

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 208
3328800

	BETWEEN	KRYSTAL THORNER Applicant
	AND	KAITAIA CHRISTIAN FELLOWSHIP TRUST BOARD First Respondent
	AND	TE WHAKAORA TANGATA TRUST Second Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Richard Mark, counsel for the Applicant Catherine Fisher and Ashley Oh, counsel for the First Respondent Cliffy Reddy, representing the Second Respondent	
Investigation Meeting:	On the papers	
Submissions and/or further evidence	None from the Applicant 7 March 2025 from the First Respondent 7 March 2025 from the Second Respondent	
Determination:	14 April 2025	

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicant, Krystal Thorner, claims that she was constructively dismissed and unjustifiably disadvantaged by the First Respondent, Kaitaia Christian Fellowship Trust Board (KCF).

[2] KCF has applied to join Te Whakaora Tangata Trust (TWT) as a controlling third party to the matter.

[3] Ms Thorner and TWT oppose the application to join TWT as a controlling third party.

The Authority's investigation

[4] The parties agreed that this preliminary issue of joinder should be dealt with on the papers. Submissions were received from KCF and TWT. No submissions were received from Ms Thorner.

[5] Affidavits were lodged by KCF in support of its application by Erica Rolleston, Pamela Mitcalfe and Wana Paikea. An application bundle comprising common documents referred to in the affidavits have also been lodged.

[6] An affidavit was lodged for TWT by Mr Reddy.

[7] Counsel for Ms Thorner confirmed that the Applicant would rely on documents lodged with the Statement of Problem and Statements in Reply.

[8] Whilst I have not referred to all the submissions made by the parties; I have fully considered them.

[9] 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 preliminary matter, and specified orders made.

Background

[10] The following background is derived from the Statement of Problem, the Statements in Reply, affidavit evidence and submissions received.

[11] KCF is the registered trust board for the Kaitaia Christian Fellowship Church (the Church). It has a constitution (the Constitution) and rules (the Rules) for governance of the church. It is further subject to the constitution and rules of the National Office of the Assemblies of God Incorporated (AGNZ) because the Church is n AGNZ church.

[12] The Church comprised a Senior Pastor, who was to lead KCF, the Eldership and the Church in accordance with the Constitution and the Rules. Upon appointment the Senior Pastor assumes the position of KCF ex officio. The Senior Pastor is also an Elder ex officio and leads KCF and the Eldership to make decisions for the Church. The Senior Pastor has the sole authority under the Constitution and the Rules to make the final decision in case of a split decision in KCF and/or the Eldership.

[13] At the time of Pastor Paikea's appointment as Senior Pastor, KCF had eight members.

[14] TWT is a registered charitable trust board, which operated as a charity. TWT was incorporated on 29 July 2010 and is a registered charitable trust board. TWT was also registered with Charitable Services, which allowed it to operate as a charity for tax purposes.

[15] TWT is a not-for-profit social service organisation working with high-risk families. Pastor Paikea stated in his affidavit evidence that at a fundraising event held by TWT in August 2023 he learnt that TWT was providing rehabilitative programmes for underprivileged families in South Auckland and in the Far North. It was not in receipt of government funding and was entirely dependent on grants and donations from the community and other charities. At that time, it was in need of funds and donations to sustain its operations.

[16] On 31 December 2024 TWT applied to deregister from Charitable Services. Whilst TWT may no longer have charitable status, I find it still has standing as a legal entity for the purposes of this matter before the Authority.

[17] Ms Thorner was employed as Operations Administrator by KWF on 22 January 2022. She was provided with an individual employment agreement (IEA) and a job description which stated that she reported to Minister Wana Paikea (Pastor Paikea).

[18] The terms of her employment as set out in the IEA were that she would be paid \$22.70 per hour for a 40-hour working week, with the hours to be worked Sunday to Thursday from 9 a.m. to 5.00 p.m.

