

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2024] NZERA 690
3237299

BETWEEN	CORALEIGH PARKER Applicant
AND	NORTH SOUTH HOLDINGS LIMITED First Respondent
AND	HANSENS RESOURCE RECOVERY LIMITED Second Respondent

Member of Authority:	Claire English
Representatives:	Coraleigh Parker in person Tom Jarman, counsel for the Respondents
Investigation Meeting:	24 July 2024 in Tauranga
Submissions received:	Up to 8 September 2024 from Applicant Up to 19 September 2024 from Respondents
Determination:	20 November 2024

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Ms Coraleigh Parker, claims to have been employed by first North South Holdings Limited (NSHL), and then by Hansens Resource Recovery Limited (HRR). She says she performed work for both companies in turn, was an employee of them both at different times, and is owed wages by them.

[2] Ms Parker raises further claims that she was unjustifiably disadvantaged by the respondents in relation to unpaid wages, unsafe working conditions, and exploitation. She seeks recovery of wages and compensation.

[3] NSHL and HRR, through their director Mr Oliver Hansen, deny that Ms Parker was an employee of either company. They say that although Ms Parker did perform work, she was at all times an independent contractor, and was paid on the submission of relevant invoices.

[4] In addition, both NSHL and HRR raise concerns that, should Ms Parker be found to be an employee of either company, her personal grievance claims are out of time. Generally they deny all claims, or that any remedies are properly owed.

The Authority's investigation

[5] For the Authority's investigation written witness statements were lodged from Ms Parker, and from Mr Hansen, together with a large volume of documents by Ms Parker. All witnesses answered questions under affirmation from me and the parties' representatives. I also received subsequent submissions from both parties.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues

[7] The issues requiring investigation and determination were:

- (a) Was Ms Parker an employee of either NSHL or HRR at relevant times?
- (b) If so, did she raise personal grievance claims within time?
- (c) If so, was Ms Parker subject to unjustified disadvantages?
- (d) If NSHL's or HRR's actions were not justified, what remedies should be awarded, considering:
 - Lost wages (subject to evidence of reasonable endeavours to mitigate loss); and
 - Compensation under s123(1)(c)(i) of the Act;

- (e) If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Ms Parker that contributed to the situation giving rise to her grievance/s?
- (f) Should either party contribute to the costs of representation of the other party?

Background

[8] Ms Parker and Mr Hansen had known each other socially. Mr Hansen owned and operated NSHL, providing construction services. Ms Parker was completing a paper in Project Management, and was looking for work to fund a planned trip to Europe.

[9] It was agreed that Ms Parker would perform various administrative and business support tasks for the company, such as bookkeeping. She would invoice NSHL for her time, up to an agreed total value of \$20,000 over 18 months. Mr Hansen accepted that he, on behalf of NSHL, had agreed to this.

[10] The details of this arrangement were not recorded in writing, as both Ms Parker and Mr Hansen were confident that “contracting” or “outsourcing” was common practice in the construction industry.

[11] Ms Parker gave evidence that when agreeing to this arrangement, it met several personal goals for her, including furthering her interest and experience in business systems, resulting in a set sum of money received by a set time to fund a trip to Europe that she had planned, and enabling her to balance work with personal freedom. Her evidence was that she had had experience both with employment and with running a business, and at that point in time, wanted freedom in her life and had arranged this for herself. She also worked at a coffee cart that she owned during this time, and performed work on occasion as a florist or caterer.

[12] Ms Parker says that although the arrangement started off as a limited contracting arrangement with NSHL in early 2022, over time it changed and evolved to become an employment relationship. She says that the biggest change was when Mr Hansen set up a second company, HRR. HRR was incorporated on 3 May 2022. The purpose of HRR was to recover and recycle, reuse, or otherwise dispose of, construction waste.

[13] Ms Parker says that the creation and then running of HRR brought about a significant increase in the amount of work she was performing. She describes designing logos, the brand strategy, company values, and mission statement, as well as designing the company structure, mapping out a business plan, and assisting with gaining finance.

[14] She described her increasing involvement in the business, including liaising with local government, acting as a personal assistant to Mr Hansen, liaising with suppliers and clients, and even general labouring as required. Ms Parker says that she assumed she would be paid for this work as it was over and above the original agreement, but this was never agreed in writing.¹

[15] Ms Parker invoiced for the hours worked in each company, beginning in May 2022. She advises that she used an hourly rate of \$30 for the work done for NSHL, as this was derived from the agreed lump sum of \$18,000 over 18 months. For the work done for HRR, she invoiced at the rate of either \$45 or \$50/hour, and at the investigation meeting, explained that she had calculated this hourly rate as being an estimate of the cost of her time to that company, being her estimate of a reasonably skilled hourly rate plus an additional allowance to cover things such as sick leave and annual leave. She confirmed there was no claim in her statement of problem for such items under separate heads, as she had included them in the hourly rate she charged HRR.

