

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 53
3237959

BETWEEN REBECCA RYAN
Applicant
AND ICCMT LIMITED
First Respondent
AND JASON CAMPBELL
Second Respondent

Member of Authority: Robin Arthur
Representatives: Applicant in person
Jason Campbell for the First Respondent and in person
as Second Respondent
Investigation Meeting: 8 November 2024 in Auckland
Further information: 10 November 2024 from the Applicant and 11
November 2024 from the Respondent
Determination: 3 February 2024

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Rebecca Ryan sought findings she had a personal grievance for unjustified disadvantage and constructive dismissal after resigning from an administrative role with ICCMT Limited (ICCMT) on 15 June 2023. She said she had been employed since 20 April 2022, on a salary of \$9,000 a month net, but resigned because she was not paid some or all of the salary due to her for the months from October 2022 to June 2023. Ms Ryan sought orders for arrears of wages totalling \$63,000 and remedies of lost wages and distress compensation for her personal grievance.

[2] Ms Ryan's statement of problem also sought penalties against ICCMT Limited and Jason Campbell, its director and sole shareholder for breaching her employment agreement.

[3] At the time these issues arose Ms Ryan and Mr Campbell had recently ended a ten-year personal relationship. They have two children together.

[4] The statement in reply for ICCMT and Mr Campbell denied Ms Ryan was either an employee or an independent contractor. It said she had "asked to help ... from time to time doing the occasional invoice here or there and reconcile Xero" and she "did not have an employment agreement as her work was on a casual basis".

[5] Although ICCMT referred to Ms Ryan's role as involving "occasional" work, it provided information collated from bank statements showing she was paid \$9,000 or more for each month from March to December 2022. ICCMT's summary of payments to Ms Ryan showed she was paid just over half that usual monthly amount for January and February 2023. Payments for those two months are shown as being made with funds provided by Mr Campbell and by another company, Innovate Civil and Construction Limited (ICCL).

[6] Mr Campbell was the sole shareholder and director of ICCL. This company was placed in liquidation on 17 May 2023.

[7] ICCMT's summary of payments show ICCL funds were also used to pay \$28,539.29 to Ms Ryan as personal loans in October 2022 and \$39,000 was used to buy an Audi Q7 car in Ms Ryan's name on 15 December 2022.

[8] ICCMT denied Ms Ryan was owed any shortfall in payment for work, whether as an employee or on some other basis, because she was paid just under \$78,000 on 7 March 2023. Those payments, from ICCMT's current business account, comprised seven separate transfers of \$9,999.99 each and one further transfer of \$8,000. Eight separate payments were made because of a \$10,000 limit on the value of electronic transfers Mr Campbell was permitted to make from the account.

[9] ICCMT said those payments were for an advance of a year's salary that Ms Ryan had requested. It said Mr Campbell and Ms Ryan had agreed she would be paid \$1,500 a week for 52 weeks in advance.

[10] ICCMT said Ms Ryan should repay \$60,000 of this advance because, due to her resignation in June 2023, she had not worked for all the time she had been paid.

The Authority's investigation

[11] The parties did not provide the written witness statements and some documents asked for in the case management conference held to make arrangements for investigation of Ms Ryan's application. Instead, Ms Ryan and Mr Campbell each set out some additional information in emails they sent to the Authority, along with bank statements showing payments made. At the investigation meeting, under affirmation, they gave oral evidence, answering questions asked of them.

[12] 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.

[13] Findings are made on the balance of probabilities, that is what is more likely than not to have been the case, weighing what can be gleaned from the parties' written and oral evidence about the circumstances and what may be corroborated from documents provided.

Assessment

[14] For reasons that follow, Ms Ryan established she had an employment relationship with ICCMT but did not establish she had been short paid salary due to her to the extent she claimed. Rather, because of the payments made to her in March 2023 and her resignation in June 2023, Ms Ryan had received more money than she was entitled to and, consequently, had a debt to the company for that additional amount. As a result, Ms Ryan's personal grievance claim also fails because the reason she gave for resigning was not correct and did not amount to a constructive dismissal.

Nature of the arrangement

[15] Where a question arises if someone was employed under an employment agreement, whether in writing or by oral agreement, the Act directs the Authority to look at "the real nature of the relationship" between the parties. The Authority must consider all relevant matters, including anything which indicates what the parties

involved had intended, but must not rely solely on how the parties described their relationship.¹

[16] In this case there was no written evidence confirming arrangements for Ms Ryan to work for ICCMT in the capacity of an employee or an independent contractor. There was no written employment agreement. Equally, there was no arrangement for her to tender invoices for payments, as would be expected with an independent contractor. There were no evidence comprising emails or text messages exchanged at the time of Ms Ryan starting the administrative role for ICCMT which might have given some indication of the details or terms of work she was to do.

[17] Mr Campbell said Ms Ryan was responsible for preparing any documentation of the arrangements because he was “not an admin guy”. He did, however, do the monthly transfer of funds paid to Ms Ryan. Those funds came mostly from ICCMT’s current account but some were from an ICCL account or Mr Campbell personally.

[18] The description recorded in the bank accounts for most of those transactions included the word “contract” and identified the month for which the payment is made. This did not, in itself, resolve the issue of whether the parties intended an employment relationship or a contracting relationship, given the common use of the phrase of “employment contract”.

[19] This issue is resolved by considering what the evidence of Ms Ryan and Ms Campbell disclosed about the reality of their family situation at the time that regular monthly payments began being made to her from March 2022.

