

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2024] NZEmpC 44  
EMPC 476/2019**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	applications for disclosure of documents
BETWEEN	DHARMENDRA MAHETA Plaintiff
AND	SKYBUS NEW ZEALAND LIMITED, FORMERLY AIRBUS EXPRESS LIMITED Defendant

Hearing: 21 February 2024  
(Heard at Christchurch via Audio Visual Link)

Appearances: S Greening, counsel for plaintiff  
S Laphorne and D Thomson, counsel for defendant

Judgment: 13 March 2024

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**INTERLOCUTORY (NO 3) JUDGMENT OF JUDGE K G SMITH  
(Applications for disclosure of documents)**

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[1] Dharmendra Maheta was employed by Skybus New Zealand Ltd as a driver from 11 December 2017 until he was dismissed on 6 September 2018.

[2] Before his dismissal Mr Maheta was involved in one collision while driving the defendant's bus at Auckland airport and was allegedly involved in a second collision. The first collision was with a bollard on 5 August 2018. He reported the incident to his supervisor and completed a report.

[3] The second incident was alleged to have occurred on 7 August 2018 and also involved a claim that while driving the defendant's bus at the airport it collided with a bollard. The plaintiff denied responsibility for this collision and resulting damage to the bus.

[4] Following an investigation, the defendant issued a warning to the plaintiff and transferred him to its express service, but he did not take up duties on that service and was dismissed. The defendant says the reason for the dismissal was not the incidents of 5 August and 7 August 2018 but the refusal to work as directed on the express service.

[5] The plaintiff pursued personal grievances with the defendant alleging he had been unjustifiably disadvantaged and unjustifiably dismissed. Those claims were dismissed by the Employment Relations Authority.<sup>1</sup>

[6] The plaintiff challenged the determination and sought a full rehearing.

### **Notice requiring disclosure**

[7] On 14 September 2020, the plaintiff's then representative served a notice in the prescribed form on the defendant seeking disclosure under reg 42 of the Employment Court Regulations 2000.

[8] The plaintiff's notice was extensive, running to 19 categories of documents to be disclosed. The defendant responded on 28 September 2020, through its counsel, in a letter addressing each of those categories. In some cases the response stated the documents sought had already been supplied, in others that what was asked for never existed or no longer existed, and some requests were rejected as irrelevant. The defendant did not formally object to the notice requiring disclosure.

[9] Matters rested there until 20 June 2023 when the plaintiff applied for an order that the defendant comply with its disclosure obligations. Not surprisingly, the grounds of the application relied on the notice previously served and acknowledged

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<sup>1</sup> *Maheta v Airbus Express Ltd* [2019] NZERA 698 (Member Robinson).

that some information was provided but maintained that most of the notice had gone unanswered.

[10] On 24 November 2023, the defendant applied for an order seeking compliance by the plaintiff with a notice requiring disclosure it had served on 3 August 2023. The defendant was seeking disclosure about alleged financial losses the plaintiff claimed, communication between him and a forensic expert, and a copy of an expert crash investigator report referred to on his behalf in the Authority.

[11] Both applications were opposed. However, an agreement was reached to resolve the defendant's application. In a joint memorandum the Court was invited to order that the plaintiff's claim for lost remuneration be limited to the period from the date of his alleged suspension up to and including 28 October 2018.

[12] In discussion with counsel at the hearing, they advised that their memorandum could be given effect to by its substance being recorded in this decision without anything further. From that agreement it follows that there was, in effect, an amendment to the plaintiff's statement of claim limiting the claim for lost remuneration.

[13] Before considering counsel's submissions about the plaintiff's application, it is necessary to provide a brief overview of the relevant regulations.

### **The Employment Court Regulations**

[14] Disclosure and inspection of documents is dealt with in regs 37–52 of the Employment Court Regulations 2000. The object of those regulations is stated in reg 37: to ensure that, where appropriate, each party has access to the relevant documents of the other parties to the proceeding. However, the regulation provides that there are circumstances in which access to documents may be unnecessary, undesirable or both.

