



[2] The document in question is a single page document headed “PSA Mediation – Full Settlement Document”. It is attached to the statement of problem by way of inclusion in the material labelled “E - Applicant Summary of matter part one.pdf”. I will refer to this one-page document as the “Document”.

### **The information and submissions I have reviewed**

[3] Counsel for the respondent has provided the Authority with a full copy of another document from which the Document has been taken. This document is three pages, is dated 18 January 2018 and is labelled as “Terms of settlement resulting from mediation held on 15 and 16 January 2018 between [the Inland Revenue Department (IRD)] and PSA.” I will refer to this document as the “Terms of Settlement”.

[4] I have reviewed the Document, the Terms of Settlement, an email from counsel for the respondent dated 25 March 2024 and two emails from the applicant, one dated 25 March 2024 and the other dated 6 June 2024.

### **The parties’ positions**

[5] The respective positions of the parties regarding the admissibility of the Document are set out in the emails:

(a) The respondent says that the Terms of Settlement, and the Document as it is an excerpt from the Terms of Settlement, cannot be produced in evidence because ss 148(1) and 148(3) of the Employment Relations Act 2000 (the Act) apply; these two sections provide that any person involved in mediation must keep confidential any document (amongst other things) made for the purpose of mediation and any such document is not admissible as evidence before any person acting judicially.

(b) The applicant says s 148(5) of the Act, which provides an exception to the confidentiality obligation in ss 148(1) and 148(3), applies and the Document

can, therefore, be admitted as evidence; this section provides that where mediation has been used to assist parties to resolve terms of a collective agreement any document created in the course of that mediation process is not covered by ss 178(1) and 178(3).

### **My analysis**

[6] I have considered the Terms of Settlement and make the following observations:

- (a) The Terms of Settlement sets out an agreement between the IRD and the PSA.
- (b) The terms (in the Terms of Settlement) indicate that the settlement relates to mediation undertaken on 15 and 16 January 2018.
- (c) The terms indicate that the settlement reached related to the [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[7] Based on these observations I conclude that the Terms of Settlement is a document produced as part of a mediation process, i.e., it was made for the purposes of mediation.

[8] It follows therefore that the Terms of Settlement is covered by ss 148(1) and 148(3) of the Act and it must be kept confidential unless the exception in s 148(5) applies.

[9] From the Terms of Settlement and my observations, I conclude that the mediation on 15 and 16 January 2018 was not part of a collective bargaining process but rather it was about issues that had arisen out of a change process.

[10] So, it follows that the Terms of Settlement is not a document covered by the exception in s 148(5) of the Act as it was not made in the course of a mediation dealing with settling the terms of a collective agreement.

[11] The Terms of Settlement is therefore subject to the confidentiality imposed by ss 148(1) and 148(3) of the Act and it follows that the Document (as an excerpt of the Terms of Settlement) is also subject to the confidentiality obligations.

### **Conclusion**

[12] The Terms of Settlement and the Document are documents covered by ss 148(1) and 148(3) of the Act. They must be kept confidential and cannot be used as evidence in any investigation meeting for this matter.

[13] The Document must be removed from the attachments to the applicant's statement of problem and the Terms of Settlement should be removed from the Authority file. Neither of these documents should be disclosed to Member Cheyne or any other Member if this matter is reallocated within the Authority.

Peter van Keulen  
Member of the Employment Relations Authority