[19] In the Statement of Problem Ms Thorner stated that:

- Although she reported to Pastor Paikea, he provided her with little work and there was a lack of clarity over who would allocate tasks to her. As a result, all of her work came from the TWT Operations Manager, Ms Bibb-Kirtan, and other members of the KCF Board.
- She had no place to work at the KCF offices, so she worked two or three days a week at TWT's offices;
- Pastor Paikea and the KCF Treasurer Mrs Mitcalfe started to question why she was working two to three days a week at TWT's offices. Due to his concern at the arrangement, Paster Paikea ceased communication with Ms Thorner;
- On 28 February 2024 she saw a document open on Pastor Paikea's desk. He asked her not to disclose what she had seen to anyone. However, she informed

KCF and Pastor Paikea stopped communicating with her for several weeks which left her feeling stressed;

- She was instructed by KFC to send an email to newly appointed elders. Pastor Paikea telephoned her and told her not to take instructions from anyone other than himself which she regarded as a threat;
- Pastor Paikea also told her that she would receive a telephone call from Pastor Joe Earl (Pastor Joe) of AGNZ the following day;
- Pastor Joe called her the following day and told her to take leave and removed her computer access.
- On 2 July 2024 Ms Thorner submitted her emailed notice of resignation to Pastor Paikea.

While Ms Thorner was working for KCF, what control or direction was provided to her by TWT?

[20] There has been comprehensive affidavit evidence filed, particularly by KFC which is supported by documents in the Application Bundle. Although the affidavit evidence is untested, it is nonetheless of assistance as regards this matter when assessed against the documents which have been provided.

[21] Between 2022 and 2023 KCF did not have a Senior Pastor or an Eldership to lead the Church. Church attendance had been variable between 80 people in the early part of the period, diminishing until by 2024 there were 40 people in the congregation.

[22] Prior to October 2022 church administration had been provided on a voluntary basis by Ms Rolleston, but from October 2022 she had been employed on a part-time basis for approximately one day a week.

[23] On or about this time KFC appointed Tina Bibb-Kirtan to assist Ms Rolleston to set up an administration system. Ms Bibb-Kirtan was employed by TWT as a Senior Whānau Coach, reporting to the Programme Delivery Manager and co-founder of TWT, Cliffy Reddy.

[24] Although KCF offered to pay Ms Bibb-Kirtan for her assistance, she declined the offer and was paid by TWT, providing her assistance on a voluntary basis to KCF, spending one day a week at the Church.

[25] In May 2023 Ms Bibb-Kirtan was appointed as a trustee of KCF. Upon her appointment, Ms Bibb-Kirtan recommended Mr Reddy for appointment as an Elder for the Church, in addition to his being an interim chairperson until a Senior Pastor was appointed.

[26] Mr Reddy became an Elder and an interim Chairperson at KCF in August 2023 and was also the sole Elder for the Church. This position conferred the authority to him to override KCF's decisions.

[27] In September 2023 Wana Paikea was appointed as Senior Pastor at KCF. This meant that he became an Elder and the Chairperson of KCK ex officio under the Constitution and the Rules. However, upon his appointment, Pastor Paikea asked Mr Reddy to continue to act as the interim Chairperson for a short period while he settled into his new role.

[28] In October 2023 Mr Reddy and Ms Bibb-Kirtan arranged for TWT to propose a partnership development plan to KCF (the Plan).

[29] During that month Indranee Reddy, Mr Reddy's wife and with Mr Reddy, co-founder of TWT, gave a presentation about the Plan. The Plan proposed that the Church would host TWT programmes, this would attract more people to the Church congregation. In addition, KCF would require all the Church congregation to enrol and complete a TWT programme which would have the benefit of increasing TWT's programme uptake. There would therefore be a partnership between KCF and TWT with dual benefit and mutual growth.

[30] Mrs Reddy proposed that there would be two new roles required for the Plan, an Operations Manager to oversee the TWT programme and an Operations Administrator role.

[31] In their affidavits Pastor Paikea, Ms Mitcalfe and Ms Rolleston assert that there was no requirement by KCF for more administration services for the Church than were already provided by Ms Rolleston. It appears that the Operations Administrator role was required in relation to the Plan which was to benefit both KCF and TWT. KCF agreed to employ the Operations Administrator and pay their salary.

