

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2013] NZEmpC 116  
ARC 38/13**

IN THE MATTER OF      Proceedings removed from the  
   Employment Relations Authority

BETWEEN                      AIR NEW ZEALAND LIMITED  
   Plaintiff

AND                              GRANT KERR  
   Defendant

Hearing:                      (on the papers)

Counsel:                      Jennifer Mills and Christie Hall, counsel for the plaintiff  
   Peter Chemis and Jennifer Howes, counsel for the defendant

Judgment:                      25 June 2013

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**INTERLOCUTORY JUDGMENT OF JUDGE A D FORD**

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**Part 1. Non-disclosure order**

[1]      Upon the application of the parties, and pursuant to s 221 (d) of the Employment Relations Act 2000, the Court hereby orders by consent that:

- (a)      The information contained in a separate folder or attachment marked “confidential” (and which contains information such as profit and loss figures, revenue and cost information, and strategic information, both generally and in relation to the defendant’s new employer, Jetstar) provided to the defendant on or before 4 July 2013 (the Confidential Documents) be set out in a separate bundle from the other documents related to these proceedings;

- (b) The Confidential Documents be disclosed to Peter Chemis, Jennifer Howes and Hamish Kynaston of Buddle Findlay (the defendant's counsel) on the condition that:
  - (i) each of them undertakes not to disclose the information contained in the confidential documents to any third party including, without limitation, any other Buddle Findlay employee or partner, or the defendant; and
  - (ii) the Confidential Documents will be stored securely on Buddle Findlay's premises and will not be removed from those premises save for the attendance at Court appearances;
  - (iii) the defendant's counsel be required to keep a record of any copy made of the Confidential Documents (whether by photocopying, scanning, forwarding email attachments or otherwise) and to provide a copy of this record to the plaintiff following the hearing, or at the plaintiff's request;
  - (iv) the authorised making of any copy of the Confidential Documents, be conducted solely by the defendant's counsel and not delegated to another person;
- (c) Without permission of the Court, the parties do not refer to the information contained in the Confidential Documents in evidence in any way other than by general category (for example the information contained in the December 2012 monthly flyer, the profit and loss figures contained in the November 2012 Monthly Australasian Scorecard);
- (d) That, if any more detailed reference to the Confidential Documents is required, such reference be made before a closed courtroom (save for the defendant's counsel, the plaintiff's counsel, any of the plaintiff's witnesses, the presiding Judge and the Court Registrar);

- (e) Subject to any appeal, that any copies of the Confidential Documents provided to the Court and/or to the defendant's counsel will either be returned to the plaintiff's solicitors or, in the case of the electronic copies, permanently deleted, immediately following the hearing.

## **Part 2. Timetabling Orders**

[2] The following timetabling orders are also made by consent:

1. The fixture is confirmed for 31 July, 1 and 2 August 2013 at Courtroom 2.01, Level 2, 41 Federal Street, Auckland.
  - (a) The plaintiff is to file and serve its statement of claim by 5.00 pm on 25 June 2013;
  - (b) The defendant is to file and serve his statement of Defence by 5.00 pm on 27 June 2013.
  - (c) Subject to any orders of the Court in respect of confidentiality, the parties will, as soon as possible, disclose and provide copies of any documents which are in their possession, custody or control and which are relevant to any disputed matter in the proceedings. The parties will ensure that all documents are disclosed and copies provided by no later than 5.00 pm on 4 July 2013;
  - (d) The plaintiff is to provide and file copies of the briefs of evidence for the witnesses it intends to call to the defendant by midday on 5 July 2013. It is noted that one brief of evidence may only be able to be provided in draft form on that date. If so, then the final brief (marked up with any changes made from the draft) will be provided by midday on 8 July 2013;
  - (e) The defendant is to provide and file briefs of evidence for the witness(es) he intends to call to the plaintiff by 5.00 pm on 11 July 2013;

- (f) The plaintiff is to provide and file copies of any briefs of evidence in reply to the defendant by 5.00 pm on 19 July 2013;
- (g) The parties will cooperate to assemble and file a joint bundle of documents by 26 July 2013. The plaintiff will be responsible for providing copies of the agreed bundle, with the costs of photocopying to be shared evenly between the parties.

[3] All briefs should be filed in hard copy and in electronic (MS Word) format, they should refer (where appropriately) to documents and pages in the common bundle of documents, and should include all the evidence-in-chief intended to be called.

[4] As discussed with counsel, the Court will issue separate directions regarding its approach to s 164 of the Employment Relations Act 2000.

A D Ford  
Judge

Judgment signed at 3.45 pm on 25 June 2013