

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Ashish Suvarna (Applicant)  
**AND** Irongate (NZ) Limited (Respondent)  
**REPRESENTATIVES** Ashish Suvarna In person  
Grant Everiss, Advocate for Respondent  
**MEMBER OF AUTHORITY** Dzintra King  
**INVESTIGATION MEETING** 7 September 2005  
**DATE OF DETERMINATION** 7 September 2005

**DETERMINATION OF THE AUTHORITY**

Mr Ashish Suvarna says he is owed money by the respondent, Irongate (NZ) Ltd. The issue for determination is whether Mr Suvarna is an employee or a contractor. The parties have been before the Disputes Tribunal which referred them to the Authority for a determination.

The parties signed a contract, which is titled "Individual Employment Contract" and refers to its being made "In compliance with the Employment Contracts Act 1991 and associated legislation as amended". The contract specifies set hours of work and provides for annual holidays. It prohibits outside employment without the consent of Irongate and refers to the dispute and grievance procedures available under the Employment Contracts Act. Clause 13, Redundancy, reads:

*As a contractor, redundancy is not applicable. In the event that your position becomes redundant Irongate has no obligation to make any redundancy payment to you.*

Part of the termination clause (which provides for a week's notice) reads:

*Irongate may insist that you leave immediately after notice of termination is given. If you are paid on a contract basis and Irongate requires you to leave immediately, you will not be entitled to any compensation for contract work you may otherwise have earned during the notice period.*

Aspects of the contract tend to indicate it is a contract of service and other aspects point towards a contract for services.

Section 6 of the Employment Relations Act 2000 requires that in determining the real nature of the relationship the Authority must consider all relevant matters and is not to treat statements by the parties as definitive of the employment status. Both Mr Everiss and Mr Suvarna thought Mr Suvarna was a contractor. Mr Suvarna did not apply for either annual leave or sick leave although he did take time off for holidays and illness.

Mr Suvarna was registered for GST and invoiced Irongate and was paid on the invoices. Irongate did not pay PAYE. The manner in which he carried out his tasks was largely up to him and his hours of work did not follow those set out in the contract. He claimed depreciation on his home computer and his cell phone, which was used for work purposes. In addition to his support role he was given projects, for which he would quote. He had the ability to increase his income by doing more work and working more efficiently.

Mr Suvarna was in business on his own account. He was employed pursuant to a contract for services; he was not an employee.

Dzintra King  
Member of Employment Relations Authority