

# Employment & Industrial Case Note

March 2007

## ***Department of Industrial Relations, Wide Bay/Sunshine Coast Region (For Michael Doug Bridge) and Binnavale Pty Ltd - Employee or Independent Contractor?***

Department Of Industrial Relations, Wide Bay/sunshine Coast Region (For Michael Doug Bridge) And Binnavale Pty Ltd Employee Or Independent Contractor? This is a decision of Deputy President Swan of the Queensland Industrial Relations Commission delivered on 2 March 2007.

The decision concerns s.278 of the *Industrial Relations Act 1999 (Queensland)*. The question in dispute was whether Mr Bridge was an employee or an independent contractor for Binnavale Pty Ltd trading as Alpha First Aid Supplies.

**Caution: From the present time such an arrangement would be governed by the Federal Independent Contractors Legislation given the arrangement was entered into with a Corporation.**

Nevertheless the decision highlights what needs to be decided and discussed on the question of whether a person is an employee or an independent contractor. In this particular case the decision may have gone either way given a number of indices were for Mr Bridge being found to be an employee and then a number of indices where he was engaged as an independent contractor.

In conclusion Commissioner Swan found Mr Bridge was in fact an independent contractor and her decision is hard to criticise. In particular a number of points affected decision amongst them being some conduct of the employee himself. One of those important factors was that Mr Bridge entered into the relationship with Alpha having ended an association with another business over the question as to whether he was an employee or an independent contractor and then never cleared this important fact up with Alpha.

The company set out what it believed to be indicia showing an employee/employer relationship compared with indicia of an independent contractor relationship. The following is a relevant extract from the decision:

The indicia showing an employee/employer relationship consisted of:

*A PAYG Declaration was filled out.*

*Income tax was deducted accordingly.*

*Workers' compensation premium paid by the respondent.*

*Superannuation paid by the respondent.*

*Invoice books were provided for the transaction of sales.*

*Some monies were deposited into the account of the respondent rather than into the account of Mr Bridge and then a cheque was forwarded to the respondent.*

*The respondent had provided a fax machine.*

The indicia showing a principal/contractor relationship consisted of:

*Brought a deal to Alpha First Aid that he would distribute product rather than existing distribution arrangements.*

*Distribution Agreement itself. It is an agency agreement relating to a territory and defining a remuneration range.*

*Payment within the agreement was by results and only by results.*

*No sick leave was payable, nor annual leave nor long service leave.*

*No control was exercised regarding hours, times or when Mr Bridge worked at all.*

*Mr Bridge provided, paid for and maintained the tools of trade that were essential to the engagement; motor vehicle and expenses; office and associated expenses; office equipment (desk, chair, storage, computer, stationary); warehouse facility and associated expenses.*

*Business expenses were treated as business expenses for taxation purposes.*

*Work was able to be delegated.*

*Only once was Mr Bridge ever directed to be anywhere and that was at a meeting in December 2003 (common ground).*

It may have been that Alpha left itself exposed to an argument that Mr Bridge was an employee by its own conduct and arrangements. Certainly Deputy President Swan in her conclusion pointed to this potential nearly having impacted upon Alpha. From the Deputy President's final paragraph the following is relevant:

*...from a practical perspective, it appears more clearly the case that Mr Bridge was running his own business with sufficient independence in the conduct of his operation to enable him to fall into the category of an independent contractor. Certainly, there are elements of an employment contract in the engagement between Mr Bridge and Alpha (the most obvious ones being the PAYG taxation arrangements; the WorkCover coverage and superannuation) however, there are believable reasons for Alpha having taken those steps. If anything, it appears that Alpha had sought to facilitate its distributors as best it could, and, to this end, left itself exposed to a claim of this nature. However, when one weighs those factors against those which show the engagement to be one for service (most notably, the overall lack of control over the distributor; the distributor's ability (with some limitation) to hire and fire those who might be engaged by them; the distributor's ability to work for others; the lack of apparent employment entitlements (ie paid annual leave and sick leave); the provision and maintenance of the distributor's tools of trade being in the hands of the distributor; the ultimate conclusion is drawn that Mr Bridge was engaged in a contract for service.*

### **Lesson Learned**

The parties to an arrangement should clearly be of the understanding as to what their respective roles are in that relationship, ie whether it is employer/employee or whether it is independent contractor/contractor.

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