

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2025] NZERA 83  
3303540

BETWEEN	GLENICE COOPER Applicant
AND	SUCCESS REALTY LIMITED First Respondent
AND	MICHAEL FRASER-JONES Second Respondent

Member of Authority:	Claire English
Representatives:	Dayna Dustan, advocate for the Applicant Jeremy Sparrow, counsel for the First Respondent Andrea Twaddle, counsel for the Second Respondent
Investigation Meeting:	On the papers
Submissions received:	27 September and 6 December 2024 from Applicant 18 October 2024 from First Respondent 18 October and 8 November 2024 from Second Respondent
Determination:	17 February 2025

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant, Ms Glenice Cooper, worked as a Marketing Manager for Mr Fraser-Jones, the second respondent, as part of the real estate team working for the first respondent (SRL). On 19 December 2023, Mr Fraser-Jones told Ms Cooper that the team she worked in was being restructured, and she was not to work, but that she would be paid to the end of January 2024.

[2] Ms Cooper accordingly raises claims of unjustified dismissal, and multiple claims of unjustified disadvantage regarding allegations made against her and what she says was an unjustified suspension.

[3] Before these substantive claims can be addressed, it is necessary to resolve the question of whether Ms Cooper was employed by Mr Fraser-Jones, or by SRL. This was discussed at a case management conference with counsel for all three parties, and directions were made for the filing of submissions by all parties, so that a determination as to the identity of the employer could be made “on the papers” by consent.

### **The Authority’s investigation**

[4] For the Authority’s investigation, written legal submissions on the preliminary question were lodged by all three parties. 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**

[5] The issue requiring investigation and determination was who was Ms Cooper’s employer?

### **Background**

[6] Following the lodging of Ms Cooper’s statement of problem naming both Mr Fraser-Jones and SRL as respondents, Mr Fraser-Jones lodged a statement in reply denying that he was the employer of Ms Cooper. SRL lodged a statement in reply taking no position on the matter and stating that it would abide by any determination of the Authority.

[7] Following a case management conference with all three parties, timetabling directions were made for the filing of submissions on the question as to who was properly Ms Cooper’s employer.

[8] In submissions, the applicant stated that her position was that SRL was her employer, and Mr Fraser-Jones was a controlling third party. No application was or has yet been made to join Mr Fraser-Jones as a controlling third party, nor was this the question before the Authority and the parties.

[9] In its submissions, SRL accepted that it was properly Ms Cooper's employer. It did not make comment on whether Mr Fraser-Jones was a controlling third party, as no application had been made, and this was not the matter that had been discussed and scheduled for submissions at the case management conference.

[10] Mr Fraser-Jones took the position that he should be properly removed from the proceedings as a respondent now that the applicant had conceded that SRL was her employer, a position which SRL essentially agreed with. He also made no comment on the controlling third party question, as no application had been made, and this was not the matter that had been discussed and scheduled for submissions at the case management conference.

[11] There is also an issue as to costs, from the perspective of both the respondents.

### **Findings**

[12] Ms Cooper was employed pursuant to an employment agreement dated 22 July 2022 which named SRL as her employer. That agreement was signed by SRL's general manager on its behalf.

[13] Ms Cooper was paid by SRL. She performed her work at SRL's premises, using SRL's tools and equipment. She reported to Mr Fraser-Jones, and her job title was "Marketing Manager to Mike Fraser-Jones, Bayleys Hamilton". She was bound by SRL's rules and policies, had interactions with other SRL staff and systems, and owed post-employment obligations to SRL.

[14] The only point of contention between the parties as to the nature of their employment relationship appears to be the significance of (a) Ms Cooper's reporting line to Mr Fraser-Jones; and (b) that the employment agreement provided that she would be eligible to earn a commission payment in addition to her salary, and that the amount of the commission payment would be determined by the value of sales made by Mr Fraser-Jones in a given time period.

[15] Section 6 of the Act defines an employee as "any person employed by an employer to do any work for hire or reward under a contract of services". It is now common ground that Ms Cooper and SRL entered into such a contract providing for her to work for SRL for hire or reward.

[16] Having said this, the Authority is also to consider whether the real nature of the relationship between the parties was one of employment, with reference to the intention of the parties, as well as the control test, the integration test, and the fundamental test or whether Ms Cooper was in business for herself.

[17] There is no evidence that Ms Cooper and SRL ever intended their relationship to be other than that of employer and employee. They explicitly entered into a written employment agreement, and the information before me suggests that both parties acted consistently with that agreement at all times. This includes such traditional markers of employment as payment of wages by SRL to Ms Cooper with PAYE deducted at source, Ms Cooper needing to apply for leave in advance and receiving paid annual leave in return, and the provision of all office space and tools of the job by SRL at its expense and ownership. I find that there was a shared intention that SRL was the employer.

[18] SRL exercised control over Ms Cooper in a way consistent with employment, including setting the place and time of work, the scope of tasks to be performed, and expectations for performance and acceptable behaviour for example, by its policies. The fact that Mr Fraser-Jones was Ms Cooper's manager does not undermine the employment relationship between Ms Cooper and SRL. It is common practice in organisations of any significant size for managers to be appointed and reporting lines to be established. Such an organisational structure tends rather to support that SRL was not only in control of the terms under which Ms Cooper worked (eg directing who she reported to) but also that she was integrated into SRL's organisational structure, workplace, and workforce.

[19] Ms Cooper has in submissions in reply raised the suggestion that her remuneration was "funded by" Mr Fraser-Jones. Insofar as this is a reference to the agreed term that her commission payment would be calculated by reference to the value of sales made by Mr Fraser-Jones, this is unsurprising given that her job title was "Marketing Manager to Mr Fraser-Jones". It does not appear to suggest anything more than an attempt by SRL to create a monetary incentive link between her marketing duties and the results of those bearing in mind that the sales were not performed by Ms Cooper herself as she was not a licenced estate agent. I further note Ms Cooper does

not suggest that her remuneration was paid by Mr Fraser-Jones, and she accepts that she was paid by SRL.

[20] There is no indication that Ms Cooper was in business on her own account, and indeed, the focus of her application in the Authority is to determine who was her employer.

[21] All of these tests point towards Ms Cooper being an employee of SRL, and I find that at all material times, SRL was Ms Cooper's employer.

[22] I decline to make any finding as to whether Mr Fraser-Jones was a controlling third party, as this was not the question before me, neither respondent has submitted on the matter, and no such application has yet been received.

[23] As the result of the uncontested finding that SRL was at all material times Ms Cooper's employer, there are no extant claims against Mr Fraser-Jones, and no reason why he should remain a party to this matter. Accordingly, I direct that Mr Fraser-Jones be struck out of these proceedings in accordance with s 221 of the Act, and his name is to be removed from the institutions going forwards.

[24] Costs are reserved.

[25] The parties can expect to be contacted by the Authority Officer in due course offering dates for the substantive investigation meeting and proposed timetabling for the filing of witness statements.

Claire English  
Member of the Employment Relations Authority