

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2011] NZERA Auckland 122  
5312283**

BETWEEN	PREMIER EVENTS GROUP LIMITED & BA PARTNERS LIMITED Applicants
AND	MALCOLM JAMES BEATTIE ANTHONY JOSEPH REGAN PATRICIA PANAPA Respondents

Member of Authority:	Eleanor Robinson
Representatives:	Aaron Lloyd & Vonda Hodgson, Counsel for Applicant John Eichelbaum, Counsel for Respondent
Investigation Meeting:	24 March 2011 at Auckland
Submissions received:	22 March 2011 from Applicant 24 March 2011 from Respondent
Determination:	29 March 2011

---

**DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] The Applicants in this matter, Premier Events Group Limited and BA Partners Limited, claim that the Respondents, Mr Malcolm Beattie, Mr Anthony Regan, and Ms Patricia Panapa, have breached contractual terms of their employment agreements, primarily restraint of trade and related terms.

[2] Mr Beattie and Mr Regan have separately filed claims in the Authority against the Applicants for unilateral reductions in salary, and in addition Mr Beattie's claim encompasses a reduction in bonus entitlement, and Mr Regan's claim a reduction in his share holding entitlement.

[3] The Applicant seeks an order for removal to the Employment Court of all three matters under s 178 of the Employment Relations Act 2000 ("the Act"), on the grounds that:

- a. *an important question of law is likely to arise in the matter other than incidentally;*
- d. *....in all the circumstances the court should determine the matter.*

[4] The Respondent has opposed the application for removal on the basis that:

- there are no important questions of law involved, the unpaid salaries claims, Mr Beattie's bonus claim and Mr Regan's shareholding claims are pure questions of fact, and consequently fall within the jurisdiction of the Authority;
- the application for removal by the Applicant is a delaying tactic, and as such promotes the granting of a discretion in favour of the defaulting party;
- The fiduciary duty/confidential information claims are not so complex that the Authority cannot address them, and further that the Authority does address such issues on a regular basis.

### **Issues**

[5] The issue for determination is whether the Applicant has established grounds to remove matters to the Employment Court.

### **Background Facts**

[6] The Applicants consist of two companies, Premier Events Group Limited ("PEG") and BA Partners Limited ("BA Partners"). PEG and BA Partners are inter-related businesses which carry out business as promoters of major event Hospitality and Travel. PEG and BA Partners are both owned and managed by Mr Robert Gill, who in addition owns other companies. The claims before the Authority relate only to PEG and BA Partners but the other companies referred to above are pertinent to the determining of the claims.

[7] Since 2004, two of the Respondents, Mr Beattie and Mr Regan, were employed in senior roles in PEG and BA Partners respectively. Mr Beattie was employed as the Managing Director of PEG (until his resignation as director in 2009), and Mr Regan as Group Financial Director from 2003, and as Chief Operating Officer, BA Partners/PEG from 2006.

[8] Additionally Mr Regan's family trust, the Piccadilly Trust ("Piccadilly") was a shareholder in PEG and BA Partners.

[9] In January and March 2010 Mr Beattie and Mr Regan respectively resigned from their employment with the Applicants. Following their resignations the Applicants became aware that Mr Beattie, Mr Regan and Ms Panapa had set up a business which was allegedly in direct competition with that of the Applicants, and that it was therefore possible that the Respondents had breached the restraint of trade provisions in their employment agreements.

[10] Subsequently the Applicants made a claim in the High Court regarding breaches of the Respondent's fiduciary duties and restraint of trade provisions, misuse of confidential information, knowing receipt, and conspiracy by unlawful means. The High Court claim was followed by three claims which were filed in the Employment Relations Authority.

