

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 779  
3331920

BETWEEN            MARIA FLEWELLEN  
                                 Applicant

AND                    DIGITAL ADVERTISING (2017)  
                                 LIMITED  
                                 First Respondent

AND                    DAVID JAQUES  
                                 Second Respondent

Member of Authority:            Peter van Keulen

Representatives:                 Applicant in person  
   David Jaques for the Respondents

Investigation Meeting:            12 September 2025 in Nelson

Further Information Received:    12 September 2025 from both parties

Date of Determination:            2 December 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     Maria Flewellen was employed by Digital Advertising Limited, company number 6418393 (Digital Advertising Company One) in May 2022.

[2]     Digital Advertising Company One, operated a digital billboard advertising business and Ms Flewellen worked in this business.

[3]     In May 2023 Digital Advertising Company One's name was changed to Digital Advertising (2017) Limited.

[4] In May 2023 Digital Advertising Company One's digital billboard advertising business was transferred to a newly incorporated company, named Digital Advertising Limited, company number 8740129 (Digital Advertising Company Two).

[5] Digital Advertising Company One and Digital Advertising Company Two say that as part of the business transfer Ms Flewells' employment was transferred to Digital Advertising Company Two. Ms Flewells says she was not notified of the purported transfer of her employment and she unaware of the transfer of the digital advertising business. This was in part because Digital Advertising Company Two was incorporated with Digital Advertising Company One's original name (Digital Advertising Limited) and operated the digital billboard advertising business in the same manner which included using the business bank account from Digital Advertising Company One.

[6] In any event, from May 2023 Ms Flewells continued to work in the digital billboard advertising business until she was given four weeks' notice of termination of her employment due to redundancy on 8 August 2024. That notice was given to her orally by Dave Jaques, the Director of both Digital Advertising Company One and Digital Advertising Company Two and the ultimate shareholder of both companies through holding companies and his family trust (except for a minority shareholding in Digital Advertising Company One).

[7] Shortly after the notice of termination was given to Ms Flewells, Digital Advertising Company Two was placed into receivership and the receivers told Ms Flewells her employment was terminated with immediate effect.

[8] Ms Flewells says she is owed wage arrears made up of one week's wages, two unpaid bonuses, accrued but untaken holiday pay and four weeks' notice pay with KiwiSaver contributions payable on the wages, notice payments and bonus entitlements: the total owed being \$8,381.37 (gross) for wage arrears and \$157.73 for KiwiSaver contributions.

[9] Ms Flewells claims this amount from Digital Advertising Company One or in the alternative Mr Jaques and she lodged a statement of problem in the Authority against them both for these wage arrears.

[10] Mr Jaques representing himself and Digital Advertising Company One says that Ms Flewellen was employed by Digital Advertising Company Two, in receivership; this is on the basis that Ms Flewellen's employment was transferred to Digital Advertising Company Two in May 2023. Mr Jaques says Ms Flewellen's claim against Digital Advertising Company One and himself cannot proceed as neither is her employer; he says Ms Flewellen's claim is correctly made to the receivers of Digital Advertising Company Two.

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

[11] In a case management conference with the parties I agreed with them that I would firstly determine who was Ms Flewellen's employer from May 2023 until the termination of her employment – this being the period during which the wage arrears are said to accrue. From this it follows that if I decide that Digital Advertising Company One or Mr Jaques was Ms Flewellen's employer then I can proceed to determine what wage arrears are owed to Ms Flewellen, if anything. Alternatively, if I decide that Digital Advertising Company Two was Ms Flewellen's employer, then I cannot proceed any further and Ms Flewellen's claim for wage arrears will need to be taken up with the receivers of Digital Advertising Company Two.

[12] I investigated this employment relationship problem by receiving written evidence and documents from the parties and holding an investigation meeting on 12 September 2025. In my investigation meeting, under affirmation, Ms Flewellen and Mr Jaques confirmed their written statements and then gave oral evidence in answer to questions from myself.

[13] As permitted by s 174E of the Act I have not recorded all the evidence and submissions received, in this determination. I have set out my findings of fact and law, then based on this I have expressed conclusions on issues as necessary to dispose of the matter, and then I have specified the orders made as a result.

### **Wage arrears**

*Who is the employer?*

[14] I note at the outset that Mr Jaques was (and still is) the director of both Digital Advertising companies and he operated as the general manager or CEO of the digital billboard advertising business – he was not at any point Ms Flewellen's employer.

[15] Mr Jaques explanation for the transfer of the digital billboard advertising business from Digital Advertising Company One to Digital Advertising Company Two was credible, as was his evidence regarding the operation of the digital billboard advertising business by Digital Advertising Company Two. I accept the transfer of the business occurred and that Digital Advertising Company Two operated the business including paying wages and bonuses to Ms Flewellen for the work she did in the business.

[16] However, Ms Flewellen's evidence about her knowledge of the transfer of the digital billboard advertising business and her employment to Digital Advertising Company Two was also credible. I accept that Ms Flewellen did not know of the transfer of the business and was not given notice of any transfer of her employment. Ms Flewellen was not consulted over any transfer, she was not given notice of termination from Digital Advertising Company One and ultimately she did not accept a transfer by taking up any offer of employment with Digital Advertising Company Two.

[17] So, despite Digital Advertising Company Two operating the digital billboard advertising business and paying Ms Flewellen, Ms Flewellen's employment was not transferred. Simply put an employer cannot unilaterally transfer an employee's employment and absent any consultation and agreement this is what Digital Advertising Company Two has purported to do.

[18] I find that Ms Flewellen continued to be employed by Digital Advertising Company One – that is Digital Advertising (2017) Limited, company number 6418393 – from May 2023 until 8 August 2024.

*What is owed?*

[19] During the investigation meeting Mr Jaques accepted the amounts claimed by Ms Flewellen as being correct.

[20] Based on the evidence received, including the oral evidence in the investigation meeting I find that Ms Flewellen is owed the following amounts:

- (a) One week's wages for the week commencing 5 August 2024 - \$960 (gross).

- (b) A bonus for July 2024 of \$1,038.90 (gross).
- (c) A bonus for the sale of advertising on Rigby Street of \$313.50 (gross).
- (d) Accrued but unused holiday pay for 2023 of \$1,038.90 (gross).
- (e) Accrued but unused holiday pay for 2024 of \$2,084.71 (gross).
- (f) Four weeks' notice pay of \$3,840 (gross).
- (g) Employer KiwiSaver contributions on wages, bonuses and the notice pay of \$157.73.

### **Summary**

[21] Ms Flewellen was employed by Digital Advertising (2017) Limited from May 2023 until 8 August 2024.

[22] Digital Advertising (2017) Limited owes, and must pay, Ms Flewellen:

- (a) Wage arrears totalling \$9,276.01 (gross).
- (b) Employer KiwiSaver contributions of \$157.73.

### **Costs**

[23] Ms Flewellen is entitled to be paid the lodgement fee for her statement of problem – Digital Advertising (2017) Limited is to pay Ms Flewellen \$71.55.

Peter van Keulen  
Member of the Employment Relations Authority