[32] Mr Reddy and Ms Bibb-Kirtan had dual responsibilities in relation to TWT and KCF, and it appears from the affidavit evidence that this created a conflict of interest between the two entities.

[33] Ms Bibb-Kirtan commenced and managed the recruitment process for the Operations Administrator role which resulted in the appointment of Ms Thorner. Although Pastor Paikea

attended the interview, he states in his affidavit that he was not allowed to ask many questions, and that Ms Bibb-Kirtan and Mrs Reddy led the interview and discussed TWT's training and tasks with Ms Thorner.

[34] The affidavit evidence of the KCF witnesses is that TWT had exclusive control over Ms Thornley from her first day and that she treated Ms Bibb-Kirtan as her direct report and TWT as her true employer in multiple respects including:

- Ms Bibb-Kirtan and Mr Reddy managed Ms Thornley's day to day tasks and directed where she worked and when, KCF did not know when she started her employment or where she worked normally;
- Her primary place of work was TWT's offices, and she only attended at the Church when instructed to so by Ms Bibb-Kirtan and/or Mrs Reddy;
- Ms Bibb-Kirtan instructed Ms Mitcalfe to pay Ms Thornley's salary from KCF before there was a signed employment agreement with KCF in place;
- Ms Bibb-Kirtan determined Ms Thornley's training which was entirely TWT training and funded by TWT;
- At a meeting on 4 February 2024, it was agreed that KCF would contact Ms Bibb-Kirtan if work was to be discussed with Ms Thornley;
- Ms Bibb-Kirtan approved Ms Thornley's leave; and
- Ms Thornley shared with Ms Bibb-Kirtan what she had read on Pastor Paikea's personal laptop despite him requesting her not to discuss it with anyone else.

[35] After Ms Thornley was appointed, it appears from the affidavit evidence that the relationship between KCF and TWT began to deteriorate, with TWT seeking to have Pastor Paikea removed from KCF on the basis that he was a workplace hazard.

[36] Ms Thornley emailed Ms Bibb-Kirtan an electronic copy of the KCF logo on 10 April 2024 which Ms Bibb-Kirtan used on the letter dated that same date which declared Pastor Paikea to be a workplace hazard.

[37] Ms Thornley stated that she was suspended on or about 15 April 2024. This is denied by KCF which states that Ms Thornley asked to work from home in order that she did not have to work with Pastor Paikea and this request was granted.

[38] In their affidavits Ms Rolleston, Ms Mitcalfe and Pastor Paikea deny that Ms Thornley raised wellbeing and safety concerns with KCF from February 2024, but instead she raised them with TWT.

[39] By 15 April 2024 Ms Bibb-Kirtan and Mr Reddy had been stood down from KCF.

[40] Ms Thornley raised a number of complaints about Pastor Paikea in a letter dated 23 April 2024 which was written with the assistance of Ms Bibb-Kitran and Mrs Reddy. This letter is stated in the KCF affidavits to be the first time Ms Thornley's concerns were raised with KCF.

Should TWT be joined to the proceedings as a controlling third party?

Section 103B of the Act

[41] The relevant circumstances in which an application may be made to join a controlling third party to a personal grievance are set out in s 103B of the Act. Section 103B requires that an employee has validly raised the relevant personal grievance with their employer in compliance with s 114 of the Act and has made an application to the Authority seeking that the personal grievance be resolved. The personal grievance must relate to an action alleged to have occurred whilst the employee was working under the control and direction of a controlling third party.

[42] Once these threshold requirements which must be met and an application to join a controlling third party has been made, the Authority must grant the application if satisfied of the following matters pursuant to s 103B(3):

- (a) That the requirement to notify a controlling third party in accordance with s 115A has been complied with; and
- (b) That an arguable case has been made out-
 - (i) That the party to be joined to the proceedings is a controlling third party; and
 - (ii) That the party's actions caused or contributed to the personal grievance.