[16] In November 2022, Ms Parker raised with Mr Hansen that her invoices had not been paid. She states that he was “extremely agitated that I had assumed I would be paid above what had been agreed”.²

[17] Ms Parker says that “it was made clear” to her that she would need to re-submit her invoices at the rate of 10 hours per week for each company, although Mr Hansen did agree that she could charge at the rate of \$45/hour for work done for HRR. So she did.

[18] Ms Parker says she “tried” to reduce the number of hours she worked to reflect the number of hours she could invoice for, but she found this incredibly stressful and ended up working just as much. She says that her hours of work were Mondays to Fridays, noon until evening. She says that she changed her coffee cart opening hours to shut at 11.00 am, so she could perform more work for Mr Hansen and his companies.

¹ Page 2 of the statement of problem.

² Page 3 of the statement of problem.

She says that she would sometimes work 14 hour days, and on weekends, and that Mr Hansen would call her repeatedly throughout each day and reprimand her if she was not available for calls. Ms Parker described this as Mr Hansen having control over how she worked.

[19] In terms of other aspects that might indicate employment, Ms Hansen said that she wore a uniform, had company business cards, and used a company laptop, printer, and sim card/phone number.

[20] She also points to the company website featuring her picture together with Mr Hansen.

[21] Mr Hansen says firstly that the uniform, business cards, laptop and printer cannot properly be seen as indicators that Ms Parker was an employee of either company because she arranged these items herself, for herself.

[22] More generally, he states that he, on behalf of NSHL, had agreed with Ms Parker that she would perform bookkeeping and similar work for that company, for a total payment of \$20,000 over 18 months. He had expected Ms Parker (or perhaps her company) to invoice NSHL for this over that time at the rate of approximately \$1,000 per month. Mr Hansen said that he thought invoices were being paid by Ms Parker and says that he told her she could pay them. He points out that some of the invoices were from a company owned by Ms Parker, Pickled Whimsy Limited, and some were from a trading name "Coraleigh Parking Consulting".

[23] Mr Hansen says there was never any discussion or agreement as to further payment for any additional work for HRR. He says that matters came to a head part way through 2022 after HRR had been set up, when he found out there were a large number of outstanding invoices from a financial advisor to the business, as well as outstanding invoices owing to Ms Parker which the companies could not afford to pay as a lump sum. His in-person evidence was that this "soured the relationship really".

[24] Mr Hansen accepted that Ms Parker had performed work for HRR over and above that which had originally been agreed to in respect of NSHL. He also accepted that some further additional payment was due to her, and said that in his view, this amounted to a further \$16,000, or a total payment (including the agreed \$20,000 from NSHL) of \$36,000, much of which had been paid already.

[25] At the time of the investigation meeting, Mr Hansen was not sure how much had been paid to Ms Parker, and how much (if any) might still be outstanding in his view. Ms Parker was also not entirely clear as to how much she was claiming.

[26] Time was allowed for both parties to consider and provide further information and submission. Ms Parker is claiming unpaid wages of \$68,085.08, which she has calculated by going back through her correspondence, phone records, and Google location tracking, to reconstruct what she says were her hours of work. She accepts that she did not keep contemporaneous records. At the investigation meeting, Ms Parker also raised a claim for compensation under s 123(1)(c)(i) of the Act, which the respondents say is out of time.

Analysis

[27] Ms Parker has named both NSHL and HRR as respondents, and suggests she was employed by both companies.

Status of work performed for NSHL

[28] At the investigation meeting, Ms Parker accepted that she had worked as a contractor for NSHL, rather than as an employee, with the agreement that she would be paid the total sum of \$20,000 over a period of 18 months. Mr Hansen agreed, so there is no dispute of facts in this instance.

[29] Ms Parker's claim that she was an employee of NSHL cannot stand in the face of her own evidence that she had reached a contrary agreement with Mr Hansen to perform a certain type and amount of work as an independent contractor for that company for a set fee. For this reason, I find that no claim by Ms Parker against NSHL is made out.

Status of work performed for HRR

[30] Ms Parker also claims against HRR, saying that this company was her employer, and that it owes her a significant amount in unpaid wages. I will consider the real nature of the relationship between Ms Parker and HRR as against the tests of intention, control, integration, and the fundamental test being whether the person was in fact working on her own account.

