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Trucking Relief (Waikato) Limited v Quin AA368/10 (Auckland) [2010] NZERA 676 (19 August 2010)

Last Updated: 9 November 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 368/10 5306232

BETWEEN

AND

TRUCKING RELIEF (WAIKATO) LIMITED
Applicant

WILLIAM QUIN
Respondent

Member of Authority: Representatives:

Investigation Meeting: Submissions Received:

Vicki Campbell

Rose Alchin for Applicant Respondent in person

On the papers

3 August 2010 from Applicant 10 August 2010 from Respondent

Determination:

19 August 2010

DETERMINATION OF THE AUTHORITY

[1] The Respondent, Mr William Quin, lodged a statement of problem in the Authority on 18 May 2010 claiming he had been unjustifiably dismissed. Mr Quin's claim is that while he commenced employment with Trucking Relief (Waikato) Limited ("Trucking Relief") as a casual employee, by the time his employment ended he was in fact a permanent ongoing employee.

[2] Trucking Relief is a temporary labour agency providing relief drivers to the trucking industry. In 2008 Trucking Relief advertised for candidates to fill a placement in Tauranga. Mr Quin responded and was successful in his application. He was offered a casual employment agreement with Trucking Relief which he accepted, and commenced working for Trucking Relief's client, Elgas.

[3] Mr Quin continued to work for Trucking Relief until January 2010 when he was advised that there was no further work available for him at Elgas. Trucking Relief denies Mr Quin's claims. There is a dispute as to whether Mr Quin was dismissed or not.

[4] During a conference call between the parties on 14 June 2010 the parties were directed to attend mediation. A timetable was also agreed to with respect to the Authority's investigation meeting, in the event that mediation was not successful.

[5] On 30 June 2010 the Authority was advised that mediation had not been successful in resolving the problem between the parties. On 3 August 2010 an application for removal was lodged in the Authority by Trucking Relief. The parties consented to the application being dealt with on the papers.

[6] This determination deals with the application for removal only and makes no findings as to the substantive issues between the parties.

Application for Removal

[7] Trucking Relief applies to have this matter removed to the Employment Court under s 178(2)(a) for the Employment Court to hear and determine without any further investigation by the Authority. Mr Quin opposes the application for removal.

[8] The ground advanced by Trucking Relief is that an important question of law is likely to arise other than incidentally during the proceedings. The questions of law are said to be:

.. whether a person who is employed by a labour hire agency, on a casual employment agreement and who is contracted out to perform work for a third party can be considered a permanent employee when there is no permanent relationship for provision of services either between the employer and the employee or between the employer and the third party client of the employer.

[9] Further, Trucking Relief says the question of law is about whether the status of the employment relationship is the relationship between the employer and employee, or the relationship between the employee and the third party. In her submissions Ms Alchin points to the lack of precedent in relation to triangular relationships to support her application for removal.

[10] My research shows that there are a number of decisions by the Authority where it has determined the real nature of the employment relationship and the correct identity of the employer in situations of triangular relationships. I am also aware of a decision which has been heard by the Full Court but is pending a written decision where the nature and status of triangular relationships is being considered.[\[1\]](#)

[11] The present case is principally a question as to whether Mr Quin was dismissed from his employment by Trucking Relief in January 2010 or not and if he was, whether that dismissal was justified. There does not appear to be a dispute over the identity of the employer, Mr Quin has been clear in all his dealings with the Authority that his employer was Trucking Relief and not Elgas.

[12] Fundamentally the proceedings are a factual enquiry to determine the ending of the employment relationship between Trucking Relief and Mr Quin.

[13] With reference to paragraph (d) of s 178(2), the Authority is of the opinion that it should continue to hear and determine the matter. On balance I am not satisfied the matter should be removed.

[14] The application for removal is declined.

[15] Costs are reserved.

Vicki Campbell
Member of Employment Relations Authority

[\[1\]](#) This is a challenge to *McDonald v Ontrack Infrastructure Limited & Allied Work Force Limited*, unreported, 22 September 2009, Christchurch Employment Relations Authority, Member Doyle, CA 159/09.