

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI A TARA**

[2025] NZERA 169  
3328560

BETWEEN	NICKA PAPER Applicant
AND	ALL TRAFFIC MANAGEMENT SERVICES LIMITED Respondent

Member of Authority:	Davinnia Tan
Representatives:	Applicant in person Laurie Castle, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions received:	24 February 2025 and 12 March 2025 from the Applicant 20 February 2025 from the Respondent
Determination:	21 March 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

*Statement of problem*

[1] Mr Papera lodged a Statement of Problem with the Authority against All Traffic Management Services Limited (ATMS) describing the problem as follows:

As this is an assault, I would like to be compensated for the time I have spent seeking employment. This assault has left me with neurological problems, nerve problems in my hand.

[2] In this, Mr Papera also stated that ATMS “failed to attend mediation”.

### *Statement in reply*

[3] ATMS provided a Statement in Reply which stated that ATMS has never been in an employment relationship with Mr Papera. ATMS stated that its role was that of a client receiving temporary labour services through Trade Assist Limited (TAL), Mr Papera's employer. It also stated that it was their understanding all employment related issues had been resolved through a mediated settlement agreement between TAL and Mr Papera, and that the settlement precluded any further claims against third parties, including ATMS. As such ATMS said there was no legal basis for Mr Papera's claim against it.

### **The Authority's investigation**

[4] For the Authority's investigation, both parties provided their submissions, including any supporting documentation.

[5] All material from the parties was fully considered. However as permitted by s174E the Act, this determination has not recorded all evidence and submissions received.

### **The issues**

[6] The issues requiring investigation and determination were:

- (a) Whether Mr Papera and ATMS had an employment relationship within the meaning of the Act;
- (b) If so, does Mr Papera have a personal grievance against ATMS?
- (c) Should either party contribute to the costs of representation of the other party?

### **Parties' submissions**

#### *Correspondence from Mr Papera*

[7] On 24 February 2025, the Authority received, by hand, correspondence from Mr Papera. The following hand written notes stated:

I can bring case against third party ATMS & Fulton Hogan.

I thought you were going to fight.

I'm sorry I did that to you, we very close,

Text to ATMS Management, I just being assaulted...

Reply Im sorry to hear, I will look into this.

ATMS

They have an off the record email

[8] On 12 March 2025, the Authority received the following email from Mr Papera:

I couldn't transfer my texts to digital format so I'm writing them here...

Tuesday 21 march 2023,13.18pm,me.Hi ... i was assaulted by ... at the beach,he thought i was getting out of truck to fight,then he smashed me in the face,so i left work to go to the hospital,i still feel dizziness and i think i broke my jaw,i keep in touch,regards nick.

Tuesday 21 march 23 @!5.20 ...,Hi Nick I will sort ASAP apologies for this

Tuesday 21 March 23 @ 16.55pm ... i won't be able to work tomorrow,Im seeing the doctor,I will keep in touch.

Wednesday 22 March 23 13.54pm,... doctor said i had to take a week off for the sore jaw and the dizzy spells that occur regularly i have to see him before i return.

Tuesday 28 March 23 @ 18.39 ... sorry to contact you outside of work,I'm keen to get going again,ok to start back at hornsey road tomorrow,will kaiser be there ? regards nick.

Tuesday 28 March @ 22.04,.. sorry nothing tomorrow nick.

...i have similar texts to ...from fulton hogan

#### *ATMS memo and submissions*

[9] On 31 January 2025, counsel for ATMS provided a memo. This memo stated that Mr Papera was previously employed by TAL, a labour hire service. Mr Papera undertook labour services for ATMS on a limited basis in 2023, on a short-term work assignment. At no time was there an employment relationship between Mr Papera and ATMS. He also provided labour services for another entity, Fulton Hogan Limited, while employed by TAL.

[10] ATMS stated that Mr Papera raised a grievance to Trade Assist back in 2023. Mr Papera never raised any form of dispute or grievance with ATMS in 2023. It stated that the comprehensive settlement agreement signed between Mr Papera and Trade Assist on 19 September 2023 bars any further action or litigation.

[11] This memo included an attachment setting out a redacted Record of Settlement (RoS) dated 19 September 2023 between Mr Papera and Trade Assist (New Zealand)

Limited (Trade Assist). The RoS stated that Trade Assist was Mr Papera's employer and not the Respondent; the RoS had also been signed by Mr Papera, Trade Assist and the Mediator. As such, ATMS' position was that the Authority has no justification to entertain this claim (notwithstanding the claim is out of time, as the events occurred in 2023).

[12] In support of its position, ATMS relies on *Riddler v Meridian Energy Ltd (Riddler)*<sup>1</sup> and stated:

[...]

The Employment Court dismissed the claim and confirmed that action against the claimed controlling third party must be joined to a claim against the actual employer. Mr Riddler's claim was not successful as he needed to have a claim against Fujitsu to which Meridian could be joined as a party.

The settlement agreement with Fujitsu was a bar to that happening.

[13] ATMS considers that the circumstances mirror those of *Riddler*<sup>2</sup> and therefore Mr Papera's claim cannot proceed. ATMS also noted a previous unsuccessful claim<sup>3</sup> brought by Mr Papera against Fulton Hogan, while Mr Papera was employed by TAL and submitted that the claim against ATMS is identical in nature and on that basis the claim must also be dismissed.

### **Analysis**

[14] Mr Papera's claim relates to an alleged assault during his short term assignment with ATMS. Although Mr Papera remains aggrieved by the events that took place during his assignment, there are several insurmountable problems with his claim against ATMS.

[15] Having reviewed the evidence, it is clear that ATMS was not and has never been Mr Papera's employer. Mr Papera's employer was TAL. Even though Mr Papera considers he has a claim against ATMS, as a third party, an action against the claimed controlling third party (which Mr Papera alleges is ATMS) must be joined to a claim against the actual employer (TAL).<sup>4</sup> There is no claim against TAL. To the contrary, there is a Record of Settlement between Mr Papera and TAL, signed 19 September

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<sup>1</sup> *Riddler v Meridian Energy Ltd* [2023] NZEmpC 87.

<sup>2</sup> *Riddler v Meridian Energy Ltd* [2023] NZEmpC 87.

<sup>3</sup> *Papera v Fulton Hogan Ltd* [2024] NZERA 479.

<sup>4</sup> *Riddler v Meridian Energy Limited* [2023] NZEmpC 87.

2023, in relation to the matters raised under this claim. This also means the Authority has no jurisdiction to consider whether ATMS was a controlling third party.

[16] Accordingly, there is no basis to pursue a claim against ATMS.

[17] For these reasons, Mr Papera's application must be dismissed. No orders are made.

### **Costs**

[18] ATMS has indicated it will be seeking costs.

[19] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.

[20] If the parties are unable to resolve costs, and an Authority determination on costs is needed, ATMS 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, Mr Papera will then have 14 days to lodge any reply memorandum.

[21] 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.<sup>5</sup>

Davinnia Tan  
Member of the Employment Relations Authority

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<sup>5</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)