

**ATTENTION IS DRAWN TO THE ORDER
PROHIBITING PUBLICATION AT PARAGRAPH
11 OF THIS DETERMINATION**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 235/09
5158824**

BETWEEN MICHAEL JAMES SALINGER
 Applicant

AND NATIONAL INSTITUTE OF WATER
 AND ATMOSPHERIC RESEARCH
 LIMITED
 Respondent

Member of Authority: Leon Robinson

Representatives: Alex Hope, Counsel for Applicant
 Peter Churchman, Counsel for Respondent

Investigation Meeting: Consideration on Papers

Memoranda Received: 10 July 2009
 15 July 2009

Determination: 16 July 2009

DETERMINATION OF THE AUTHORITY ON NON-PUBLICATION

The investigation

[1] By his statement of problem lodged in the Authority on 17 June 2009, the applicant Mr Michael James Salinger ("Dr Salinger") claims a dispute, unjustifiable disadvantage and unjustifiable dismissal.

[2] The respondent the National Institute of Water and Atmospheric Research Limited ("NIWA") lodged its statement in reply in the Authority on 2 July 2009.

The applications

[3] Both parties now make preliminary applications.

[4] Dr Salinger lodges an "Amended Interlocutory application for the deletion of evidence and prohibition of publication" dated 10 July 2009".

[5] NIWA lodges a memorandum of counsel dated 10 July 2009 seeking orders under clause 2 of Schedule 2 to the *Employment Relations Act 2000* and opposing the application lodged by Dr Salinger.

The merits

[6] NIWA seeks an order that the identity of four employees whose names are set out in paragraphs 2.69.6, 2.69.7, 2.69.8 and 2.69.9 of the statement of problem and elsewhere in paragraph 2.69 and the documentation annexed to the statement of problem and in the statement in reply, be suppressed. It also seeks an order that the details of a commercial contract annexed as document 4.9 to the statement of problem, be suppressed. Both orders are sought under clause 10 Schedule 2 of the *Employment Relations Act 2000*.

[7] Dr Salinger seeks an order for the deletion of paragraphs 2.12, 2.13, 2.14, 2.102, 2.103, 2.104 in the statement of reply and the annexed document 4.1 and any evidence subsequently given in relation to those paragraphs and that document. He further seeks an order that those paragraphs and that document be prohibited from publication.

[8] With respect to the identities of persons named, I propose to refer to them if it is necessary to do so in my determination by their initials. I do not know whether those persons will give evidence and so I cannot at this point in time refer to them as witnesses. As concerns the contract document annexed as 4.9, I accept that it is commercially sensitive.

[9] While Dr Salinger refers to the deletion of evidence, there is no evidence before the Authority presently. There are only allegations pleaded in the statement of problem and statement in reply. I do not deal with the matter as one for the "deletion of evidence".

The determination

[10] Clause 10(1) of Schedule 2 to the *Employment Relations Act 2000* is as follows:-

10 Power to prohibit publication
(1) The Authority may, in respect of any matter, order that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the Authority thinks fit.

[11] I am persuaded that I should accommodate both parties' requests and that it is just to do so. There only being pleadings before the Authority at present, I deal with matters on that basis. **I make an order, pursuant to Schedule 2 of the *Employment Relations Act 2000*, that the pleadings filed not be published.**

[12] **I further order that the Authority's file may not be inspected by any person without order of the Authority.**

[13] It is not appropriate that I be asked to make orders in relation to evidence that might subsequently emerge. I prefer to see that evidence first and then be addressed in relation to it.

Other matters

[14] I ask the representatives to discuss these matters with me at a preliminary conference to be held within 7 days:-

- (i) Any preliminary issues arising;
- (ii) Identifying any factual and/or legal issues central to the employment relationship problem and its determination;
- (iii) Details of persons who are to give information;
- (iv) Details of the supply of documentary information;
- (v) Timetable for the filing and exchange of witness statements or the provision of information by the parties or any other party;
- (vi) Agreed bundle of exhibits;
- (vii) Submissions;

- (viii) Time required for Investigation Meeting;
- (ix) Venue for Investigation Meeting;
- (x) Date for Investigation Meeting;
- (xi) Any requirement for formal orders or directions;
- (xii) Procedure at Meeting;
- (xiii) Special requirements;
- (xiv) Other matters.

Leon Robinson
Member of Employment Relations Authority