Gloriavale in the Employment Court: A decision that could cost its leaders thousands

Whether a worker is legally considered an "employee" is an issue the Employment Relations Authority and Employment Court regularly consider. Employee status is the gateway to an array of statutory entitlements, including minimum wage, sick leave, and annual leave. It follows that where a worker is deemed to be an employee, yet is not afforded these statutory entitlements during their employment, they are often entitled to back pay.

Three former Gloriavale members (the Plaintiffs) were recently successful in the Employment Court after Chief Judge Inglis ruled they were employees at the Community from the age of 6.

Read on for a breakdown of the judgment.

Working Conditions

From the age of 6 to 14, Gloriavale children perform work outside of school hours, either early in the morning or in the late afternoon and evening. For the plaintiffs, this involved working in the Community gardens, the operational moss factory (Lakeview Moss Ltd), and one of the Community's dairy farms. One plaintiff did the morning milking from 4am-7am or 3:30am to 7:30am, two or three times a week for six years. He was also required to do milking on Sundays. Another plaintiff worked in the moss factory, separating sticks from moss on a conveyor belt. When he turned 14, he began working at the Community's piggery cleaning out pig sties.

At the age of 15, children enter their final year of school and take part in a "transitional education programme", also referred to as work experience. This programme is approved by the New Zealand Qualifications Authority (**NZQA**), but the Court accepted that the programme was not administered in accordance with NZQA standards. The Court determined that Gloriavale used the programme to transition its members into full-time work when they were still legally required to attend school.

At the age of 16, children sign a Deed of Adherence. The Deed signifies commitment to a range of religious principles underpinning the way of life at Gloriavale, including a commitment to serving the Community through work. From this point, working conditions became especially gruelling for the plaintiffs. They worked an average of 60-70 hours per week across Gloriavale's different businesses, including Forest Gold Honey Ltd, Harvest Honey Ltd, Wilderness Quest New Zealand Ltd, and Apetiza Ltd. The plaintiffs were required to complete timesheets, and were given six days of holiday per year.

The legal test

Ascertaining whether a person is an "employee" requires the Court to determine "the real nature of the relationship".[1] This involves an inquiry into all relevant

[1] Section 6(2) of the Employment Relations Act 2000.

matters relating to the conduct of the parties, and the intention that such conduct conveyed.

Does religion change the application of the legal test?

In determining how to apply the above legal test, Chief Judge Inglis briefly considered the relevance of religion, and whether that affected the application of the law. Gloriavale's leaders (**the Leaders**), the defendants in this case, argued that the way of life at Gloriavale and its structures around work were all "deeply rooted in the way in which members expressed their belief". They further suggested that the Court should make their determination upon a presumption against the existence of an employment relationship.

This argument was rejected by the Court. The intermingling of "the spiritual life and the practical life" at Gloriavale was indeed a relevant consideration for determining the real nature of the relationship, but could not give rise to a presumption against employment status. Although Christian faith informs the "practical life" at Gloriavale, the Community's activities go far beyond practising religion. As put by the Court, this is clearly reflected in the Community's extensive commercial operations, within which the plaintiff's worked. Gloriavale owns a number of substantial assets, and has funded these purchases through its commercial endeavours.

Application to the facts

The Leaders argued that the plaintiffs were volunteers who performed chores from the ages of 6 -14, NZQA-approved work experience at the age of 15, and volunteer work from the age of 16. The Court rejected all three arguments.

The Court instead favoured the plaintiff's argument – that the real nature of their relationship was one of employment given the extensive control the Leaders exercised over the plaintiffs and the commercial benefit obtained from their labour. The Leaders determined which job each boy over the age of 6 would perform. Boys were required to attend their work at times determined by the leaders, and at the direction and control of those managing each workplace. Gloriavale's commercial businesses reaped the benefits of the plaintiffs' work, the activities were consistently performed over an extended period of time, and the activities were physically demanding or dangerous.

The Court also based its determination on the definition of "employee" found at s 6(1)(a) of the Employment Relations Act. Section 6(1)(a) makes clear that an "employee" works for hire or reward. In this case, it was abundantly clear that work was performed in exchange for the food, clothing, and the ability to participate in Community activities, and thus amounted to a reward. Each of the plaintiffs testified that it was drilled into members from a young age they would receive those rewards in exchange for their work. The plaintiffs (and other members of the Community) equally understood that they would be deprived of those benefits if they did not work. One plaintiff gave evidence that he was prohibited from eating dinner one night after his work manager said he had not been pulling sticks out of the moss fast enough in the moss factory. Another plaintiff gave evidence that he was made to stand on stage in front of the entire Community at dinner time when he was 10 or 11 years old.

The Labour Inspector

The plaintiffs also claimed that the Labour Inspector failed to exercise its protective statutory duties. This claim arose from two inquiries conducted by the Labour Inspector in 2017 and 2020/2021. Both inquiries concluded the members of Gloriavale were not employees, and rather had agreed to "give up all individual rights to their personal assets in order to contribute communally".

A definitive determination was not made with regard to this claim, and will be dealt with at a later time. What Chief Judge Inglis did say was that "large alarm bells ought, in my view, to be ringing...". She determined that the evidence provided to the Labour Inspector during its

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inquiry made very clear that the Leaders held absolute power in relation to work, that the members of the Community submitted to the leaders, and that the members were not to report concerns to external agencies.

What next?

The decision amounted to a declaration that each of the plaintiffs were employees from the age of 6 years. The next matter for determination is the identity of the true employer – whether that is the Leaders, or the businesses the plaintiffs worked for. Evidence presented on the matter in this judgment failed to shed any light on the matter, and will be dealt with by the Court at a later date.

Once it is determined who the employer is, a claim for wage arrears and holiday pay could be brought. If other workers at Gloriavale bring similar claims then Gloriavale could be ordered to back-pay not only current members, but former Gloriavale members that have left the community.

Want to know more?

If you have any questions about this decision, or employment status in general, please contact our specialist Employment Team.