



splitting, selling and delivery operation that was based out of the Red Stag Restaurant in Fairlie, South Canterbury. The business was called Ignite Firewood Temuka there was no registered company for this business.

C worked for about three weeks up until which point he was dismissed from his employment after having raised issues about not having been paid his wages in full. There was no written employment agreement to identify officially who or what entity his employer was. It was suggested and later argued by the Respondent's to this matter that Mr Ralston (R), a worker that at times would supervise C in his work, was C's employer.

Mr Gosling (G) was at the time the owner of the Red Stag Restaurant where the firewood was being split for outgoing deliveries. G is a director of a few registered companies, most notably Gosling Solutions Limited, and was the former owner of the Red Stag Restaurant at that time.

In response to a personal grievance letter

“Often our clients are faced with having to decide whether a claim is against an individual or company”

raised for C, Gosling Solutions Limited fronted as the employer that purported to defend the grievance and wage arrears claims through its representative, Employsure.

G was found to be C's employer for the following reasons:

1. The job advertisement was a personal Facebook posting of G.
2. C met G to discuss the job in doing firewood work, and clearly the Red Stag Restaurant was an unrelated business.
3. No written employment agreement was provided to C that would identify a company being the employer.
4. A business card was provided to C with G's name on it and the Ignite Firewood Temuka logo.
5. C supplied G with his IRD number and bank account details.
6. G personally controlled and financed the firewood operation and put out to the local community that it was his operation given the impression that he was a sole trader.
7. G took on the responsibility of paying C personally from his own bank account.
8. C was not made aware of the existence of Gosling Solutions Limited at the time that C was engaged or during his short period of employment.
9. G conceded in his evidence during the Authority's investigation meeting that R's role was only to supervise C.

After having been declared the true employer, when the Authority investigated C's claims, G was found to have unjustifiably

dismissed C, and failed to pay his wages in full. G was ordered to pay in total around \$20,000 personally, meanwhile G's company will soon be struck off the companies register for failing to file an annual return.

Advice for small employers

As illustrated in this case, G could have avoided personal liability if he had taken steps from the outset of employment to make it clear that a company was the employer, and not risk having been found to be personally liable as an employer.

Small employers, contractors, tradies, if you operate a small business and you are seeking labour, this is my simple advice for you if you want to take on any staff:

If you don't already have a company, register a company with the Companies Office. Conduct all business through the company.

If you are taking someone on, be sure to have a written employment agreement prepared that clearly records the parties to the employment relationship. Make sure that the limited liability company name is clearly printed in the intended written employment agreement.

Do not personally pay wages, always put it through the company. ■

For more details, contact Lawrence Anderson on 0800 946 549 or 0276 529 529 or Lawrence@AndersonLaw.nz or visit AndersonLaw.nz

WHO IS THE EMPLOYER?

WORDS BY LAWRENCE ANDERSON

ANDERSON EMPLOYMENT LAW ADVOCACY, NO WIN NO FEE KIWI, EMPLOYER HELP

Who is the employer?

Often the question of, 'what legal entity is the employer in an employment relationship problem' will arise. When it is not clear who or what legal entity the employer is, we first need to establish the answer to this question, so that we know who we are going after for an unjustifiable dismissal, personal grievance, or wages arrears claim.

Often our clients can be faced with having to decide whether a claim is against an individual or a company. This is quite often because of tardiness in the way the client was originally offered the job, particularly when there is no written employment

agreement and when it is not clear who or what entity was paying the client during their employment.

The general test requires an objective observation of the employment relationship at its outset with knowledge of all relevant communications between the parties.

Emails, text messages and generally whatever representations are said to have been made at the time are helpful to be able to answer this question practically.

If there is a good case to make claims against an individual being personally liable as being an employer, the employer will be liable to pay whatever is awarded to the

employee, and an employer placing their company into liquidation and/or letting their company being struck off the Companies Office register will not avoid this liability if we can establish personal liability.

Holding an individual as being the employer, a recent win

I have just won a case for a client where I had to apply the tests to establish that an individual was personally liable as an employer, this was *Cotton v Gosling and Ors* [2022] NZERA 90.

Mr Cotton (C) applied for a job and began work undertaking a firewood recovery,



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