

When contractor labels fail to deliver

The Employment Relations Authority has awarded a delivery driver more than \$26,000 after finding he was an employee, not an independent contractor, and had been constructively dismissed after refusing to withdraw an ACC claim.

Background

In *Huang v Fast Horse Ltd*, the Employment Relations Authority considered whether Mr Huang, a delivery driver for Fast Horse Express (**Fast Horse**), was an employee or an independent contractor.

Mr Huang worked for Fast Horse as a part-time warehouse labourer from December 2023, before becoming a full-time delivery driver from February 2024 to February 2025. Fast Horse said its drivers were independent contractors, which is confirmed by registering with its app. However, Mr Huang said he never signed an independent contractor agreement and, in any event, the way the relationship operated in practice was one of employment, with significant control exerted over the performance of his work.

In November 2024, Mr Huang was bitten by a dog while delivering a parcel. He reported the incident to the police, sought medical treatment and was certified as unfit for work until February 2025. He then applied for ACC.

However, Mr Huang's manager then requested he withdraw his ACC claim, on the basis that he was an independent contractor. Mr Huang refused, believing he was an employee and entitled to compensation. Shortly afterwards, he was

removed from Fast Horse's WhatsApp group and stopped receiving work through the app.

Authority's decision

The Authority found the real nature of the relationship was one of employment. Although Fast Horse relied on an independent contractor arrangement, the Authority focused on how the relationship operated in practice.

In particular, the Authority found Fast Horse exercised a high level of control over Mr Huang's work while he was using the app. The app was the primary way work was allocated, and drivers were subject to pay deductions and penalties if deliveries were not completed on time or in accordance with Fast Horse's requirements. The Authority also noted that Mr Huang had no real ability to subcontract his work because the app did not allow multi-device logins.

The Authority also considered that any freedom Mr Huang had to work for others was largely illusory. He was required to collect parcels from Fast Horse's warehouse the evening before his delivery run, and the full-time nature of the work meant he had no time to work for himself or anyone else.

Having found Mr Huang was an employee, the Authority then considered whether he had been constructively dismissed. The Authority found Fast Horse's conduct of pressuring Mr Huang to withdraw his ACC claim, together with blocking his access to work through the app, was not what a fair and reasonable employer could have done in the circumstances and therefore it was reasonably foreseeable that Mr Huang would have no choice but to look for work elsewhere. His unjustified constructive dismissal claim was made out.

Remedies awarded

Fast Horse was ordered to pay Mr Huang:

When contractor labels fail to deliver (Continued)

- \$13,574.71 in lost remuneration; and
- \$12,500 in compensation for hurt and humiliation.

In assessing compensation, the Authority accepted that Mr Huang experienced loss of sleep, and considerable emotional and psychological distress, including stress, anxiety and a loss of confidence, as a result of the dismissal.

The Authority also considered the fact that Mr Huang had returned to China after being unable to find other work in New Zealand, while his wife remained in New Zealand.

Key takeaway

This case is a useful reminder that labelling someone as an independent contractor will not, by itself, make them one. The Authority will look at the real nature of the relationship, including how the work is allocated, the level of control exercised, whether the worker can genuinely work for others, and whether they are in business on their own account.

For businesses engaging workers as contractors, this decision reinforces the importance of ensuring a written agreement exists and that it matches how the relationship works in practice. If a business exerts a high level of control over when, where and how work is performed, there is a real risk the worker will be found to be an employee, regardless of what the contract says.

Want to know more?

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