



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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MEDIA RELEASE

GILL PIZZA LIMITED & ORS v A LABOUR INSPECTOR (MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT)

(SC 67/2021) [2021] NZSC 184

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

Background

In 2018, a Labour Inspector commenced an action under s 228(1) of the Employment Relations Act 2000 (the Act) before the Employment Relations Authority (the Authority) to recover wages said to be owing by two Pizza Hut franchisees, Gill Pizza Ltd and Malotia Ltd, under the Minimum Wage Act 1983 and the Holidays Act 2003. The action was brought on behalf of 28 pizza delivery drivers. Both Gill Pizza and Malotia maintained that the delivery drivers were not employees but contractors and therefore were not covered by either the Minimum Wage Act or the Holidays Act. The dispute between the parties therefore concerned the status of the delivery drivers.

The Authority found that it lacked jurisdiction to deal with the s 228(1) action. It found that before it could consider the application, the status of the delivery drivers needed to be resolved by the Employment Court under s 6(5) of the Act. Subsequently, the Employment Court dismissed a challenge by the Labour Inspector to the Authority’s decision. The Court of Appeal reversed the Employment Court’s decision, finding for the Labour Inspector.

Issue

The Supreme Court granted Gill Pizza and Malotia leave to appeal against the Court of Appeal decision. The approved question was whether the Court of Appeal was correct to conclude that the Employment Court erred in finding that, if a defendant asserts there is no employment relationship, the Labour Inspector must first seek a declaration of employment status from

the Employment Court under s 6(5) of the Act before commencing or continuing with a proceeding under s 228(1) of the Act.

The issue arose because s 228(1) empowers a Labour Inspector to commence an action on behalf of an “*employee*” to recover wages or holiday pay entitlements. Relatedly, s 161(1)(q) confers on the Authority exclusive jurisdiction to deal with actions of the type referred to in s 228(1). Although the Authority can resolve matters regarding whether a person is an employee, s 161(1)(c) specifically excludes matters “arising on an application under section 6(5)”.

That exclusion assumed significance in the appeal. Section 6(5) allows the Employment Court to make a declaration regarding a person’s employment status following an application by that person or on their behalf (with consent from the person). Section 187(1)(f) confers on the Employment Court exclusive jurisdiction to hear and determine, under s 6(5), whether any person is to be declared an employee. Applications under s 6(5) therefore cannot be made to the Authority.

Both the Authority and the Employment Court found that the statutory framework prevented the Labour Inspector from bringing a s 228 claim, and the Authority from dealing with it, where employment status is disputed. Rather, the question of status must be resolved under s 6(5) through an application to the Employment Court by, or with consent from, each driver. Only after a declaration is granted can a Labour Inspector commence or resume a s 228(1) claim.

Decision

The Supreme Court has unanimously dismissed the appeal. It agreed with the interpretation of the relevant statutory provisions adopted by the Court of Appeal.

The Court did not consider that the existence of a dispute regarding whether the person on whose behalf the Labour Inspector is pursuing an action under s 228(1) is an employee can be controlling of the jurisdiction either of the Labour Inspector to commence the action or of the Authority to deal with it.

Rather, the Court held that the question of whether a person on whose behalf a s 228(1) claim is brought is an employee is a jurisdictional fact which the Authority can determine during the course of dealing with the claim. It forms part of the elements that must be proved by a Labour Inspector in a successful s 228(1) application. Where that element cannot be established, the Authority will dismiss the application without further consideration.

The Supreme Court agreed with the Court of Appeal’s interpretation of the exclusion contained in s 161(1)(c) for matters regarding employment status arising on a s 6(5) application. So, the Authority’s jurisdiction to determine whether a person is an employee is only excluded where an application has, in fact, been made to the Employment Court under s 6(5) for a declaration. The legislative history behind the relevant provisions supported that finding.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613