

**NON-PUBLICATION OF ALL EVIDENCE OF ALLEGATIONS MADE BY  
PLAINTIFF AGAINST THE DEFENDANT AND REFERRED TO IN  
COURT. ORDER REMAINS IN PLACE**

**IN THE EMPLOYMENT COURT  
WELLINGTON**

**WC 20A/07  
WRC 17/07**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	IAN CAMDEN GASKIN Plaintiff
AND	MICHAEL GRENSIDE Defendant

Hearing: 19 September 2007  
(Heard at Wellington)

Appearances: I C Gaskin (in person)  
G J Ogilvie, Advocate for the Defendant

Judgment: 27 September 2007

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**JUDGMENT OF JUDGE C M SHAW**

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[1] This challenge concerns whether Mr Gaskin breached the confidentiality clause of a mediated settlement agreement.

[2] At the start of the hearing an order of non-publication was made covering all evidence of allegations made by Mr Gaskin against Mr Grenside and referred to in Court. That order remains in place.

**The facts**

[3] In July 2001, Mr Grenside filed a statement of problem with the Employment Relations Authority seeking outstanding holiday pay and pay in lieu of notice following the end of his employment as a taxi driver for Mr Gaskin. The matter was referred to mediation. The record of settlement signed by the mediator on 13 August

2001 set out agreed terms of settlement to the employment relationship problem which were to remain confidential to the parties. The record was made pursuant to s149 of the Employment Relations Act 2000.

[4] In October 2006, Mr Grenside's advertisement of his application for a passenger service licence was published in the public notices section of the Dominion Post newspaper. The notice called for any objections to be sent to the regional transport advisor.

[5] Mr Gaskin saw the public notice and sent an objection by e-mail to Land Transport New Zealand (LTNZ) with a copy to Richard Wright who had assisted Mr Grenside to lodge his application. In that notice of objection, Mr Gaskin made serious allegations about Mr Grenside's private life and insinuations about his business matters, neither of which had been raised before either in Mr Gaskin's statement in reply to the statement of problem nor at mediation and will not be repeated in this judgment.

[6] In his e-mail, Mr Gaskin said that he had to dismiss Mr Grenside as a driver and that it had cost him \$600 in unfair dismissal costs. He concluded "*I am willing to appear in court to back my objection as I dont think he should be driving a cab let alone own one.*"

### **These proceedings**

[7] Because of this e-mail, Mr Grenside brought another claim to the Employment Relations Authority, this time alleging that Mr Gaskin had breached the confidentiality provisions of the mediated settlement. He sought damages of \$20,000, a penalty of \$5,000, and payment of his costs.

[8] Mr Gaskin participated in the pre-investigation meeting phone conferences. He had agreed to the Authority determining the problem on the papers and to file submissions according to a schedule but did not in fact file any argument and/or evidence so the determination was made on the basis of the submissions that it had received from Mr Grenside.

[9] The Authority found that Mr Gaskin had committed clear breaches of the mediated settlement which were gratuitous and deliberate. The Authority member concluded that Mr Gaskin was well placed to communicate to LTNZ any concerns he had about Mr Grenside's fitness to hold a passenger service licence without

making comments which were unrelated to the merits of Mr Grenside's application. The Authority made an order that Mr Gaskin was to pay a \$4,000 penalty.

[10] Mr Gaskin has challenged that determination. The grounds for his challenge are that the Authority did not interpret the facts of the matter in a fair and reasonable way and it found against him without any evidence that the words used by him referred to the mediation, its terms, the matters discussed, or any terms of settlement. He also alleges that the penalty and costs are extremely excessive and out of proportion to the facts and the unsubstantiated loss suffered by the defendant.

[11] The challenge was heard by the Court de novo and evidence was given by Mr Gaskin and Mr Grenside. In his statement of defence Mr Grenside is now seeking only a penalty and costs.

[12] In his evidence to the Court Mr Gaskin did not dispute the terms of the mediation agreement which included a payment by him of \$507.60 in settlement of the claim for holiday pay and payment in lieu of notice. He agreed that he had sent an e-mail objecting to Mr Grenside's application in 2006 and sent a copy to Mr Wright, a taxi driver/trainer who assisted Mr Grenside with his application. He did not deny the contents of the e-mail.

[13] He said that after he sent the e-mail he received a phone call from Mr Grenside inviting him to withdraw his objection or he would take it to mediation. Mr Grenside denies that he had any conversation or any contact at all with Mr Gaskin until he personally served his statement of problem on him before the Authority hearing.

[14] It is Mr Gaskin's case that he has an obligation as a taxi company manager to act in a fit and proper manner and to advise LTNZ about any matters in the public interest which should prevent a person from becoming a taxi driver. He submitted that what he referred to as the Land Transport Management Act is coming into force on 1 October 2007 which will make taxi companies obliged to report to the director of Land Transport New Zealand any serious complaints and names of drivers whose

employment has been terminated due to improper behaviour<sup>1</sup>. He accepted that until this legislation comes into force there is no statutory obligation to do that.

