

**IN THE EMPLOYMENT COURT
WELLINGTON**

**WC 13/08
WRC 4/08**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority
AND IN THE MATTER OF an application to admit evidence

BETWEEN MANA COACH SERVICES LIMITED
Plaintiff

AND NZ TRAMWAYS AND PUBLIC
PASSENGER TRANSPORT UNION
(WELLINGTON BRANCH)
Defendant

Hearing: 24 June 2008
(Heard at Wellington)

Appearances: Hugh Fulton and Kate Ashcroft, Counsel for Plaintiff
Paul McBride, Counsel for Defendant

Judgment: 24 June 2008

ORAL INTERLOCUTORY JUDGMENT OF CHIEF JUDGE GL COLGAN

[1] The only outstanding document disclosure issue relates to the category of documents set out at paragraph 11 of the defendant's notice requiring disclosure which is undated but the identity of which will be known to the parties. For the sake of clarity that reads:

All documents (including e-mails, drafts and memos) by and/or to Kerry Waddell and/or the Board and/or Marau Russell and/or Geoff Norman pertaining to the 6 August 2007 letter to union members and to the union.

[2] Mr McBride says he has been told by the plaintiff's solicitor that no such documents exist. He says, however, that there was evidence before the Authority of discussions between or with Board members of the plaintiff that may be consistent with the existence of written records about these or their subject matter. In the

circumstances Mr McBride asks, reasonably I conclude, for confirmation of the absence of the existence of any documents falling within that description by a responsible officer of the plaintiff. Such a person must so depose and by affidavit to be filed and served by 4 pm this coming Friday 27 June 2008. Leave is reserved to apply further on reasonable notice if there are any other difficulties arising out of document disclosure that has been made in the courtroom today.

[3] I turn now to the principal matter of today's hearing, the defendant's application to admit hearsay evidence of a potential witness who has recently died.

[4] The defendant may adduce in evidence-in-chief Exhibit D1 to Mrs Kennedy's affidavit and the brief of evidence in the name of Philip James Griffiths that is attached thereto. The defendant may also adduce in evidence-in-chief Exhibit D2 to Mrs Kennedy's affidavit, being the e-mail and the first attachment to that which is a letter from Mr Griffiths to Mrs Kennedy dated 24 May 2008.

[5] In those documents, there are or may be some objectionable passages. I have concluded, however, that the Court can ignore those as is not uncommon in cases of this sort. Such issues include, but are not restricted to, statements about the witness's view of the ultimate issues for the Court to decide, a witness's view of the proper interpretation of an agreement and the like. Those are matters that the Court is well used to and able to put to one side when weighing otherwise admissible evidence.

[6] If the plaintiff intends to contradict the hearsay evidence that I have permitted the defendant to adduce in evidence-in-chief, it may do so by leading the documents that are known as Exhibits A, B and C to Mrs Kennedy's affidavit, that is Mr Griffiths' affidavit before the Employment Relations Authority and his two briefs of evidence in that forum. I should signal also that if the plaintiff seeks to contradict part of Mr Griffiths' hearsay evidence that I have allowed to be admitted, I will hear evidence of what may or may not have been said by Mr Griffiths in the Employment Relations Authority's investigation in addition to Exhibits A, B and C. That may mean that Mrs Kennedy and Mr Banks, who were counsel present at the Authority's investigation meeting, should be prepared to give evidence about those matters if

there is a challenge to the accuracy of Mr Griffiths' hearsay that can be resolved by reference to their evidence of what was said in the Authority.

[7] I reserve costs on today's application and I will give my more detailed reasons for those conclusions as soon as I am able to do so.

GL Colgan
Chief Judge

Judgment delivered orally at 3.28 pm on Tuesday 24 June 2008