

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 171  
5399236

BETWEEN                      MICHAEL ORR  
   Applicant  
  
A N D                              RAYMOND ORR  
   Respondent

Member of Authority:        James Crichton  
  
Representatives:              Applicant in person  
   Respondent in person  
  
Investigation Meeting:        21 February 2013 at Auckland  
  
Date of Determination:        7 May 2013

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment relationship problem**

[1]     The applicant (Mr Michael Orr) alleges that for the period from August 2006 down to June 2010 (both dates inclusive) he was working for his father (Mr Raymond Orr) and that, in consequence, he is owed wages for the period.

[2]     Mr Raymond Orr indicates that he undertook to assist Mr Michael Orr (who is his son) to manage the financial affairs of his son's business but that at no time was he (Raymond Orr) the owner of the business. It follows that Mr Raymond Orr maintains that he does not owe Mr Michael Orr wages.

[3]     The Authority is satisfied that in late 2005 Mr Michael Orr agreed to a suggestion from his mother that Mr Raymond Orr assist in the running of the business. The family seemed to have developed a conviction that Mr Michael Orr

would be best to concentrate on building up the business (which sold fish bait) and Mr Raymond Orr could manage the financial affairs.

[4] At the point at which this transfer of responsibilities happened, the Authority is satisfied that Mr Michael Orr provided all of the financial information and administrative records to Mr Raymond Orr. This would have included bank statements and relevant company information.

[5] To add to the challenges in discerning precisely what happened over the relevant period, the trading name for the business changed during the period in question, as did its bank account and its GST number.

[6] Mr Raymond Orr acknowledges that from the point at which he took responsibility for the administrative affairs of the business entity, which the Authority will refer hereafter as “Magic Bait” being one of the names it traded under, he (Mr Raymond Orr) opened fresh bank accounts with his bank and eventually a fresh GST number. According to Mr Raymond Orr, this was to enable the business to make a “fresh start”.

[7] Mr Raymond Orr says that Mr Michael Orr took back control of the records and opened a fresh bank account on 1 April 2009. Although Mr Michael Orr claims that he is owed wages by Mr Raymond Orr up until June 2010, that date is inconsistent with all of the evidence the Authority has before it and, if any wages are owed at all it can only be up to 1 April 2009 which is the date that the financial control changed back from Mr Raymond Orr to Mr Michael Orr.

[8] Following on from that change, there seems to have been discussion between the two men about tax that was owed by the business which led Mr Michael Orr to engage accountants and to commence discussion with the Inland Revenue Department.

[9] Mr Michael Orr says that it was the Inland Revenue Department which suggested to him that during the period in dispute, Mr Raymond Orr was the owner of the business and that in consequence, Raymond Orr owed Michael Orr wages.

[10] Mr Raymond Orr says that during the period that he had the control of the financial affairs of the business, tax returns were properly prepared on the business’s income by his longstanding accountant and any tax to pay was paid from the

business's income. On the basis of Mr Raymond Orr's evidence, if there was tax payable at all it would have been very modest indeed because he describes the business in very modest terms.

[11] The Authority has been able to establish from the Inland Revenue Department that there is no tax owing in respect to any of the IRD numbers the Authority has been provided with relating to the business, for any of the periods in question.

[12] Given that the issue of payment of tax seems to have been the primary bone of contention between the parties, it is difficult to see why the matter was not capable of earlier resolution. Plainly, Mr Michael Orr became anxious about the possibility that there was tax owing and certainly, while the Authority has been unable to find evidence that there was ever tax overdue, the short point is that if that were the case, it is certainly not the position now.

### **Issues**

[13] Fundamentally though, the Authority is not concerned with issues of whether tax was paid or not in respect of a small sole trader business. The only point at issue in that regard is whether that information assists in any way in identifying the answer to the employment relationship problem which is at the core of this dispute between father and son.

[14] That core issue is whether Mr Raymond Orr ever employed Mr Michael Orr and if he did, whether there are any wages owing by Raymond Orr to Michael Orr in consequence.

### **Was Raymond Orr ever Michael Orr's employer?**

[15] The Authority is satisfied on the balance of probabilities that Raymond Orr was never Michael Orr's employer. All the evidence the Authority has available to it suggests that Mr Raymond Orr agreed to assist his son with the financial management of his son's business and while it is certainly true that Mr Raymond Orr changed bank accounts and GST numbers neither of those facts of themselves are indicative of ownership. The change in the GST number was designed to reflex the change in the financial management and the change in the bank account was designed to reflect the fact if Mr Raymond Orr was going to be responsible for financial matters, he preferred to deal with his own bank, a relationship that had endured for over 50 years.

[16] To add to that picture, the Authority notes that Mr Raymond Orr arranged with his bankers to advance a \$10,000 overdraft to the business to enable it to purchase “necessary equipment to assist in its expansion”. That money was advanced and expended and the advance was made by the bank against a personal guarantee from Mr Raymond Orr. When Mr Michael Orr reclaimed the financial records of Magic Bait, he declined to reimburse his father for the \$10,000 overdraft which Mr Raymond Orr had arranged with his bank and which the bank had then sought recovery of, when the business account was closed and repatriated back to Mr Michael Orr.

[17] The essence of the issue here is that the mere fact that Mr Raymond Orr was performing administrative services for Magic Bait does not of itself carry with it any implication that Mr Raymond Orr is somehow the owner of the business. Magic Bait was a creation of Mr Michael Orr and was at the relevant time an unincorporated sole trader arrangement. The Authority is satisfied that the business was at all times Mr Michael Orr’s and was never Mr Raymond Orr’s.

[18] There is no evidence that the business ever changed hands but it is plain that the business was created by Mr Michael Orr. In the absence of any transfer to Mr Raymond Orr, it is difficult to see how Mr Raymond Orr can be held to be the owner at any time. Certainly, there is no documentation to support that transfer and plainly no evidence that Mr Michael Orr agreed to such a transfer. For the record, nor did Mr Raymond Orr. He is adamant that he never owned the business and was simply performing administrative services as a volunteer.

[19] The reason Mr Michael Orr never received any wages during the period in question was because the business was not successful enough to pay them not because his father was somehow holding back money which Mr Michael Orr was entitled to.

[20] There is nothing in the evidence that has been provided to the Authority and the various inquiries that the Authority has made with the helpful staff at the Inland Revenue Department, which would suggest that there was ever any transfer of ownership of the business Magic Bait from son to father and back again. All the evidence discloses is that for a period, Mr Michael Orr was persuaded to allow his father to assist him in the administrative requirements of the business and for whatever reason, those arrangements did not meet Mr Michael Orr’s requirements and so he took back the financial responsibility.

## **Determination**

[21] The Authority has not been persuaded that there is any employment relationship between Mr Raymond Orr and Mr Michael Orr and as a consequence the claim by Mr Michael Orr that Mr Raymond Orr owes him wages must fail.

## **Costs**

[22] Costs (if any) are to lie where they fall.

James Crichton  
Member of the Employment Relations Authority