

A Labour Inspector v Southern Taxis Ltd, Maureen Grant and Ronald Grant CA [2021] NZCA

This test case has determined the level of knowledge required to establish liability for a breach of minimum employment standards. Whatever their belief or intention, a company's officers (including directors) will likely be found liable if they had full knowledge of the particular contractual arrangement.

Although the Employment Court had found the company's taxi drivers to be employees, not contractors, it had held the second and third defendants (the company's Directors) not personally liable for the \$80,000 due (the company was in receivership) because they were not involved in the breaches committed by the company. The Directors believed the taxi drivers were independent contractors and the Labour Inspector had not proved they knew the drivers were really employees. The necessary pre-requisite for liability for 'involvement in a breach' is proof of intentional and purposeful actions in breach of the relevant minimum standards.

The Labour inspector disagreed, and on appeal, the Court of Appeal was asked to determine *the level of knowledge required to establish liability for a person 'involved in a breach' of employment standards under s 142W(1) of the Employment Relations Act 2000.*

Unlike the Employment Court, the Court of Appeal discounted genuine belief, holding instead that personal liability depended on how much the Directors knew about the primary facts establishing the company's breaches (the payment method, that the drivers drove branded vehicles they did not own, did not have to make their own tax payments to the IRD and so on). Inferences from those facts were not relevant.

Citing *Bryson v Three Foot Six Ltd* ([2005] 3 NZLR 721), the Court of Appeal referred the case back to the Employment Court to consider what, belief aside, each Director knew about the primary facts. Whether the Directors were persons 'involved in a breach' of employment standards would depend on their knowledge of the essential facts which had led the Employment Court to find the drivers were employees. The proceeding was to be determined in light of the Court of Appeal's answer to the question posed.

(The Court noted that whether someone is an employee is not solely a matter of fact and although there is no right of appeal where the facts have been correctly understood, even on that restrictive approach, the conclusion a person is an employee could result from an error of law.)