[15] The regulations require disclosure of relevant documents. Any document is relevant if it directly or indirectly:

- (a) supports or may support the case of the party who possesses it;

- (b) supports or may support the case of the party opposed to the case of the party who possesses it;
- (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.<sup>2</sup>

[16] There is an extended definition of “document” in reg 38(2). It extends beyond any written material to information recorded or stored by means of a tape recorder, computer or other device.<sup>3</sup> Importantly, the definition includes any photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable of being reproduced (with or without the aid of other equipment).<sup>4</sup>

[17] Regulation 40 specifies that any party may require any opposing party to make disclosure. The introductory words to reg 40(1)(a) require the party who must provide disclosure to make what is disclosed available for inspection.

[18] Regulation 43 imposes a duty to comply with the tenor of the notice for disclosure subject to any objection that might be taken. Significantly, reg 43(b) requires that the party who is complying must take every reasonable step to facilitate the mutual inspection of documents and any necessary copying.

[19] The regulations provide for a means to dispute the content of a notice, by formally objecting.<sup>5</sup> The grounds of objection are specified. An objection may be challenged.<sup>6</sup>

[20] A failure to satisfy a notice under reg 42 can result in a compliance order being made compelling the defaulting party to comply.<sup>7</sup> Sanctions are available if any compliance order is not satisfied or, alternatively, the Court may refuse to receive in evidence any document tendered by a party who is in default.

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<sup>2</sup> Regulation 38(1).

<sup>3</sup> Regulation 38(2).

<sup>4</sup> Regulation 38(2)(e).

<sup>5</sup> Regulation 44.

<sup>6</sup> Regulation 45.

<sup>7</sup> Regulation 52.

[21] In this proceeding there was no material dispute about what the regulations require.

[22] No issue was taken by the defendant about the length of time that elapsed between the notice requiring disclosure being served and this application, although it is appropriate to observe that the plaintiff has been taking steps to progress this proceeding in the meantime.

[23] Before reviewing counsel's submissions some points can be made that apply to several of the orders that were sought. The first point is that while the plaintiff's application emphasised the limited grounds of objection in reg 44, it was common ground that the defendant could nevertheless advance an objection based on relevance.<sup>8</sup>

[24] The second point is that what is relevant is determined by the pleadings.<sup>9</sup> The third point arises from the fact that the Court does not undertake disclosure or directly supervise that process. That means where there is a statement on oath or affirmation by a knowledgeable person that no document of a certain class exists, that will usually be accepted by the Court.<sup>10</sup>

[25] Finally, by way of introduction, while the plaintiff's application for compliance orders emphasised the limited range of objections in reg 44, that point was not pursued by Mr Greening who instead concentrated on whether disclosure had been adequately provided.

### **The plaintiff's application**

[26] Mr Greening prefaced his submissions by describing the plaintiff's theory of his case, not to attempt to shift emphasis away from the pleadings but to provide context.<sup>11</sup>

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<sup>8</sup> See *Snowdon v Radio New Zealand Ltd* [2005] ERNZ 905 (EmpC) at [60].

<sup>9</sup> See *Airways Corp of New Zealand Ltd v Postles* [2002] 1 ERNZ 71 (CA).

<sup>10</sup> *Fox v Hereworth School Trust Board (No 6)* [2014] NZEmpC 154, (2014) 12 NZELR 251.

<sup>11</sup> See *Airways Corp of New Zealand Ltd v Postles*, above n 9.

[27] The plaintiff's case is that he was not driving the defendant's bus on 7 August 2018 when it sustained the damage which led to the investigation. Part of the plaintiff's case is anticipated to be that the bus may have been damaged the previous day, when he was not working, or while he was on a break on 7 August 2018. It was said that the structural integrity of the bus may have been compromised when the plaintiff was not in control of it, with attention being drawn to photographs supplied by him compared to those supplied by the defendant during its investigation.

[28] The plaintiff's theory underpins the 19 categories of documents sought to be disclosed. The plaintiff considers the application is necessary because documents provided by the defendant previously were inadequate, incomplete or there was an unsatisfactory explanation for not disclosing what was sought. He maintains that the documents in the 19 categories are relevant and that where the defendant has deposed to a document not existing, or no longer existing, what has been said falls short of satisfying reg 40.

[29] Each of the categories is quoted and discussed below. For convenience, attached and forming part of this decision is a schedule indicating whether a compliance order is to be made for each of the 19 categories of documents where an order was sought.

