

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 163
5399236

BETWEEN MICHAEL JOHN ORR
Applicant

A N D RAYMOND JOHN ORR
Respondent

Member of Authority: James Crichton

Representatives: Applicant in person
Respondent in person

Investigation Meeting: 7 August 2015 at Whangarei
11 December 2015 at Auckland
24 May 2016 at Whangarei

Date of Determination: 26 May 2016

DETERMINATION OF THE AUTHORITY

History

[1] On 24 October 2012, the present applicant (Mr Michael Orr) filed a statement of problem in the Authority at Auckland, alleging that, in the period from August 2006 to June 2010, he was working for his father, the present respondent (Mr Raymond Orr). As a consequence, Mr Michael Orr said that he was owed wages by Mr Raymond Orr.

[2] In a determination dated 7 May 2013, issued as [2013] NZERA Auckland 171, I found there was never an employment relationship between father and son.

[3] On 27 May 2015, Mr Michael Orr filed an application to reopen the Authority's investigation, citing fresh evidence which had not been available at the time of the original investigation.

[4] I have conducted a lengthy investigation including meeting with both parties and carefully reviewed all the additional evidence provided by Mr Michael Orr.

[5] Of necessity, I have had to give Mr Raymond Orr an opportunity to comment on all the new material now filed and to consider those responses.

[6] Of more moment though, is the requirement that I consider whether the new material, taken item-by-item or as a totality, disturbed my primary finding in the first determination.

[7] That primary finding was that Mr Raymond Orr had never been Mr Michael Orr's employer although there was clearly a business relationship of some description between them for the period broadly from mid-2006 to mid-2010.

[8] The primary finding just referred to was supported by certain agreed facts. First, the business was created by Mr Michael Orr. It was very obviously his business prior to the time period in contention.

[9] Second, there is no evidence whatever that the business was ever sold, transferred or otherwise moved from the ownership of Mr Michael Orr to the ownership of Mr Raymond Orr at any time, including prior to or during the period in dispute.

[10] Third, nor is there any evidence of the transfer back to the ownership of Mr Michael Orr from the ownership of Mr Raymond Orr when, it is common ground, that Mr Raymond Orr ceased to have any involvement in the business from 1 April 2009 (Mr Raymond Orr's position) or mid-2010 (Mr Michael Orr's position).

[11] Having given the matter earnest consideration, I have not been persuaded that the new evidence bears at all on the question of ownership and in the absence of an employment relationship between the parties to the dispute, this Authority's statutory remit falls away.

[12] That said, I acknowledge there are still unhappy differences between the parties. I can only regret that, especially because of the family relationship but I am not persuaded that the Authority can take matters any further.

Determination

[13] I have concluded that there should be no reopening of the Authority's investigation because I have not been persuaded that any of the new evidence bears on the fundamental question whether there was an employment relationship between the parties in dispute.

[14] I am satisfied that the original determination is still correct in law and in consequence, that it should not be disturbed. Both parties seem to accept that there was never a transfer of the business from one to the other and on that basis there can be no employment relationship between the parties and without an employment relationship between the parties (even if there is a dispute), this Authority has no jurisdiction.

Costs

[15] There is no issue of costs but lest that be in any doubt, costs are to lie where they fall, that is, each party bears their own legal costs (if any).

James Crichton
Chief of the Employment Relations Authority