



New Zealand Employment Relations Authority Decisions

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Woodfield v Howard (Wellington) [2016] NZERA 623; [2016] NZERA Wellington 147 (2 December 2016)

Last Updated: 12 January 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2016] NZERA Wellington 147
5579018

BETWEEN MARTINETTA WOODFIELD Applicant

AND KAREN HOWARD Respondent

Member of Authority: M B Loftus

Representatives: Applicant in person

Respondent in person Investigation Meeting: 20 October 2016 at Wellington Submissions Received: At the investigation meeting Determination: 2 December 2016

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Martinetta Woodfield, claims she is owed various sums being

... payment for costs associated with using my personal vehicle as a work vehicle while I was employed by Karen Howard.

[2] Ms Howard denies liability on the grounds she never employed Ms Woodfield who, she says, was engaged by Dee Gee Holdings Limited (Dee Gee).

Background

[3] The facts which Ms Woodfield says give rise to her claim are recorded in the statement of problem as:

Ms Howard had verbally promised at several points during my employment to reimburse me for costs associated with using my car

for work purposes. Despite multiple acknowledgments on her part that the costs were not insignificant, there was no further moves made by Ms Howard to reimburse me. In employment discussions in earlier 2015 reimbursement was specifically mentioned. I made a spreadsheet detailing distances and costs, and emailed it on June 5th. After June 14th all contact ceased despite my emailing twice more to request payment or closure. As per the attached spreadsheet, the total costs are \$6,653.42 for work related driving from 2009 to 2015. I have detailed the costs as accurately as possible, measuring distances and number of times each route was driven. I have deliberately estimated the number of times driven to the low side in order to be as fair as possible.

[4] Ms Woodfield adds she never received a written employment agreement despite frequently requesting one.

[5] During the investigation meeting Ms Woodfield said she performed work for both Dee Gee and Ms Howard personally and while the line between personal and company obligations was blurred, she is firmly of the view she was employed by Ms Howard. She says this is because she primarily cooked and cleaned in Ms Howard's home and Ms Howard was the person to whom she answered, who gave daily instructions and who approved any leave.

[6] Ms Howard says Ms Woodfield was employed by Dee Gee which trades as Cheapskates and was expanding when Ms Woodfield commenced in November 2006. At that time Ms Howard was, along with her now ex domestic partner David Green, a director of Dee Gee.

[7] Ms Howard accepts nearly all of Ms Woodfield's recent work was performed in her home but says that was not always the case. She says for most of the employment Ms Woodfield worked at least one day in the shop and while she performed domestic tasks, a significant portion of the work done from Ms Howard's home was for the business. This included accountancy related tasks, wage payments and data entry. Ms Howard says Ms Woodfield also moved stock between Cheapskate stores and performed some work for various trusts in which she and/or Mr Green, had an interest. Ms Howard says while she instructed Ms Woodfield in respect of the accounts, Mr Green gave instructions regarding stock and both participated when it came to organising the care of their children.

[8] In September 2014 Ms Howard and Mr Green's relationship came to an end.

Ms Howard accepts that from then a greater portion of Ms Woodfield's duties were of

a domestic nature and performed from her home. She does, however, say this was in Ms Woodfield's interest as having become a mother the arrangement benefited her as it allowed her to care for both her child and Ms Howard's children while working.

[9] Ms Howard also says in late 2014 there was a discussion with Cheapskates management about Ms Woodfield possibly becoming her employee but nothing came of it and she and Ms Woodfield never discussed the issue. Here reference is made to an email dated 17 December 2014 from one of Cheapskates' managers to Ms Howard discussing various issues concerning Ms Woodfield and the possible change. It records various concerns Ms Woodfield raised such as holiday pay and whether or not she had to resign from Dee Gee's employ. Ms Woodfield denies this occurred saying the conversation went no further than discussing her duties.

Determination

[10] Ms Woodfield is adamant Ms Howard was her employer and it is against Ms Howard she wishes to proceed. The parties agreed I consider the issue of who employed Ms Woodfield and only if I conclude it was Ms Howard need I address the issue of whether or not monies owe.

[11] The onus of establishing, on the balance of probability, Ms Howard was the employer falls upon Ms Woodfield.¹

[12] The test as outlined in *Colosimo* has been summarised by one of my colleagues as requiring the Authority to ask *Who would an independent but knowledgeable observer have said was the employer?*²

[13] I conclude the answer is Ms Woodfield was employed by Dee Gee and not Ms Howard. I do so given a number of answers provided by Ms Woodfield when questioned during the investigation.

[14] First there are the circumstances under which the arrangement was entered into. Ms Woodfield says the employment came about as a result of her husband speaking to Mr Green. The two were *mates of old*. Ms Woodfield says she and her husband were dissatisfied with her then employment while Mr Green was concerned

Ms Howard was *drowning in paperwork*. Ms Woodfield accepts the original

¹ *Colosimo v Parker*, Employment Court Auckland, AC68/06, 6 December 2006

² *Morley v Jorgensen t/a Barista the Espresso Bar*, NZERA Wellington, WA120/09, 28 August 2009

arrangement was she perform both housework and business-related tasks but the emphasis was on the later. The domestic tasks were the result of Mr Green's view Ms Howard was somewhat disorganised and this proposal would allow her to concentrate on that she was qualified to do – the accounts. Ms Woodfield accepts Ms Howard played no part in formation of the arrangement which would be odd if she was personally the employer.

[15] Second Ms Woodfield accepts she was paid by Cheapskates and performed work for both it, two of Mr Green's trusts, one of Ms Howard's and three joint trusts. She accepts the work was primarily for Cheapskates (Dee Gee), she worked in its shops and this included counter work as well as her normal accountancy related tasks. She also accepts that while the proportion of domestic tasks increased significantly toward the end of the relationship in June 2015 she never ceased performing work for Cheapskates.

[16] Third Ms Woodfield accepts that when she asked about an employment agreement she was told to prepare it herself. She says she felt uncomfortable with this and that was one of the reasons one was never supplied. More importantly, she accepts had she prepared the agreement she would have used Cheapskates form document and Cheapskates (Dee Gee) would have been identified as the employer. There was no indication she felt that inappropriate and it would be odd she prepare the agreement contract that way if Dee Gee were not the employer.

[17] Each of these factors point to an original intent, and agreement, Dee Gee was the employer. Collectively the impression is overwhelming. I conclude Ms Woodfield's employment, as originally agreed, was with Dee Gee.

[18] That raises the question of whether or not the employer subsequently changed.

[19] *The question of who was the employer must be determined as at the outset of the employment. If that changed during the course of the employment, there must be evidence of mutual agreement to that change.*³

[20] Both Ms Woodfield and Ms Howard agree that while there was some discussion ([9] above) it was never between the two personally. Both also agree there

was never any formal agreement or statement the arrangement (or as Ms Woodfield

³ *Mehta v Elliott (Labour Inspector)* at [22]

puts it the change in duties) had led to a situation under which Ms Howard had become her employer.

[21] My conclusion Ms Woodfield was initially employed by Dee Gee and there was no subsequent agreement that change means Ms Howard was not the employer. It follows her claim against Ms Howard fails and shall be dismissed.

Costs

[22] Neither party was represented. Recoverable costs are therefore minimal if not non-existent. Costs shall therefore lie where they fall.

Conclusions

[23] Ms Woodfield was employed by Dee Gee Holdings Limited. [24] Her claims against Ms Howard therefore fail and are dismissed. [25] Costs lie where they fall.

M B Loftus

Member of the Employment Relations Authority

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