### *Category 1*

Via USB stick (pen drive) provide all original files of all photos taken of the Skybus bus 89 (LGK816...) on 07<sup>th</sup> August 2018 (or any other time) which identifies the damage you allege was caused to the bus by the plaintiff

[30] Mr Greening submitted that what was previously provided by the defendant was inadequate. The defendant provided copies of photographs of a damaged bus, but the plaintiff had not inspected the originals, so he could not establish whether what was supplied was of the bus he was driving on 7 August 2018.

[31] This category of document was said to be relevant because paragraph [8] of the statement of claim contained a pleading that the plaintiff has a personal grievance arising from being unjustifiably suspended. The pleading includes at [8](e) a claim that information provided to him was incomplete and misleading in breach of the duty

of good faith in the Employment Relations Act 2000. The scope of that pleading is broad and not limited by the balance of paragraph [8](e) which refers to the adequacy of relevant video footage previously supplied to him.

[32] The plaintiff's pleading about the adequacy of what was supplied was not confined to his unjustified disadvantage personal grievance. Paragraph [12] of the statement of claim contains particulars of his claim for unjustified dismissal and in its drafting incorporates the shortcomings alleged in paragraph [8](e). In short, the completeness of information previously supplied, and whether what was provided was misleading, is connected to both claims.

[33] Mr Lapthorne's response was that copies of photographs were supplied on 13 August 2018, as part of the defendant's investigation into what happened earlier that month. The request for access to the originals of those photographs was said to fall outside the ambit of the pleading, because the statement of claim did not challenge or assert any inconsistency between the plaintiff's and defendant's photographs of the buses.

[34] What needs to be borne in mind is that the regulations provide for inspection of documents. There is nothing in them limiting that inspection to passively receiving copies made available by the other party. The process of inspection must contemplate, for example, an opportunity to examine the original to be satisfied about it.

[35] The pleadings are broad enough to encompass this disclosure. I do not accept that there is any frailty in this part of the application merely because there was no pleading questioning the authenticity or reliability of the copies of the photographs previously supplied.

[36] The defendant pleaded that the personal grievance arising from the suspension is out of time. However, the pleading is not determinative of this application because that issue is yet to be resolved. Until it is the pleading still needs to be considered in assessing this application.

[37] Viewed in this light, the issue is not whether copies were supplied, but whether an opportunity was provided to inspect the originals. The plaintiff is entitled to inspect the original photographs.

*Category 2*

Via USB stick (pen drive) all original and continuous CCTV footage from 1400 hours to the end of the plaintiff's shift recorded on the bus's cameras on 07<sup>th</sup> August 2018

[38] There are cameras on the defendant's buses. Mr Simpkin's evidence was that after the collision on 5 August 2018 he removed the hard drive from the bus and downloaded some CCTV footage. He said that it was not possible to select scenes because the software automatically downloaded images from all the cameras for the time period selected, described as being "all or nothing". About 80 seconds of footage from the 5 August 2018 incident was downloaded.

[39] Mr Simpkin said that after he became aware of an incident on 7 August 2018 he again reviewed CCTV footage from the bus. He was able to download about 15 seconds in a "clipped copy" of what he judged to be the relevant footage showing the incident.

[40] Mr Simpkin said that after clipping the segment he returned the hard drive to the bus where the images would have been overwritten about two weeks later when the capacity of the drives was reached.

[41] With that background the defendant maintains that the notice was complied with by supplying to the plaintiff the few seconds of video footage clipped by Mr Simpkin and that it cannot supply footage for the span of time requested because the original has ceased to exist.

[42] The plaintiff does not accept that disclosure obligation has been satisfied. His evidence was that while 16 seconds of video footage were previously supplied, it cannot be the same footage played to him during the disciplinary meeting, because while the defendant claimed the sound of breaking glass was recorded, that sound was not on the few seconds supplied to him.



[43] The significance of this part of the application is that the plaintiff wants to inspect the original CCTV footage to obtain metadata for use at the hearing, which he says cannot be done from the copy he has.

[44] Mr Greening's submissions initially emphasised that a compliance order was required because Mr Simpkin's evidence did not adequately explain steps taken by him when he retrieved the hard drive, connected it to a USB port on a computer and downloaded the information. He amplified those submissions by arguing that a laptop must have been used by Mr Simpkin to view the images and that laptop may retain the full footage, or at least more than was supplied.