- i. The first claim in the Authority was that of Mr Beattie (File No: 5306290 *Malcolm Beattie v Premier Events Group Limited*), which alleges:
  - Unauthorised reductions in his salary;
  - PEG's manipulation of accounts by removing substantial management fees; and
  - Attempts by PEG to deprive Mr Beattie of sort of earnings and profits by removing profits from a potential business link with Cartan (a USA based company).
- ii. The second claim in the Authority was that of Mr Regan (File No: 5310009 *Anthony Regan v BA Partners Ltd & Premier Events Group Limited*), which is based on:
  1. Lost wages of Mr Regan;
  2. Compensation pursuant to s 123 (1)(c )(i) for humiliation, loss of dignity and injury to feelings
  3. Compensation for loss of a benefit pursuant to s 123 (1)(c )(i) for attempting to remove a potential business link with Cartan in which Mr Regan holds a 20% shareholding; and
  4. Compensation for loss of a benefit pursuant to s 123 (1)(c )(i) for the stripping out of assets from companies in which Mr Regan has a 20% shareholding.
- iii. The third claim (File No: 5212283I *Premier Events Group Limited & BA Partners Limited v Malcolm James Beattie, Anthony Joseph Regan and Patricia Panapa*) was brought by the Applicants against the Respondents and Ms Panapa alleging breaches of the restraint of trade and confidentiality provisions set out in each employee's employment agreement.

## Removal Application and discussion

### *Important Questions of Law*

*File No: 5212283 Premier Events Group Limited & BA Partners Limited v Malcolm James Beattie, Anthony Joseph Regan and Patricia Panapa*

[14] The Applicants claim breaches of important terms of the Respondents' employment agreements, including restraint of trade, obligations of confidentiality, and non-solicitation of the Applicant's customers.

[15] The Applicants say that whilst cases involving alleged breaches of confidentiality and restraint of trade provisions are not novel questions of law, in this case the question of the scope and enforceability of the restraints pleaded, and whether the restraints prevent the actions by the Respondents, are an important question of law because they will be determinative of the case. Mr Lloyd further submits in this respect that the outcome will have significant ramifications for this small industry which render it an important question of law.

[16] At first glance, I do not find that argument to be persuasive. Whether restraint of trade clauses are reasonable and enforceable, while fundamentally a question of law, are required to be determined by consideration of the factual context. As such this falls within the jurisdiction of the Authority which is an investigative body with: "*the role of resolving employment relationship problems by establishing the facts*"<sup>1</sup>.

[17] However I find this submission more persuasive in light of the arguments in support, these being firstly that the determination of the claims regarding breaches of the restraint provisions and misuse of confidentiality would be a complex task given the factual complexity of the matters at issue; and secondly that in the event that the restraint of trade clauses are found to be unenforceable the Applicant could experience significant loss, which Mr Lloyd submitted could be in the vicinity of \$10 - \$13 million. Although this estimate was disputed by Mr Eichelbaum, I accept that the amounts involved in the matter are significant, and that the outcome of the case is undoubtedly of significant consequence for the Applicant, a consideration the Employment Court held to be relevant to the assessment of the importance of questions of law.<sup>2</sup>

---

<sup>1</sup> S 156 Employment Relations Act 2000

<sup>2</sup> *New Zealand Banking Trades etc Union (Inc) v Foodtown Supermarkets Limited* [1992] 1 ERNZ 266

*File No: 5306290 Malcolm Beattie v Premier Events Group Limited*

[18] The Applicants submit that important questions of law arise in Mr Beattie's bonus entitlement claim due to the interrelatedness of the parallel High Court proceedings. While concurrent claims are not novel, the Applicants submit that important questions of law are not required to be novel<sup>3</sup>. The Applicants submit that the inter-relationship between the High Court claim and the Authority claim, and the extent to which the Authority can determine matters that are subject to the adjudication of the High Court, is an important question of law and which would be decisive of the outcome in Mr Beattie's case.

[19] It is further submitted that the question of how the bonus entitlement should be interpreted constitutes an important question of law given the complexity of the issue, the financial consequences, and the interrelatedness with the remaining matters.

[20] I accept the Respondent's submission in opposition on this point that the disadvantage grievance arising from the issue of Mr Beattie's bonus entitlement is in nature such that is regularly heard by the Authority.

