

**IN THE EMPLOYMENT COURT
WELLINGTON**

**WC 20/06
WRC 27/06**

IN THE MATTER OF proceedings removed from the
Employment Relations Authority

BETWEEN THE CHIEF EXECUTIVE OF THE
DEPARTMENT OF THE PRIME
MINISTER AND CABINET
Plaintiff

AND ROBERT SISSON-STRETCH
Defendant

Hearing: 24 and 25 October 2006
(Heard at Wellington)

Appearances: B A Corkill, Counsel for the Plaintiff
F M R Cooke QC, Counsel for the Defendant

Judgment: 25 October 2006

JUDGMENT OF CHIEF JUDGE GL COLGAN

[1] By consent I make the orders set out in a schedule that will be attached to the original and the parties' copies of this judgment but will not be attached to any other copies of it in circumstances and for reasons that I now set out.

[2] This was a proceeding brought by the plaintiff as former employer to interpret a mediated settlement between the parties of Mr Sisson-Stretch's employment relationship problem. After the plaintiff's case had been all but concluded, and before the second scheduled day of the hearing, the parties, with the assistance of their experienced counsel, settled the case and asked the Court to make the consent orders referred to above.

[3] Both counsel also asked the Court to exercise its discretion under clause 12(2) of Schedule 3 of the Employment Relations Act 2000. That provides:

Where proceedings are resolved by the Court making a consent order as to the terms of settlement, the Court may make an order prohibiting the publication of all or part of the contents of that settlement, subject to such conditions as the Court thinks fit.

[4] Although there was a public hearing of part of the case that attracted some news media interest, and such cases are usually not only conducted in public but the Court's full judgment is available publicly, I consider, on balance, that this is an appropriate case in which to exercise the Court's discretion under clause 12(2) set out above. That is for the following reasons.

[5] The case concerned the interpretation of a mediated settlement that was itself confidential and the details of which could not have been made public except for these proceedings.

[6] There are special circumstances relating to the defendant and to his relationship with the plaintiff that makes appropriate a prohibition of publication of all of the contents of the settlement.

[7] The terms of the settlement fall within the limits of settlements that the plaintiff is authorised to approve for the expenditure of public monies in such cases.

[8] Having heard the plaintiff's case, I am satisfied that the terms of settlement reached are effectively no less for the defendant than he would have been likely to have received in a judgment and, although differently expressed, do not exceed the value of the remedies claimed in the litigation.

[9] The consent orders settling the proceeding provide the factual basis for information about the defendant's pensionable income, information that persons in Mr Sisson-Stretch's position might reasonably expect not to be made public except in litigation such as this.

[10] If the parties had settled and the plaintiff had withdrawn its proceeding, there would have been no question that its terms could not have been made public. I accept, however, that there are special reasons why orders, even by consent, should be made in this case but I do not consider that should deprive the parties of the normal confidentialities of a settlement in mediation.

[11] As distinct from the power in clause 12(1) of Schedule 3 which deals with evidence or pleadings or the names of parties in litigation, clause 12(2) addresses the more unusual and special circumstances of a settlement of litigation. The

Court's usual reluctance to prohibit publication of such identity or evidential details about current litigation do not necessarily apply to settlements effected between the parties.

GL Colgan
Chief Judge

Judgment signed at 4.15pm on 25 October 2006

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