[45] Mr Lapthorne's response was that the disclosure sought is not relevant because the decision to dismiss the plaintiff arose not from the collisions but subsequently when he failed or refused to comply with the defendant's instruction relocating him to the express service. He also submitted that, if relevance is established, compliance has nevertheless taken place because the 15 or 16 seconds of the clipped images were supplied in the investigation.

[46] The CCTV footage is relevant to the plaintiff's claim. His pleadings allege that the driving incidents the defendant investigated in August 2018 are material to the decisions that were made about moving him to other duties, which he considers to have been an unjustified demotion.

[47] The difficulty confronting the plaintiff in this part of the application is Mr Simpkin's evidence that the hard drive on which the entire CCTV footage was originally captured would have been overwritten within two weeks or so of him clipping from it the few seconds subsequently relied on. That, however, is not the end of this evaluation. While not expressed in these terms by counsel during submissions, the plaintiff is at least entitled to inspect the source of the copy sent to him.

[48] I contemplate that this information might be stored on a device which could contain other information that is either not material to this proceeding or is confidential. In these circumstances, it might be expected that counsel would make

arrangements for inspection to be undertaken, perhaps by an expert subject to suitable conditions addressing how the inspection is handled.

[49] The parties did not propose any mechanism by which the footage might be inspected. Consequently, while a compliance order is to be made about this category, an opportunity will be provided to counsel to liaise to establish an appropriate way for the inspection to be undertaken.

### *Category 3*

CCTV footage of the 05<sup>th</sup> August 2018 accident that involved the plaintiff

[50] Mr Greening submitted that this CCTV footage is relevant because the plaintiff is entitled to be appraised of all information relied on by the defendant as part of the disciplinary process.

[51] Mr Laphorne's response was that CCTV video clips had been disclosed when they were sent with the letter of September 2020.

[52] Even though the plaintiff acknowledged his responsibility for what happened on 5 August 2018, and his pleadings do not suggest that in some way that acknowledgment is to be resiled from, the information about that incident is relevant.

[53] As with the original photographs and CCTV footage from the 7 August 2018 incident, this material is disclosable. It will also need to be the subject of conditions such as those for category 2.

### *Category 4*

Copies of ALL documents that record checks of bus LGK816 during the period of 01<sup>st</sup> July to 15<sup>th</sup> October 2019<sup>12</sup>

[54] The request for these documents was supported by the breadth of the pleading in paragraphs [8] and [12] referred to earlier and by a submission that checks of the bus on 6 August 2018 are important to the plaintiff's case that the damage was not caused by him.

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<sup>12</sup> Emphasis original.

[55] The defendant's response, on 28 September 2020, stated that the documents do not exist, because vehicle checks were not recorded in writing at that time. Mr Simpkin deposed that the documents sought never existed.

[56] I do not accept Mr Greening's submission that there is some deficiency in the defendant's response. The disclosure obligation is satisfied.

*Category 5*

Copies of ALL documents that record ALL changes (if any) to the aforesaid bus<sup>13</sup>

[57] The same situation applies to category 5 as to category 4.

[58] Mr Simpkin deposed that the documents have never existed. Accordingly, the disclosure obligation is satisfied.

*Category 6*

Copies of ALL documents which that confirm Mr Peter Simpkin was one of your fully trained authorised staff in 2018 who was authorised to remove CCTV footage from the bus for evidential gathering purposes

[59] This category is in the same situation as categories 4 and 5. Mr Simpkin deposed that the documents have never existed. The disclosure obligation is satisfied.

*Category 7*

Copies of ALL Skybus incident reports (in compliance of Airside Driving and Vehicle Permit Rules) which names the plaintiff as the driver of ANY bus that was involved in an incident<sup>14</sup>

[60] The ambit of this request is extremely broad. It appears to encompass not only the incidents of 5 and 7 August 2018, but anything else that may have arisen involving the plaintiff.

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<sup>13</sup> Emphasis original.

<sup>14</sup> Emphasis original.

[61] The defendant's response was twofold: first, that the incident report from 5 August 2018 was disclosed, and second, that there is no incident report from 7 August 2018.

