

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2010] NZEMPC 42
ARC 1/10
ARC 9/10**

ARC 1/10
IN THE MATTER OF a de novo challenge to a determination of
the Employment Relations Authority

ARC 9/10
IN THE MATTER OF proceedings removed from the
Employment Relations Authority

AND IN THE MATTER OF a challenge to objection to disclosure

BETWEEN NING (NEIL) WANG
Plaintiff

AND HAMILTON MULTICULTURAL
SERVICES TRUST
Defendant

Hearing: 16 April 2010
(Heard at Auckland)

Appearances: Ning (Neil) Wang, plaintiff
Ellie Wilkinson, Tania Lynn Pointon, and Jovi Abellanos,
representing the defendant

Judgment: 16 April 2010

INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE B S TRAVIS

[1] The defendant has objected to disclosing a list of particular documents on the grounds that they are irrelevant. The plaintiff, in turn, has applied for an order declaring the objection to be ill-founded and directing that the class of documents he has requested be disclosed. Both parties filed supplementary memoranda providing detailed references to the pleadings in order to justify their respective positions.

[2] It was common ground that the test to be applied is that contained in regulation 38 of the Employment Court Regulations 2000, which provides that a document is relevant, in the resolution of any proceedings, if it directly or indirectly:

...

- (a) supports, or may support, the case of the party who possesses it; or
- (b) supports, or may support, the case of a party opposed to the case of the party who possesses it; or
- (c) may prove or disprove any disputed fact in the proceedings; or
- (d) is referred to in any other relevant document and is itself relevant.

[3] Regulation 37 provides that the object of the regulations dealing with mutual disclosure and inspection of documents is to ensure that:

...where appropriate, each party to proceedings in the Court has access to the relevant documents of the other parties to those proceedings, it being recognised that, while such access is usually necessary for the fair and effective resolution of differences between parties to employment relationships, there are circumstances in which such access is unnecessary or undesirable or both.

[4] With these considerations in mind, and with close regard to the statements of claim in both sets of proceedings and using the numbering and description in the plaintiff's original notice requiring disclosure, the following orders were made:

1.0 Employment agreements

1.1 The Migrant Internship Coordinator employment agreement will be listed.

1.2 The employment agreement of the Finance Manager will be listed.

2.0 Job descriptions

[5] Job descriptions for the following persons will be listed:

2.2 Financial Administrator

- 2.4 Migrant Internship
- 2.5 Centre Coordinator
- 2.6 Finance Assistant
- 2.8 Interpreting Service Coordinator
- 2.9 Interpreting Service Administrative Assistant

[6] Confidential aspects such as pay rates in any of those documents may be obscured from the copies to be viewed by the plaintiff.

3.0 Minutes

- 3.1 The minutes of monthly board meetings, April 2003- July 2003: The defendant will confirm in its list that there are no relevant references to the plaintiff in these minutes.
- 3.2 Monthly board meetings May 2007-November 2009:

[7] The plaintiff will by 4pm on Friday 23 April 2010 provide to the defendant details of any communications from the Board which would suggest the date on which the Board had discussed matters involving the plaintiff. Those minutes will then be listed by the defendant.

- 3.5 Weekly staff meetings (as since recorded). Recording commenced in 1999. The plaintiff is only concerned with any reference to incidents involving him in the period March-April 2009.

[8] The plaintiff will by 4pm on Friday 23 April 2010, provide to the defendant any details which might be able to identify relevant weekly staff meetings which referred to the plaintiff.

4.0 Policies

4.1 The Trust Deed. This the defendant states does not contain any reference to policies which the plaintiff seeks to examine, but the defendant no longer has any reluctance to list this document which is available to the public. It should be listed.

4.2 The defendant will list the Department of Labour guidelines it relied on.

4.3 The defendant will list the Department of Labour guidelines it relied on.

4.5/4.6 The defendant advises that it has no documents recording the policy of selection criteria or regarding staff working hour records.

5.0 Maps and Graphs

[9] The defendant has no relevant documents of the nature of those described in paragraphs 5.1, 5.2 and 5.3 to be listed.

6.0 Restructure documents

6.1 The defendant will list the advertisement in the *Waikato Times* for the vacancy of Finance Manager and any drafts of that advertisement or communications in relation to it.

7.0 Printout of electronic documents

7.1 The defendant will list all relevant emails relating to the plaintiff including those already provided to the plaintiff.

[10] If the plaintiff requires any additional items to be listed he should provide sufficient particulars of those items to the defendant by 4pm on Friday 23 April 2010 to enable those emails to be identified and listed.

[11] The following items under the heading 7.0 are not relevant and do not have to be listed:

- 7.2 MS Excel spreadsheet document
- 7.3 Interpreting service assignment booking system
- 7.4 Invoice and payment control form of Centre venue hiring
- 7.5 All accounts code list (from MYOB)
- 7.6 All job code list (from MYOB)
- 7.7 Budget analysis of monthly finance reports (from MYOB)
- 7.8 Kiwi Saver training materials

[12] All of the documents listed under heading “8.0 Finance, accounting and annual audit documents” numbered 8.1 to 8.13 are not relevant and do not require to be listed.

9.0 Other work related documents

- 9.2 The list of all staff does not have to be provided
- 9.4 The Log book of the Centre van does not have to be listed

[13] Provided either the defendant receives from the plaintiff the material in relation to the matters referred to above or the plaintiff advises the defendant there is no such material by 4pm on Friday 23 April 2010, the defendant will then comply with reg 42 by 4pm on Friday 30 April 2010. This regulation requires the defendant to assemble in a convenient place, all of the relevant documents and to make a concise and ordered list or index of those documents. By that time and date the defendant must state in writing to the plaintiff a time, which must be by 4pm on Friday 7 May 2010 and advise of the place where the assembled documents may be

inspected or copied. A copy of the list or index made should also be provided by the defendant to the plaintiff by 4pm on Friday 30 April 2010.

[14] I direct that if the plaintiff requires any photocopies of any documents this should be at the plaintiff's expense, until further order of the Court.

[15] Costs in relation to this matter are reserved.

B S Travis
Judge

Judgment signed at 5pm on 16 April 2010