

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 52
5429177

BETWEEN

ROBYN VOSS
Applicant

A N D

REGENT INTERNATIONAL
EDUCATION GROUP
LIMITED
Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person
E G McWatt, Counsel for Respondent

Date of Oral 13 February 2014

Determination:

Date of Determination 14 February 2014

ORAL DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This is an oral determination about the late admission of evidence. During closing submissions the respondent sought to file further evidence. The evidence was an affidavit of Zhaoxn Zhu sworn 12 February 2014. The affidavit details contract work by Ms Voss in February 2013. It alleges she did further work in April 2013 during her employment with the respondent.

[2] The respondent submits the affidavit should be accepted as it is relevant and raises subsequently discovered misconduct by Ms Voss. At hearing Leo Lee, the respondent's managing director and sole shareholder, told the Authority he had found emails about this conduct two to three days prior to hearing. The emails were produced at hearing between Ms Voss, Mr Zhu and another employee.

[3] Counsel submits Mr Lee did not appreciate the significance of the emails and affidavit which was why they were produced so late. There was no explanation as to why the affidavit was not sought earlier or an adjournment of hearing to do so.

[4] Ms Voss objects to the late acceptance of this evidence. She disputes it, would need to file further evidence and require a further hearing.

[5] Timetabling directions for the filing of the respondent's evidence were made in December 2013. The respondent's evidence was to be filed by 13 December 2013 and 9 January 2014. This timetable had been extended at the respondent's request.

[6] There was no explanation for why this information was not discovered earlier in preparation for hearing. The respondent knew about Mr Zhu's dispute with Ms Voss two to three days prior to hearing. This evidence was reasonably available for production at hearing or an adjournment sought to do so. All evidence was heard on 30 to 31 January 2014. Today's hearing was for submissions only with a determination to be issued thereafter. Mr Zhu's evidence is inconclusive and disputed. It did not greatly assist the Authority in reaching a conclusion about the issue of subsequently discovered misconduct. To admit it would result in more costs and delay.

[7] For the above reasons, the Authority declines to accept the evidence.

T G Tetitaha
Member of the Employment Relations Authority