[43] Pursuant to s 103B(3)(a), I am satisfied that the requirement that TWT has been notified of KCF's intention to join it as a controlling third party has complied with in accordance with s 115A of the Act.

[44] The Authority must grant the application to join a controlling third party if the requirement that an arguable case has been made out. This is a relatively low threshold.¹

¹ *Welten v McKay Limited and OJI Fibre Solutions (NZ) Limited* [2023] NZERA 60 at [20].

Section 5 of the Act sets out that there are two elements of the definition of a controlling third party:

Controlling third party means a person-

- (a) Who has a contract or other arrangement with an employer under which an employee of the employer performs work for the benefit of the person; and
- (b) Who exercises, or is entitled to exercise, control or direction over the employee that is similar or substantially similar to the control or direction that an employer exercises, or is entitled to exercise, in relation to the employee.

(a) Contract or arrangement

[45] The first element is whether or not the person (e.g. a company) has a contract or arrangement under which an employee of the employer performs work for the benefit of that person.

[46] It is not disputed that Ms Thorner was employed by KCF pursuant to an employment agreement, and KCF paid her wages.

[47] The affidavit evidence before the Authority establishes that there was a partnership arrangement between KCF and TWT arising from the Plan with its mutual benefit to both entities.

[48] Ms Thorner was employed by KCF to work as an administrative resource for the Plan. In that capacity Ms Thorner worked predominantly at TWT's premises and under the direction of Ms Bibb-Kirtan.

[49] TWT gained a benefit from this arrangement because it gained the services of an administrator for the Plan at no financial cost.

[50] Based on the evidence before the Authority at this preliminary stage I find that there is an arguable case that there was an arrangement under which Ms Thornley performed work for the benefit of TWT.

(b) Control or direction

[51] The second element is that in order to be a controlling third party, the party must exercise, or be entitled to exercise, control and direction over the employee which is similar or substantially similar to that which an employer exercises or is entitled to exercise with the employee.

[52] This element addresses the situation in which, despite the absence of a direct employment relationship with the proposed controlling third party, in practice the individual is working under the control and direction of a person not being their employer.

[53] Although I do not consider the control and direction for s 5 of the Act are synonymous with the control and integration test used when assessing if an individual is engaged in an employment relationship or pursuant to a contract for service, aspects of that assessment are nonetheless helpful in determining this issue.

[54] The affidavit evidence lodged by KCF shows that KCF appears not to have exercised control or direction over Ms Thorner. In practice it was TWT who predominantly controlled and directed Ms Thorner in her work.

[55] TWT instigated and fully participated in the recruitment process which resulted in the engagement of Ms Thorner, and after her appointment she worked exclusively under the control and direction of Ms Bibb-Kirtan and predominantly at TWT's premises.

[56] In essential terms, based upon the KCF affidavit evidence, TWT exercised significant control and direction over Ms Thorner that equates to that exercised by an employer over an employee.

[57] I find that an arguable case has been made out that TWT exercised control and direction over Ms Thorner that is substantially similar to the control and direction that an employer exercises or is entitled to exercise.

Is there an arguable case that TWT's actions caused or contributed to the personal grievance?

[58] Section 103B(3) of the Act states:

The Authority or the court must grant the application to join a controlling third party if the Authority or the court is satisfied-

- (a) That the requirement to notify the controlling third party in accordance with section 115A has been complied with; and
- (b) that an arguable case has been made out-
 - (i) that the party to be joined to the proceedings is a controlling third party; and

- (ii) That the party's actions caused or contributed to the personal grievance.

[59] As observed the arguable case threshold is a low one.

[60] I find that there is an arguable case that TWT contributed to the circumstances of Ms Thornley's personal grievance.

[61] I find that all the requirements of s 103B of the Act have been met in this case.

[62] Therefore, I grant KCF's application and TWT is joined to Ms Thornley's employment relationship problem in relation to a claim of unjustifiable dismissal.

Costs

[63] Costs are reserved pending determination of the substantive matter.

Eleanor Robinson
Member of the Employment Relations Authority