the day of the investigation meeting (page 5 of 5). John Meroiti says that the numbering related to the transference from being a draft in word to a final document and being scanned for PDF format. He also says that he kept the signature page separately once he located the document because it was important and that the other contract pages could have been folded anytime.

- vi. The fonts and layout and type face of the schedule were different to the rest of the document.
  - vii. The information produced by John Meroiti to support that the document had been emailed by another person to Mr Meroiti does not prove that Mr Meroiti actually received the agreement, but Mr Meroiti has not produced any records of his own from his own laptop to support that he did not receive such a document.
- c. Third Mr Meroiti denied that he sent emails that the respondent has produced to support its claim that he signed the contract. He says the emails produced are different from his usual greeting and farewell. However, the emails open to scrutiny contradict his claim. In other words emails produced contradict his claim. Without any other explanation I hold that his denial of sending them is implausible.

[12] Lindale claims that Mr Meroiti initially provided a hand written invoice for services and followed this up with typed invoices for payment. Mr Meroiti denied ever seeing the invoices and claimed that only a hand written document with his tax number and bank details was provided for his employer for payment and no other reason. During the period there are computerised invoices (Annexure 4 – invoices produced), but where they have come from is unexplained since Mr Meroiti denied he produced them, and John and Jill Meroiti say they were from Mr Meroiti and he had to produce them to get paid. The invoices varied both in their amounts and their frequency for payments (Annexure 3 – invoices produced). Payment of the invoices was made by Lindale as per their normal operations.

[13] Mr Meroiti advised that he did not take holidays and was declined a period of holiday. This was refuted by Lindale in witness statements produced (Annexure 5, 6 and 7 – witness statements).

[14] Notwithstanding his claim he took no holidays Mr Meroiti twice travelled to Australia without pay. During that time Mr Meroiti was not available to provide services and on at least one other occasion went to pick up his son from Auckland which took two days. He did not seek the permission of anyone at Lindale. Nor did he indicate that he would not be unavailable for work. There was apparently no

requirement for him to seek such permission. There were other people available to cover his services, although the contract did not have any procedure to cover absence.

[15] Mr Meroiti's engagement ended with Lindale when a written note was provided by him as follows:

*I'm owed  
5 days pay for this week  
+ 2 weeks on termination as you and I agreed to  
want that money in my bank by tomorrow  
I will be taking legal action  
AND BY THE WAY "F...YOU"  
Tell me not to swear*

[16] At first Mr Meroiti said that the note produced by the respondent is not the one he wrote, because he says he finished it with the words "*have a nice day*". He claims that John Meroiti dismissed him and that he asked how much notice was required. Mr Meroiti says that two weeks notice was agreed. However, at the Authority's investigation meeting Mr Meroiti changed his evidence and acknowledged he had written the note with the swearing. I hold it is entirely probable that Mr Meroiti has become confused about what he signed and the documents he has referred to, because of this concession.

[17] Lindale contended that Mr Meroiti is not entitled to wages and holiday pay. He was not employed in any capacity and that his employment agreement was a contract for services. It denies all Mr Meroiti's claims.

[18] During Mr Meroiti's employment he received various loans to cover personal expenses, for example: 6 December 2009 Air New Zealand \$600.50, 2 June 2010 Air New Zealand \$631.70, IRD \$500, 23 November 2010 Vodafone \$150.00, 18 December 2010 Air New Zealand \$81.00, and 7 January 2011 Air New Zealand \$374.00. He repaid \$556.00 on the total.

[19] John and Jill Meroiti have given evidence that their intention was that the contract for services signed by the parties was a contracting arrangement. They say that the services provided by Graeme Meroiti could be covered by them or other contractors as required without any disruption to the business in the absence of Mr Meroiti. They say Mr Meroiti was not integral to the business. They say contractors did the work at their own convenience although unit cleaning, conference room set up had to be done as required. There were no set hours.

## **The law**

[20] The law in regard to this matter is straightforward. The test applied is the test under the Employment Relations Act 2000 in regard to the real nature of the employment.

[21] The following relevant provisions apply:

### **6      *Meaning of employee***

...

- (2) *In deciding for the purposes of sub-section (1)(a) whether a person is employed by another person under a contract of service, the Court or the Authority (as the case may be) must determine the real nature of the relationship between them.*
- (3) *For the purposes of sub-section (2), the court or the Authority –*
  - (a) *must consider all relevant factors, including any matters that indicate the intention of the persons; and*
  - (b) *is not to treat as a determining matter any statement by the persons that describes the nature of their relationship.*

[22] I am required to have regard to all relevant matters including the intention of the parties and apply and assess the following tests: the control test, the integration test and the fundamental economic reality test.

