

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2017] NZERA Wellington 29  
3000173

BETWEEN BRADY CHADWICK  
Applicant

AND THE CHIEF EXECUTIVE OF  
THE MINISTRY OF SOCIAL  
DEVELOPMENT  
Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in person  
Nikki Farrell for Respondent

Investigation Meeting: On the Papers

Submissions Received: 27 March 2017 from Applicant  
29 March 2017 from Respondent

Determination: 28 April 2017

---

**PRELIMINARY DETERMINATION OF THE  
EMPLOYMENT RELATIONS AUTHORITY**

---

- A. Mr Chadwick is not an employee of the Chief Executive of the Ministry of Social Development and the Authority has no jurisdiction to investigate his claims.**
- B. Costs are reserved.**

**Employment relationship problem**

[1] Although not articulated as clearly in his statement of problem, Mr Brady Chadwick alleges one or more conditions of his employment have been affected to his disadvantage by the unjustifiable actions of the Chief Executive of the Ministry of Social Development (MSD) (disadvantage grievance). Mr Chadwick alleges his disadvantage arose when MSD breached the Health and Safety at Work Act 2015 (H&S Act) and subjected him to discrimination on the ground of employment status.

[2] MSD denies the claims and says Mr Chadwick has never been an employee of MSD. This issue was discussed during a case management call with the parties on 20 March 2017. It was agreed that I would deal with the threshold issue of whether Mr Chadwick was an employee as a preliminary issue and that the determination would be done based on the papers currently before the Authority.

[3] As permitted by section 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded all the evidence and submissions received from Mr Chadwick and MSD but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

### **Determination**

[4] Mr Chadwick receives government assistance in the form of a job seeker support benefit. As a condition of receiving his benefit Mr Chadwick is expected to search for work and undertake work preparedness activities.

[5] On 31 May 2016 Mr Chadwick applied to MSD for a “Transition to Work” grant. The grant was to cover the costs associated with having clothing altered and to purchase a pair of safety boots. Mr Chadwick made the grant application in the belief that it would be approved as he was seeking the payment to assist him to undertake voluntary work.

[6] The grants are part of an Employment and Work Readiness Assistance Program. Documents published by MSD indicate that a grant is available to eligible persons to enable them an opportunity to gain work experience or undertake voluntary work. Mr Chadwick’s application was declined and he appears to have exhausted his appeal options, without success.

[7] Mr Chadwick says he is a volunteer worker as defined under the H&S Act and relies on the decision from the Employment Court in *The Salad Bowl Limited v Howe-Thornley*<sup>1</sup> to support his assertion that he was, for all intents and purposes, an employee of MSD.

---

<sup>1</sup> [2013] NZEmpC 152.

[8] The onus of establishing whether Mr Chadwick is an employee rests on him on the balance of probabilities. The starting point for the Authority is section 6(1) of the Act which requires the Authority to determine the real nature of the relationship, considering all matters that indicate the intention of the parties and not to treat as decisive any statements made by the parties.<sup>2</sup>

[9] Based on the documents Mr Chadwick has lodged with the Authority, I am satisfied he did not undertake any volunteer work for or on behalf of MSD. The documents demonstrate that Mr Chadwick has undertaken voluntary work for the Department of Conservation and it is clear that he has taken a great deal of pride in the work he has undertaken.

[10] I am satisfied MSD had no control over Mr Chadwick's voluntary work. The voluntary work Mr Chadwick undertook was not integral to MSD's business. In fact the work undertaken by Mr Chadwick was completely removed from MSD and was undertaken for another government enterprise entirely.

[11] The overall impression from all the facts in this case satisfies me that on the balance of probabilities Mr Chadwick was not an employee of MSD. The Authority has no jurisdiction to investigate his claims.

### **Costs**

[12] Costs are reserved. Given Mr Chadwick's personal circumstances and that this matter has been dealt with on the papers, I am of a mind to let costs lie where they fall. If MSD does not agree with that proposal it shall have 14 days from the date of this determination in which to file and serve a memorandum on the matter. Mr Chadwick shall have a further 14 days in which to file and serve a memorandum in reply. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

Vicki Campbell  
Member of the Employment Relations Authority

---

<sup>2</sup> Employment Relations Act 2000 section 6(3); *Bryson v Three Foot Six Ltd* [2005] ERNZ 372; *Poulter v Antipodean Growers Ltd* [2010] NZEmpC 77.