[62] Disclosure has been satisfied in the provision of the incident report from 5 August and in Mr Simpkin's evidence that there is no incident report arising from the events of 7 August 2018.

#### *Category 8*

Copies of ALL documents which confirm photos of bollards taken by you, were the same bollards you allege were struck on 07<sup>th</sup> August 2018 by the bus driven by the plaintiff<sup>15</sup>

[63] The plaintiff's claim is that this information is relevant because, he says, the photographs previously provided by the defendant do not establish that he caused damage to the bus. He has undertaken his own analysis of photographs supplied to him and from that analysis wishes to draw conclusions that support his case.

[64] The submission was that it is incumbent on the defendant to depose as to whether the photographs sought in the notice ever existed and, until such time as that happens, the disclosure is deficient.

[65] Mr Simpkin's evidence goes further than the submissions for the plaintiff allow; he has deposed that the documents have never existed. Bearing in mind the observations in *Fox*, this aspect of the disclosure is satisfied.

#### *Category 9*

The records (including copies of incident reports) of other collisions between your client's buses and airside airport structures in the calendar years 2018 and 2019 and the outcomes of your investigations of these, and the consequences for employees involved

[66] Initially, Mr Greening's submission was that the documents sought in this category are relevant because they may support a claim that the plaintiff has been treated differently from other drivers who have also been involved in collisions.

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<sup>15</sup> Emphasis original.

However, because a claim for documents from 2019 could not be sustained, the application was amended. The date range is now from 1 January 2018 to 1 September 2018.

[67] Mr Greening referred to *Nel v ASB Bank Ltd* to support the proposition that there is no objection in principle to a comparative exercise being undertaken to cases known to the affected employee as well as those which are not known.<sup>16</sup>

[68] The defendant's response was twofold. In addition to opposing the breadth of the date range in the notice, Mr Lapthorne submitted that the documents are not relevant. That was because, while there is a pleading that the plaintiff was treated inconsistently in comparison with drivers who had similar accidents, no particulars of that claim were provided. The second response was that the documents are irrelevant because the decision to dismiss was not based on either driving incident but on the subsequent failure or refusal to undertake other duties.

[69] While the criticism of the pleading is correct, that does not take this assessment very much further. There is a claim about disparity of treatment which the plaintiff is entitled to pursue. If particulars are required to ensure the defendant is in a position to respond, that is a separate issue.

[70] Disclosure is required.

#### *Category 10*

Copies of reports made by you to the relevant authorities of collisions and/or incidents involving your vehicles airside at Auckland Airport

[71] The plaintiff's reason for seeking these documents turns on the defendant's CCTV policy which refers to disclosure being made to "relevant agencies" of any material relied upon when undertaking disciplinary action. His concern is that in responding to the notice the defendant has not confirmed whether these documents exist, or if they did exist but no longer do what became of them.

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<sup>16</sup> *Nel v ASB Bank Ltd* [2017] NZEmpC 56, [2017] ERNZ 297 at [85].

[72] The defendant's response to this claim was twofold. The first response was to challenge the specificity of the documents as being too broad and unclear. The second response was that they are not relevant because the dismissal was not because of what happened on 5 and 7 August 2018.

[73] There is some merit in the defendant's submission about the breadth of reference to "relevant authorities", but the intended scope is obvious. Mr Simpkin's evidence was that the defendant must report to airport management because it has a contractual requirement to do so and faces a financial penalty in certain circumstances.

[74] In the pleadings the plaintiff asserted that he was unjustifiably suspended and unjustifiably dismissed. He drew a link running through those claims that the only reason he was in difficulty with his employer was because of dissatisfaction over what happened on 5 and 7 August 2018.

[75] The pleadings are not capable of being isolated in the way in which the defendant's submissions invite.

[76] The information is relevant because it may support the plaintiff if it transpires that information supplied to authorities such as the airport shed light on the defendant's decision making.

[77] Disclosure is required.

### *Category 11*

Documentation held by you in relation to compliance with paras 4, 5, 7 & 8 under your Closed Circuit Television Policy (including but not limited to chain of custody documentation) affecting the CCTV footage relied on by you in seeking to establish the plaintiff was responsible for causing the damage to your buses

[78] The reason for seeking this category of documents lies in the defendant's CCTV policy requiring images downloaded to be "securely stored and retained".