[15] Mr Gaskin says that in his e-mail, apart from the allegations of misconduct against Mr Grenside, he did not refer to confidential matters in the mediation. He said that the reference to the \$600 in unfair dismissal costs did not refer to the terms of the settlement but to the legal costs which he had incurred in dealing with Mr Grenside's personal grievance.

[16] Mr Gaskin had no evidence of any legal costs which he had incurred for this purpose. He said he did not file any submissions as he was required because his lawyer unfortunately passed away before the Employment Relations Authority investigation but he had had a meeting with his lawyer. He took another person to the mediation meeting with him. This person was a lawyer who has been struck off the role of barristers and solicitors and is now a taxi driver. Mr Gaskin could not quantify his legal fees and was vague about whether his support person was paid.

[17] Mr Gaskin is presently employed as a taxi driver but is winding up his affairs in Wellington and moving away. He has both personal and company debts of about \$35,000. He earns about \$700 or \$800 a week from his taxi driving and also has income through his company.

[18] Mr Grenside's evidence was that he is outraged at the publication of matters which he regarded as confidential to the mediation. He is even more upset by the allegations of serious misconduct which he says are completely unfounded. These allegations were not relied on by Mr Gaskin to dismiss him in 2001. For the last 2 or 3 years he has been studying full time at university. He has a history of work in South East Asia teaching English and gave a creditable account of his actions since his employment as a taxi driver ended.

[19] Mr Grenside understands that he cannot claim any relief in the Employment Court for the allegedly false allegations made against him by Mr Gaskin and that his claim is confined to breaches of the mediated settlement.

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<sup>1</sup> Mr Gaskin did not provide a copy of the legislation he relied on. It may in fact be the Land Transport Amendment Act 2005 which comes into force on 1 October 2007 but which does not appear to impose any such specific obligations.

## Discussion

[20] A settlement made in terms of s149 of the Employment Relations Act 2000 requires that the mediator, before signing the agreed terms of settlement at the request of the parties, must explain to the parties that the terms are final and binding on and enforceable by them. The terms may not be cancelled under s7 of the Contractual Remedies Act 1979 and, except for enforcement purposes, no party may seek to bring the terms before the Authority or the Court whether by action, appeal, application for review, or otherwise (s149(3)). The parties must affirm their request to the mediator knowing of these matters.

[21] A person who breaches an agreed term of settlement to which subsection (3) applies is liable to a penalty.

[22] There were three terms in the settlement.

[23] The first term said:

*The employer will forthwith on a denial of liability basis pay the employee the sum of \$400 in terms of S123(c)(i) [sic] of the Employment Relations Act 2001 [sic], together with holiday pay agreed at \$107.60.*

[24] The second read:

*These terms of settlement and all matters discussed at Mediation shall remain confidential to the parties.*

[25] The principal question is whether Mr Gaskin's e-mail of objection disclosed a term or terms of settlement or matters discussed at mediation and were therefore strictly confidential between the parties. My findings are that the e-mail does contain such terms.

1. The statement that he had to dismiss Mr Grenside is an unequivocal reference to the fact of dismissal, a matter which was clearly within the scope of the mediation. The payment of holiday pay and a sum under s123(1)(c)(i) of the Employment Relations Act 2000 for humiliation, loss of dignity, and injury to the feelings of the employee indicates that this was a settlement arising from a dismissal.
2. The reference to the \$600 "*in unfair dismissal costs*" is, I find, more likely than not to be reference to the amounts Mr Gaskin paid to Mr Grenside in terms of the mediated settlement. Mr Gaskin's

explanation that these costs related to his legal costs was not credible. It was not backed by any evidence which could easily have been obtained from the law firm he says he consulted. Although he had somebody with him at the mediation he was not a lawyer and was only there in the role of a non-participating support person. While the settlement sum was less than \$600, an exaggerated claim is consistent with Mr Gaskin's other behaviours in relation to this claim.

### **Conclusion**

[26] I have no doubt that Mr Gaskin's e-mail did refer to matters which in the terms of the mediated settlement agreement were confidential.

[27] I agree entirely with the determination of Employment Relations Authority including the imposition and disposition of the \$4,000 penalty. This was justified because Mr Gaskin acted deliberately and unnecessarily in referring to the terms of the settlement agreement. He was not bound by any ethical or legal obligation to disclose the terms of settlement and could have raised his objection to Mr Grenside's application without doing so.

[28] The imposition of the penalty is necessary not only to mark the breach of the agreement but to act as a deterrent to those who have entered into confidential settlement agreements. The Authority and the Court take the undertakings as to confidentiality seriously. Unless parties strictly adhere to their obligations of confidentiality, the integrity of the mediation process would be undermined.

[29] The challenge is dismissed. The determination of the Employment Relations Authority is confirmed and the penalty imposed is to be paid by Mr Gaskin as set out in that determination.

### **Costs**

[30] Mr Ogilvie has asked for these to be reserved. If they cannot be agreed, he is to file a memorandum as to costs within 28 days of this judgment. Mr Gaskin will have 14 days following that to make any response to the costs application.

**C M Shaw  
JUDGE**

Judgment signed at 4pm on 27 September 2007