Test of Intention

[31] The test of intention asks whether the parties intended to enter into an employment agreement. In this case, the evidence of both parties shows a clear meeting of minds between Ms Parker and Mr Hansen as to the nature and extent of the work she was to perform for NSHL, the time this work was to be performed over, and the agreed fee. In addition, this work was performed. Any issues that may remain as to outstanding payment would be in the nature of unpaid invoices, not wages resulting from employment.

[32] Ms Parker's evidence was that she started performing additional work for HRR in and around the set up of the company prior to May 2022, without discussing with Mr Hansen how she would be remunerated for that, or what her role in the company would be. Ms Parker goes into considerable detail stating that she had "expected" at some point to "transition" into employment with HRR and to be paid a salary from then on. She also talks about her desire to receive shares in HRR at some point. She is unable to say when she would become an employee, or what the trigger for that would be. She was also unable to point to any firm agreement as to when, why, or how she would become a shareholder in HRR.

[33] Employment agreements existed for other staff, and Ms Parker assisted in this process. When questioned why she had not prepared an employment agreement for herself and asked Mr Hansen to sign it, her evidence was that she did not consider it would have been fair or binding for her to have done this, given her high level of executive involvement.

[34] Mr Hansen's evidence is that he was aware that Ms Parker was performing work for HRR, but that the basis on which this work was done was never discussed, and even the issue of payment for this work was never discussed until a few months in to the arrangement. Mr Hansen denies any intention to enter into any arrangement which was not that of principal and independent contractor. His evidence was that this was how it was always done in the construction industry and he believed both he and Ms Parker had a shared expectation of an independent contractor arrangement. He considered this was borne out by Ms Parker's submission of invoices payable to her own company, and her working in her own coffee cart business, and from time to time in other ventures throughout this period.

[35] At this point, I note that Ms Parker and Mr Hansen had known each other prior to entering into a working relationship, and were in a personal relationship at the time their working relationship had started. Their personal and working relationships came to an end at the same time.

[36] The evidence demonstrates that there was a shared intention that Ms Parker's work for NSHL would be performed on an independent contractor basis. However, there was no shared intention as to how the work for HRR should be performed. Neither party communicated their views to the other until Ms Parker had been performing this work for some time. In particular, it is Ms Parker's evidence there was never any firm agreement between her and Mr Hansen that she was an employee of HRR. Her evidence is instead that she had expected to become an employee at some point, she cannot say when, and had expected to become a shareholder at some point, again she cannot say when or why. These assumptions cannot support a claim of employment status.

Test of Control

[37] Ms Parker claims that her work was controlled by Mr Hansen to a degree consistent with employment status.

[38] She says that this control was exercised by Mr Hansen ringing her consistently throughout the day, requiring her to prioritise work for HRR over her work at her coffee cart. She says that her "day to day activities revolved around the work she was doing for" Mr Hansen, which was essentially a reversal of the amount of control she had over her work for NSHL earlier. She refers to increased expectations of immediate results and higher levels of outputs. Ms Parker also says that in September and October 2022, she raised the topic of employment status and pay with Mr Hansen, but was convinced by him to stay and continue working.

[39] Mr Hansen's view generally is that Ms Parker was in control of her own work and had agreed to perform services for the business.

[40] On Ms Parker's own evidence, she was performing work for HRR without having agreed to the status attached to that work (that is, employment or independent contracting), without having agreed to a clear scope of work, duties, and hours, and without having agreed to a rate of pay, or in fact receiving any pay. She was under no obligation to perform such work, yet her evidence is that after discussions with Mr

Hansen, she agreed to continue working. In these circumstances, her claim that NSHL and/or Mr Hansen exercised control over her work cannot succeed.

[41] I further note that Ms Parker referenced a considerable volume of phone calls from Mr Hansen as suggesting control consistent with an employment relationship. Phone logs show that there were a surprising number of calls being made by both Mr Hansen to Ms Parker and by Ms Parker to Mr Hansen at very early hours of the morning and again late at night. There were fewer calls during the working day. Both Mr Hansen and Ms Parker agreed that during these out of hours calls they would discuss many topics not all of which were work-related. My view is that these calls were more consistent with their friendship and personal relationship, than they were demonstrative of an employment relationship.

Test of Integration

[42] Ms Parker says as she took on more responsibility, she became more integrated into the business. She points to a number of factors to show she was integrated into the business including: receiving user access to the accounting software to enable her to perform bookkeeping tasks for both NSHL and HRR, engaging with local council, having a company phone number, business cards, laptop, printer, and uniform, liaising with clients, and having access to the business banking account.

