Summary of decision – Three Foot Six Limited v Bryson

In its judgment dated 12 November 2004, the Court of Appeal overturned the decision of the Employment Court and by a two to one majority (McGrath J dissenting), found that Mr Bryson was a contractor of Three Foot Six Limited rather than an employee.

Re-Cap – Employment Court's decision

Mr Bryson was employed by Three Foot Six between April 2000 and September 2001 as an onsite model technician on the set of The Lord of the Rings. When his contract was terminated, Bryson claimed to be an employee who had been unjustifiably dismissed. Three Foot Six claimed that at all times Bryson was an independent contractor whose contract could be terminated on notice, without the need for justification or fair procedure. On 14 October 2003 the Employment Court issued its decision that Bryson was, in its view, an employee not a contractor.

The Employment Court based its decision on, among other things, the following features of Mr Bryson's working relationship with Three Foot Six:

- Mr Bryson worked for Three Foot Six for over a year
- Mr Bryson was trained by Three Foot Six to do the work he undertook for six weeks following engagement
- Mr Bryson was directed as to when he had to do the work with hours of work being clearly defined along with lunch breaks in the crew deal memo
- Mr Bryson was directed as to how he had to do the work and was not entitled to do any other work for himself or others while he worked for Three Foot Six
- Mr Bryson was not, by and large, required to provide his own equipment for doing the work
- Mr Bryson was fully integrated with the company due to collaboration and team work with all of those involved.

When all of these circumstances were weighed together, it was found by the Court that despite the crew deal memo saying Bryson was a contractor, the real nature of the relationship was one of employment. The Court found that while its decision may be of significance for others in the industry, it would not automatically unwind existing crew deal memos or contracts for production in the future as every relationship would turn on its own circumstances.

Court of Appeal's decision

The Court of Appeal found that two features of the case significantly favoured the interpretation that Mr Bryson was a contractor despite the features listed above. These were:

- The clear statement in the crew deal memo that Mr Bryson was a contractor
- The practice of the industry which is that workers are engaged as contractors and not employees.

While the Court stated that "the real nature of the relationship" is not to be dictated by the terms of the contract, it found that such terms are significant to the determination and their existence is not just a secondary or nominal consideration.

Recognition was given to the fact that the way Mr Bryson was paid and the tax treatment of his earnings was in line with that of a contractor. Again, this was found not to be the deciding point, but nonetheless a relevant one.

However, what appeared to be of most importance to the Court were the implications of the Employment Court's finding for the industry. The Court said:

> *"It seems to us that the approach taken by Judge Shaw in effect involves a claim to require restructuring of the way in which the film industry operates."*

The Court of Appeal was concerned about the uncertainty this would create, stating that if the decision was upheld:

> *"…film producers could have no confidence that the contractual arrangements they enter into will be upheld and will have to build into the decisions they make (including decisions whether to carry on business in New Zealand) associated uncertainties, disruptions and likely costs."*

For these reasons the Court found that Mr Bryson was a contractor and ruled he could not pursue his case in the Employment Relations Authority.

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