[20] Mr Campbell said both he and Ms Ryan were paid \$9,000 a month from company funds. He said he was working 80 or more hours a week in the company’s civil construction business, carrying out earthworks and drainage projects. They agreed Ms Ryan would get the same monthly payment. Her work for the company was to comprise mostly reconciling the Xero accounts. From their evidence, it was clear they had mutually intended the payment from company funds would, in return for a small amount of administrative work, enable her to remain available as a full-time mother to their children at home.

¹ Employment Relations Act 2000, s 6.

[21] Ms Ryan described her role as also including other administrative tasks, working remotely on a laptop at home. She said she was also involved in liaising with some clients, which included helping resolve a dispute over payments to ICCMT for a large earthworks project. That dispute was resolved in February 2023, with subsequent payment of \$280,000 to ICCMT by the customer. This payment played an important part in later arrangements.

[22] Taking their evidence as a whole, the reality of the arrangement for as-needed administrative tasks in ICCMT's business was one of employment. Ms Ryan's work was entirely integrated with the business of the company and under its control. It was not a situation where Ms Ryan was in business on her own account or free to provide administrative services to other customers.²

[23] Although there was no written employment agreement, the conduct of the parties and their evidence established that the terms of that employment required Ms Ryan to be available, as required, for various administrative tasks and, in return for that availability, was to be paid an agreed amount as salary. Mr Campbell alleged Ms Ryan had not done the expected work while Ms Ryan said there were some technical issues which had prevented her doing some invoicing or accounts work. It was not necessary for this determination to resolve that point of difference between them.

Nature of the 7 March 2023 payments

[24] Ms Ryan said the payments made to her on 7 March 2023 was an agreed "bonus" to recognise her contribution to resolving the dispute with a customer over payment for an earthworks project. She and Mr Campbell had then separated on 1 April, with Mr Campbell moving out of their family home. By the date that she wrote her formal letter of resignation on 15 June Ms Ryan said she had been prevented from doing any work for ICCMT since 30 March 2023. She said her internet access to its accounts had been blocked from then and she was not paid for the months of February, March, April and May.

[25] Mr Campbell said he and Ms Ryan agreed in early March that she would receive an advance payment of her salary for the following year. He said she had asked for that payment because of "anxiety and depression around future work". He denied there was

² *Bryson v Three Foot Six Limited* [2005] NZSC 34 at [32].

any agreement to pay her a bonus from the \$280,000 paid to ICCMT when a customer dispute was settled in late February. The \$78,000 payment was an advance on her salary to provide security of income. Mr Campbell said he had also used some of those funds to transfer \$68,000 to himself as his director's salary.

[26] A finding on the difference in evidence over the reason for the 7 March payments had to be made in light of what was known of the context of the business and its financial situation at the time. Ms Ryan was aware of those difficulties and said she "did think the company was going down".

[27] One instance of those difficulties was the late 2022 repossession of a vehicle Ms Ryan used as a family car. The company had not been able to keep up with payments. Mr Campbell said they had then used \$40,000 from an ICCL account to buy a replacement vehicle for Ms Ryan on 15 December 2022 and registered it in her name "so it could not be repossessed".

[28] ICCL was also in financial difficulty at the time, as apparent from its subsequent liquidation in May 2023.

[29] In that context it was more likely than not that Ms Ryan had sought an advance payment of her salary to provide some security of income. Given she knew that the company had the funds available at that time, but faced uncertainty in coming months, it made sense to her to do so. It was unlikely, given those uncertainties, that Mr Campbell would have agreed to pay a bonus as well as ongoing monthly salary payments.

[30] On that basis, the funds transferred to Ms Ryan on 7 March are determined to have been advance payments of her weekly salary of \$1,500 for a 52-week period from March 2023 to February 2024.

Reconciling the claims

[31] ICCMT's summary of payments showed Ms Ryan was not paid her full salary for the months of January and February. There was a shortfall due to her for those months.

[32] Its summary also showed Ms Ryan was paid, by the advance payments made on 7 March, for the weeks of March, April, May and June, through to her resignation on 15 June 2023.

[33] ICCMT said Ms Ryan should repay 40 weeks of the advance payments, amounting to \$60,000. This, however, appears to overstate the potential debt. Ms Ryan had been available for work through the 15 weeks from 7 March to 15 June 2023 and ICCMT's calculation did not account for what appeared to be a shortfall of around \$6,000 in her monthly pay for January and February 2023.

[34] On those broad calculations, Ms Ryan had received advance payment for 37 weeks which she had ended up not working (\$55,500) from mid-June 2023 onward but had earlier been short paid \$6,000 for January and February 2022. Offsetting that amount reduced the apparent overpayment of salary for work not done to \$49,500.

[35] These calculations do not include or account for sums Ms Ryan received from what are identified in ICCMT's summary as funds from ICCL, now in liquidation. Any concern regarding those amounts (being \$28,539.29 as personal loans in October 2022 and \$39,000 for purchase of a car in December 2022) is a matter for the liquidator of ICCL, not the Authority. This determination is in respect of Ms Ryan's employment relationship with ICCMT only.

Outcome

[36] A shortfall in salary owed to Ms Ryan for January and February 2023 is remedied by advance salary payments made to her in March 2023 for a period extending beyond her resignation in June 2023. At the time of Ms Ryan's resignation there was no deficit in salary payments. Her personal grievance application is declined.

[37] While the evidence available identified a debt due to ICCMT for salary paid in advance, no orders in relation to that amount were formally sought and none are made.

[38] The parties represented themselves in the Authority investigation, so no issue of costs arises.

Robin Arthur
Member of the Employment Relations Authority