[43] Mr Hansen's evidence is that he had agreed that Ms Parker would perform bookkeeping duties. From both parties' evidence, there was agreement in around October 2022 that Ms Parker would perform 10 hours per week of work for HRR, and would invoice HRR for this at the hourly rate of \$45.00. In relation to aspects such as uniform, business card, and particularly the provision of a laptop and printer, Mr Hansen's evidence is that Ms Parker arranged these items herself, at the expense of the company, without checking with him first.

[44] Some of these matters are consistent with Ms Parker's acknowledged role at both NSHL and HRR. Some of these matters suggest employment status, particularly items such as uniforms, and the provision of a phone number, laptop, and printer. Having said this, I must weigh this against Ms Parkers' evidence that she did have a high level of control and autonomy, and Mr Hansen's evidence that she had made these arrangements herself without getting authorisation from him specifically. Overall, the evidence of both Ms Parker and Mr Hansen is that these things happened organically

over time. They were never explicitly discussed one by one as they occurred, nor is there any evidence that either party turned their mind to the impact of these decisions either separately or as a whole when the time came for each decision to be made.

[45] In addition, Ms Parker continued to perform other work during this time, in both her own coffee cart business, and occasionally casual work for others.

[46] I find that the level of integration is a neutral factor in the assessment of employment status.

The Fundamental Test

[47] This test is often expressed as whether the applicant was performing work on their own behalf or on behalf of someone else, or alternatively, for whose benefit was the work performed? The question is potentially complicated by Ms Parker's claims that she remains unpaid for many hours of work performed.

[48] The question can be answered straightforwardly in relation to NSHL. Ms Parker agreed to a lump sum payment, payable by a set time, driven by her desire to both fund an overseas holiday for a certain amount, and by her desire to enjoy the benefits of a lifestyle which gave her freedom and control. She also had a lesser goal of work experience supporting her studies in project management. In performing work for NSHL, she was performing that work on her own behalf.

[49] These factors did not change when Ms Parker worked for HRR.

[50] When working for HRR, Ms Parker's evidence was that she could have drawn up an employment agreement for herself and asked Mr Hansen to sign it but did not as she felt that this would not be fair or binding; and that she expected that she would become a shareholder in the company in exchange for the work she was performing. Ms Parker goes so far as to say in her statement of problem that "I was told [by Mr Hansen] to write my own contract. I did not do this."³

[51] Matters came to a head in October 2022 when Mr Hansen declined to pay a financial advisor to set up an employee share scheme and Ms Parker raised concerns with him that she was not being paid for her work. At that point, Ms Parker agreed to continue working for HRR on the basis that she would perform 10 hours of work per

³ At page 3 of the statement of problem.

week at the rate of \$45/hour, and submit regular invoices accordingly, or the working relationship would come to an end, as Mr Hansen's view was that the company could not afford to pay her more than this. Ms Parker's evidence is that Mr Hansen "made it clear that she risked losing her whole investment if she did not cooperate". Ms Parker agreed to continue working for HRR on that basis.

[52] She further gives evidence that she worked more, possibly considerably more, than this, on the basis that she felt the company needed her to do so. However, she was not obligated to perform this work, and to the contrary explicitly agreed to perform work for HRR for only 10 hours per week, on an invoice-only basis, even though she had been told by Mr Hansen that she could "write her own contract". Performing more work than she had agreed to do and be paid for does not convert the explicit contracting agreement she had with Mr Hansen into an employment agreement.

[53] For all the above reasons, I find that the fundamental test shows that Ms Parker was working as an independent contractor.

Conclusions

[54] In considering the tests, as set out above, I have found there was no shared intention as to employment status; the amount of control exercised by Mr Hansen over how Ms Parker worked gave no indication of employment status; the level of integration into HRR's business was a neutral factor; and Ms Parker agreed to perform work for HRR on the basis of an invoice-only contract, not as an employee. Ms Parker's claim to be an employee of HRR is not made out.

Orders

[55] Ms Parker's claim that she was an employee of North South Holdings Limited is not made out. No orders are made.

[56] Ms Parker's claim that she was an employee of Hansens Resource Recovery Limited is not made out. No orders are made.

[57] As I have found that Ms Parker was not an employee of either respondent at the relevant times, her claims for unpaid wages, unjustified disadvantage, and compensation cannot proceed in the Authority. No further orders are made.

Costs

[58] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves, particularly given the evidence of both Ms Parker and Mr Hansen that neither of them chose to record their agreements in writing.

[59] If the parties are unable to resolve costs, and an Authority determination on costs is needed, the applicant may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum the respondents will then have 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[60] The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.⁴

Claire English
Member of the Employment Relations Authority

⁴ For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1