## **Determination**

[23] Any relationship such as this one can be formulated and construed to be either an employment relationship or a form of contracting in some way, but I must determine the real nature of the relationship, taking into account all the relevant factors. Important to this matter is whether or not Mr Meroiti signed the contract produced by John Meroiti. Mr Meroiti's evidence is that he did not sign the contract and has never seen it before, and he remains adamant about that. John Meroiti was equally as much adamant that there was a signed contract between the parties. I hold, whatever the arrangement, that the intention of the parties therefore cannot determine the matter. The evidence on the contract remains unexplained given the conflict between Messrs Graeme and John Meroiti. No one witnessed the signing and no one

has come forward to say they have seen the agreement before, other than Jill Meroiti, who I hold is not an independent witness given her personal involvement.

[24] Likewise the invoices are not determinative of the matter either. This is because there is a conflict between the Meroitis about who initiated them. From the evidence it remains unexplained who produced them. However it does seem that payments that were made were based on the details of the invoices and time records.

[25] The contract supports that John Meroiti believed that the role was a contractor, and Graeme Meroiti continues to claim that he was an employee. This does not assist in regard to a common position as to the intention of the parties, suffice for me to hold:

- a. That John Meroiti has been more consistent with his opinion.
- b. That Graeme Meroiti has changed his evidence.
- c. That John Meroiti highlighted that Mr Meroiti's claims about his emails has not been consistent.

[26] In addition since Graeme Meroiti was not registered for GST and there have been no payments relating to ACC, these factors do not assist determine the relationship either. Any discussions between Mrs Francis Meroiti, mother to Graeme and John, does not dispose of the issue either because of the differences in their evidence. It is more likely than not that there was a discussion about something to do with tax, but what that discussion covered and focussed on remains unexplained.

[27] The factors relating to the control over Mr Meroiti in the business include that Mr Meroiti was left unsupervised for much of the time. This is supported by him being at Lindale 24/7. His broad duties were prescribed, but without some independent evidence he has not been able to support his claim that he was the "manager". Jill Meroiti contradicted him when she denied that she gave him a badge with the word "manager" on it. He could not produce the badge and the documentation that does exist does not assist him. The duties he had were consistent with what has been described as his lack of experience in the hospitality industry and seemly having no actual business in place. It is more likely than not that his accommodation at Lindale related to family kindness rather than any employment arrangement since the contract was silent on such a provision. It follows that if no

one else was there he was a convenience used by John and Jill Meroiti in filling in for them, the cleaner and anybody else, and doing the duties required; or otherwise John Meroiti would have had to do the duties such as the bookings and making breakfast. I hold that in the very barest sense Mr Meroiti could do what he wanted and when he wanted so long as there was an invoice and it seemed he would be paid based on that.

[28] This convenience is underpinned by John and Jill Meroiti using the contracting for services as a mechanism for all their employees, as opposed to providing employment agreements. The legality of other arrangements is another matter. This is an instance where they can support it because Graeme Meroiti was family and their kindness extended to paying him when ever an invoice was produced and accommodation was provided 24/7 without any contractual obligations and payments. John and Jill Meroiti's evidence of watching him and requesting him to do things and instructing him not to use the eftpos card and not to make booking charges do not meet the requirement for the degree of control required, I hold. This is because they were in charge, Jill Meroiti owned the business and Mr Meroiti's role falls short of being the "manager" when he could do any of the work he was allowed to do at any time and when he wanted to. Therefore there is not much guidance from the control test, I hold.

[29] I hold that Mr Meroiti was not integrated in the business. He could not produce the badge he says he was given to prove he was the manager. He was allowed to do his duties whenever and there were no demands on him to meet any time requirements other than if he was around and things needed to be done. The accommodation was related to his family connection where there was no term relating to it in his employment relationship.

[30] It is clear, however, that Mr Meroiti was not in business on his own, except that he had to arrange any tax himself and that he could come and go. There was no business set up as such for him. There is a tenuous link to contracting research arrangements with his other brother before the arrangement with John Meroiti was entered into. Mr Meroiti did not provide any tools; he relied on using the motel's lawn mower; and he did not have a vehicle of his own.

[31] In totality I hold that Mr Meroiti had a loosely defined arrangement to contract for services on an individual basis with his brother and sister in law. Such an arrangement involved him being responsible for tax since there had been no

deductions ever made and no record of any ACC payments. Mr Meroiti was paid consistent with the invoices and paid an amount in the hand on every occasion in accordance with the \$350 under the contract. Finally, because I prefer John Meroiti's evidence as being more reliable, it is more than likely than not that the contract existed and the invoices were genuinely produced to enable payment. Therefore I hold that Mr Meroiti was a contractor.

[32] Because of this finding I am not able to proceed any further with the employment relationship problem. Graeme Meroiti's claim that he was an employee is dismissed.

[33] Costs are reserved.

P R Stapp  
Member of the Employment Relations Authority