[79] Mr Greening described this request as establishing the chain of custody of documents relied on by the plaintiff. Reference was also made to the policy's

requirement for the retention of documents for at least a specified time and to include amongst other things a log of the results of functionality checks and actions taken, a record of any maintenance programme and a list of “authorised staff” (presumably staff authorised to access the stored documents).

[80] The documents were said to be relevant because they may assist in establishing how the CCTV footage was managed when downloaded from the bus, what happened to it and who was involved in dealing with it after it was downloaded by Mr Simpkin.

[81] The difficulty with this category is Mr Simpkin’s evidence that these documents have never existed. The disclosure obligation has been satisfied.

#### *Category 12*

Records of staff training with respect to CCTV, including the training package

[82] Mr Greening relied on the CCTV policy because it mandates that the defendant is to retain a list of all staff authorised to access, manage and review footage.

[83] As with the previous category, Mr Simpkin’s evidence is that this information has never existed. The disclosure obligation has been satisfied.

#### *Category 13*

Copies of the roster and daily duty sheets for the plaintiff for the period from 01 June 2018 to August 2018

[84] Given that a core part of the plaintiff’s case is that the damage to the bus could have been caused on 6 August 2018, or at some other time when he was not driving the bus, he has sought roster and daily duty sheets.

[85] The plaintiff acknowledged that some rosters and daily duty sheets were provided but not for the airside service and that only one duty sheet was provided dated 7 August 2018.

[86] Mr Simpkin’s evidence was that duty sheets have never existed. The disclosure obligation has been satisfied.

#### *Category 14*

Regarding the bus involved in the alleged incident on 07 August 2018, copies of specific details of the turning radius, dimension, special features, special license and training needs, and the tyre heights and specifications, make and model

[87] Mr Greening could not explain why information relating to the performance of the bus in question, such as its turning radius, could be relevant.

[88] No part of the pleadings calls into question the performance of the vehicle. Further, seeking this information clashes with the plaintiff's claim that he was not driving or otherwise responsible for the vehicle at the time it was damaged. No disclosure is required because the documents sought are irrelevant.

#### *Category 15*

The records of all interviews between your employees and the plaintiff relating to the subject matter of the litigation, pursuant to your Employee Policy Manual

[89] This request is for documents relating to the defendant's investigation including, it was submitted, what any employee may have said to the defendant about the alleged incident. Despite the potential ambiguity in the wording of category 15, it now appears that it is not confined to information obtained from the plaintiff.

[90] The defendant's response was that it complied previously by supplying copies of handwritten notes taken by its human resources representative during an interview with the plaintiff, and that no other documents exist. The disclosure obligation has been satisfied.

#### *Category 16*

Copies of the nine-page document signed by you and the plaintiff relating to internal training for Airside driving duties

[91] Underpinning this part of the application was an assertion by the plaintiff that he had a right to all relevant information relied on as part of the disciplinary process.



[92] The difficulty confronting this category of documents is Mr Simpkin's evidence that a signed version of the document being sought has never existed, although an unsigned version was supplied.

*Category 17*

Copies of the Regional Airside Operation Shift Report completed by the plaintiff for the period 07<sup>th</sup> July 2018 to 07 August 2018

[93] This category is linked to category 13. Mr Simpkin's evidence was that this information has ceased to exist because the defendant only retained paper records for a period of 12 months so that by the time the notice requiring disclosure was served they no longer existed. The disclosure obligation has been satisfied.

*Category 18*

Records of how many cameras were installed on the bus (re the incident on 07<sup>th</sup> August 2018) and each camera's mounted positions

[94] This category is linked to the earlier categories where the plaintiff attempted to obtain information which might generally be said to be about establishing the veracity of the CCTV footage.

[95] The application was answered by Mr Simpkin, whose evidence was that this information has never existed. The disclosure obligation has been satisfied.

*Category 19*

Copies of all documents relating to the plaintiff that was filed by your employee Mr Peter Simpkin regarding Airside Driving Permit; and security clearance at Auckland International Airport re the plaintiff

[96] This part of the application for disclosure is an aspect of establishing from the plaintiff's perspective what happened and the defendant's response to the allegations made about him.

