Gloriavale Article – Gloriavale Members Declared Employees

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The Employment Court's recent decision in *Courage v Attorney General*[1] has found that members of Gloriavale Christian Community (**Gloriavale**) were employees while living there. The Court's finding comes following previous Labour Inspectorate investigations that had concluded workers at Gloriavale were not employees.

'Chores' vs 'Work'

Gloriavale is a small, isolated community on the West Coast of New Zealand whose members live a communal lifestyle. Three former Gloriavale members sought a declaration from the Employment Court that they had been employees (and therefore entitled to minimum employment standards). The three plaintiffs had been born into Gloriavale and started working from the age of 6. All were involved in work in Gloriavale's various commercial enterprises.

Gloriavale representatives claimed that from the ages of 6 to 14 years the plaintiffs were completing 'chores' that might normally be required of a child by their caregiver; work undertaken at 15 years of age was part of their schooling; and work undertaken from 16 years of age was performed on a voluntary basis. Gloriavale argued there was no intention to enter into an employment relationship at any stage.

Chief Judge Inglis found that all three plaintiffs were employees from the age of 6 until they left Gloriavale.

The Court found that the work done between 6 to 14 years old was more than merely 'chores.' They worked long hours doing work that was for the benefit of Gloriavale's commercial enterprises, and they and their parents had little if any influence over where, when and for how long the plaintiffs worked.

The Court also found work undertaken by the plaintiffs when they turned 15 could not be described as work experience or as volunteering. While Gloriavale characterised this period as work experience, the Court found in reality it was simply a transition to full time work in Gloriavale's commercial enterprises.

Upon turning 16 the plaintiffs were required to sign agreements, labelling them as 'Associate Partners". From this point they were paid a rate of pay for their work equivalent to the applicable minimum wage, for eight hours per day (regardless of

[1] [2022] NZEmpC 77

how many hours actually worked). However, all earnings were paid back into the Gloriavale communal account for the benefit of the community.

At all times while working at Gloriavale, the plaintiffs worked in Gloriavale's commercial enterprises, had no influence over where, when or how long they worked, and did not get fed if their work was not to an acceptable standard. All work was allocated by a "Shepherd", one of Gloriavale's leadership group, with little regard to the plaintiffs' views or desires.

Determining whether someone is an employee

An employee is any person of any age employed by an employer to do work for hire or reward under a contract of service.

When considering whether the plaintiffs in this case were employees, the Court considered a range of factors including that:

- the work done was for the benefit of Gloriavale's commercial enterprises;
- the plaintiffs worked for long periods of time;
- the work was strenuous and often difficult and / or dangerous; and
- there was a significant degree of control exercised by the Shepherd over what, when and how work was done.

The Court also found that the work was done for reward, that being the plaintiffs worked in exchange for the necessities of life (food, accommodation, clothing, etc) and the ability to remain in the Community.

Applying the above tests, the Court rejected the suggestion the plaintiffs were volunteers.

What does the decision mean?

The Labour Inspectorate has signalled it is likely to further investigate employment conditions at Gloriavale, including whether minimum employment standards are being met. There are significant arrears in wages and other minimum employment entitlements owing to the plaintiffs and other residents of the Gloriavale community. However, who or what entity might owe those arrears is still to be determined. Other agencies such as the Charities Commission and New Zealand Police have also signalled potential investigations into the way Gloriavale operates.

For the vast majority of organisations and their workers this decision is unlikely to have much, if any impact – the situation at Gloriavale is certainly unusual by New Zealand standards. It is worth considering the potential implications for

organisations that engage family members to perform work for no reward. Could it mean greater scrutiny on arrangements where children are required or expected to work without pay in the family business outside of school hours? That seems reasonably unlikely to us, but each situation will turn on its particular facts.

However, the case is an important reminder that where there is a dispute about a working relationship, the Employment Court and Employment Relations Authority will inquire into the true nature of the relationship and will take a robust approach to finding an employment relationship where one exists, regardless of what the parties choose to call it.

The case also reflects New Zealand's decreasing tolerance for exploiting workers of any kind and reinforcement of minimum standards that underpin employment relationships.