

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 243
3014252

BETWEEN MARCUS STEELE
 Applicant

A N D EVOLUTION ROAD SERVICE
 GROUP LIMITED
 Respondent

Member of Authority: Nicola Craig

Representatives: Applicant in person
 Nishi Jain for Respondent
 Phill van Syp for Proposed Second Respondent, JCR
 2006 Limited

Investigation Meeting: On the papers

Date of Determination: 18 August 2017

DETERMINATION OF THE AUTHORITY

**A. I order that JCR 2006 Limited, trading as 1st Call Recruitment, be
 joined as second respondent to this proceeding**

Claim by Marcus Steele and Evolution Road Service Group Ltd's response

[1] On 30 June 2017, Marcus Steele filed an application in the Authority identifying a number of problems which he wished the Authority to resolve. These included wrongful and constructive dismissal, failure to act in good faith, misleading conduct in the employment process, failure to supply an employment agreement, discrimination, harassment and theft of employee property.

[2] The application identified Evolution Road Service Group Limited (Evolution) as the respondent employer. On receipt of the statement of problem, a representative

from Evolution contacted the Authority to advise that it had not been Mr Steele's employer at any point in time. 1st Call Recruitment (the trading name of JCR 2006 Limited) (referred to as 1st Call) was identified as Mr Steele's employer and so Evolution sought that any employment relationship issue should be raised with 1st Call and not Evolution.

Case management conference

[3] At a case management conference held by telephone on 8 August 2017, Mr Steele maintained that Evolution was his employer as he was interviewed on two occasions by managers from that company, including having discussions about the job and the amount of hours on offer. He acknowledged that he had been referred by Evolution to 1st Call subsequently, but maintained that he considered Evolution to be his employer.

[4] Evolution acknowledged some discussions but said that Mr Steele was referred to 1st Call and signed an employment agreement with that company. That document has not yet been filed with the Authority.

[5] Evolution says that Mr Steele's work with Evolution was undertaken as a 1st Call employee. Evolution says that Mr Steele was never on Evolution's records as an employee and was not paid by Evolution.

[6] The parties were advised at the case management conference that the Authority was considering, of its own motion, whether to join 1st Call.

[7] Mr Steele consented to the joinder proposal. Evolution expressed willingness to assist the Authority's process as required. The Authority then gave 1st Call and Evolution the opportunity to provide a response to the Authority regarding the joinder proposal.

[8] At the case management conference, the Authority indicated that it was anticipating undertaking the joinder decision on the papers. Neither party objected to this. 1st Call was also given the opportunity to object to the joinder issue being dealt with on the papers. No objection was subsequently received.

1st Call's response

[9] The managing director of 1st Call, Phill van Syp, subsequently made contact with the Authority. He confirmed that 1st Call regarded itself as Mr Steele's employer, and that the position at Evolution was offered by 1st Call and all confirmation of assignments were sent through 1st Call. Further, various complaints by Mr Steele had been investigated by 1st Call.

[10] 1st Call says that it does not believe that this needs to be a joint matter with Evolution, however, it would proceed with whatever process the Authority requires to have the matter resolved.

Determination

[11] Under s 157 of the Employment Relations Act 2000 (the Act), the Authority is an investigative body which has the role of resolving employment relationship problems according to the substantial merits of the case without regard to technicalities.

[12] Under s 221 of the Act:

In order to enable the court or the Authority, as the case may be, to more effectually dispose of any matter before it according to the substantial merits and equities of the case, it may, at any stage of the proceedings, of its own motion or on the application of any of the parties, and upon such terms as it thinks fit, by order, –

(a) Direct parties to be joined or struck out...

[13] I took the position of both Evolution and 1st Call to be that Evolution should be struck out as a party to this proceeding and 1st Call joined.

[14] Mr Steele, however, maintained that he regarded Evolution as his employer. It appears to be at least arguable that Evolution was the employer, although I have received relatively little evidence to date on this issue and also consider it possible that 1st Call was the employer. Given the prospect of Evolution being the employer, I am not prepared to strike out Evolution as a party to this proceeding at this stage.

[15] I am satisfied that it is arguable that 1st Call was Mr Steele's employer and therefore I order that JCR 2006 Limited trading as 1st Call Recruitment be joined to this matter as a second respondent.

[16] I consider it likely that having both Evolution and 1st Call as respondents in this case will promote efficiency by allowing the Authority to consider which of the two organisations was Mr Steele's employer.

[17] 1st Call is directed to file a statement in reply within 14 days of the date of this determination.

[18] The Authority will then make contact with the parties to arrange a further case management conference to progress the proceeding.

Nicola Craig
Member of the Employment Relations Authority