[97] Mr Simpkin's evidence was that the documents referred to have never existed. It is also appropriate to record Mr Lapthorne's submission that if what is sought is to do with the plaintiff's security clearance enabling him to drive on parts of the airport premises not open to the public, that authorisation is obtained from airport authorities

and would never be in the defendant's possession. The disclosure obligation is satisfied.

## **Outcome**

[98] The plaintiff's application is successful in part as described above and as noted in the attached schedule. Regulation 52 contemplates orders being made compelling compliance. However, I consider an opportunity needs to be provided for counsel to agree on a mechanism to allow the documents to be inspected, and to enable those discussions to take place an order will not be made at this stage. Leave is reserved to do so if the parties are unable to reach agreement.

[99] At the conclusion of the hearing, I raised with counsel the need for this proceeding to be heard at the earliest possible time. The Court has hearing time available in June and July 2024, and I understand from counsel that a hearing during that window could be accommodated.

[100] To that end, the Registrar is requested to convene a telephone directions conference the purposes of which will be to resolve any orders arising from this judgment, if required, and to make directions for a hearing.

[101] Costs are reserved.

K G Smith  
Judge

Judgment signed at 12.30 pm on 13 March 2024

**Attachment 1**

<b>Category</b>	<b>Description</b>	<b>Compliance Order Yes/No</b>
1	Via USB stick (pen drive) provide all original files of all photos taken of the Skybus bus 89 (LGK816...) on 07 <sup>th</sup> August 2018 (or any other time) which identifies the damage you allege was caused to the bus by the plaintiff	Yes subject to conditions
2	Via USB stick (pen drive) all original and continuous CCTV footage from 1400 hours to the end of the plaintiff's shift recorded on the bus's cameras on 07 <sup>th</sup> August 2018	Yes subject to conditions
3	CCTV footage of the 05 <sup>th</sup> August 2018 accident that involved the plaintiff	Yes subject to conditions
4	Copies of ALL documents that record checks of bus LGK816 during the period of 01 <sup>st</sup> July to 15 <sup>th</sup> October 2019	No
5	Copies of ALL documents that record ALL changes (if any) to the aforesaid bus	No
6	Copies of ALL documents which that confirm Mr Peter Simpkin was one of your fully trained authorised staff in 2018 who was authorised to remove CCTV footage from the bus for evidential gathering purposes	No
7	Copies of ALL Skybus incident reports (in compliance of Airside Driving and Vehicle Permit Rules) which names the plaintiff as the driver of ANY bus that was involved in an incident	No
8	Copies of ALL documents which confirm photos of bollards taken by you, were the same bollards you allege were struck on 07 <sup>th</sup> August 2018 by the bus driven by the plaintiff	No
9	The records (including copies of incident reports) of other collisions between your client's buses and airside airport structures in the calendar years 2018 and 2019 and the outcomes of your investigations of these, and the consequences for employees involved	Yes as amended
10	Copies of reports made by you to the relevant authorities of collisions and/or incidents involving your vehicles airside at Auckland Airport	Yes
11	Documentation held by you in relation to compliance with paras 4, 5, 7 & 8 under your Closed Circuit Television Policy (including but not limited to chain of custody documentation) affecting the CCTV footage relied on by you in seeking to establish the plaintiff was responsible for causing the damage to your buses	No

12	Records of staff training with respect to CCTV, including the training package	No
13	Copies of the roster and daily duty sheets for the plaintiff for the period from 01 June 2018 to August 2018	No
14	Regarding the bus involved in the alleged incident on 07 August 2018, copies of specific details of the turning radius, dimension, special features, special license and training needs, and the tyre heights and specifications, make and model	No
15	The records of all interviews between your employees and the plaintiff relating to the subject matter of the litigation, pursuant to your Employee Policy Manual	No
16	Copies of the nine-page document signed by you and the plaintiff relating to internal training for Airside driving duties	No
17	Copies of the Regional Airside Operation Shift Report completed by the plaintiff for the period 07 <sup>th</sup> July 2018 to 07 August 2018	No
18	Records of how many cameras were installed on the bus (re the incident on 07 <sup>th</sup> August 2018) and each camera's mounted positions	No
19	Copies of all documents relating to the plaintiff that was filed by your employee Mr Peter Simpkin regarding Airside Driving Permit; and security clearance at Auckland International Airport re the plaintiff	No