[21] However what sets this particular claim apart from other cases of like nature is the reliance on the validity and performance of a contract between PEG and Cartan, determination of which is subject to High Court litigation.

[22] I further accept that there is a risk that in proceeding to determine this matter without that reliance on the outcome from the High Court, the Authority might inadvertently trespass upon the jurisdiction of the High Court. Consequently the extent to which the employment jurisdiction can determine such matters, without undermining the jurisdiction of the High Court to deal with matters at issue, constitutes an important question of law.

*File No: 5310009 Anthony Regan v BA Partners Ltd & Premier Events Group Limited*

[23] The Applicants submit that the issue regarding whether Mr Regan's shareholding was an implied term and condition of employment, is a novel and important question of law. I do not accept that this is the case and note that the Respondent in opposition submits that the shareholding was not an implied term of employment but arose as an oral

---

<sup>3</sup> *Hanlon v International Educational Foundation (NZ) Inc*[1995] 1 ERNZ 1

inducement to accept employment, thus that it constitutes an integral part of the employment agreement.

[24] I find more significant the Applicant's submission that an important question of law arises in respect of whether the Authority can determine matters based on shareholder entitlement and oppression, especially in the situation in which those shares are held by Mr Regan's family trust rather than by Mr Regan personally, which are fundamental matters of Company Law and fall within the jurisdiction of the Companies Act 1990 and the High Court.

***In all the circumstances, the court should determine the matter***

[25] Although there were three separate Statements of Problem filed with the Authority, all three claims share a common factual matrix, and all three are subject to parallel proceedings in a complex High Court claim. All three will involve the presentation of complex expert evidence in both the Employment and the High Court jurisdictions.

[26] The Applicants submit that the complex expert evidence would be better addressed by the Employment Court Regulations, given that these are closely aligned to the High Court Rules regarding the same.

[27] In addition, it is submitted that the Authority would be unable to determine quantum until such time as a valuation of the Applicant's companies has been determined by the High Court. Of itself, this latter submission I do not find constitutes a ground for removal to the Employment Court since it could be addressed by having the quantum of any remedies determined to be appropriate by the Authority held in abeyance until the High Court judgment crystallised the valuation of the Applicant's companies.

[28] The Applicants further submit that in light of the importance of the matters to the parties and the quantum at issue, it is inevitable that any determination of the Employment Relations Authority will be appealed to the Employment Court. The Respondents oppose this argument for removal on the basis that the future course of any litigation cannot be predicted with certainty.

[29] While the possibility of a challenge to the Authority's determination is not usually a factor in deciding the issue of removal, I find that in these particular proceedings various factors including the complex nature of the expert evidence, the importance of the matters to the parties, and the quantum involved, all act as powerful

indicators as to the likelihood that a determination of the Authority would be appealed on a *de novo* basis to the Employment Court<sup>4</sup>. On this basis it would be cost effective to have the matters heard in one forum.

### **Determination**

[30] Complexity of issues in a matter is not, of itself, sufficient to justify an employment relationship problem being removed to the Employment Court. However I am satisfied that important questions of law may arise other than incidentally in relation to these associated matters.

[31] I have given consideration to the Authority retaining jurisdiction over the claims of Mr Beattie and Mr Regan in respect of a wage reduction, but accept that determination of these matters, relying almost exclusively on parol evidence, will involve assessments of credibility. As such assessments which would require access to the whole matrix of dealings between the parties which would not be possible in the situation in which determination of the major part of the matters lies with the Employment Court, it is appropriate for removal of the matters to be made in totality.

[32] I am satisfied that it is appropriate for the Authority to exercise its discretion to remove in accordance with s. 178(2)(d) of the Act. In all the circumstances the Employment Court should determine these matters. I order that the whole employment relationship problems between the Applicants and the Respondents be removed to the Employment Court.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**

---

<sup>4</sup> *Auckland DHB v X (No 2)* [2005] ERNZ 551 at 563