



- a. transcripts of a number of five audio recordings that Mr Hardeep Singh (the complainant in this matter) secretly recorded on his mobile phone around December 2013;
- b. the evidence of Mr Varinderjit which is proposed to be given by phone because he is currently living in India.

[3] The Authority has a wide discretion under s.160(2) of the Employment Relations Act 2000 (the Act) in terms of its equity and good conscience jurisdiction to take into account evidence and information whether or not it is strictly legal evidence.

[4] I also have regard to the principles of the Evidence Act 2006 (EA06) in terms of guiding the Authority's exercise of its equity and good conscience jurisdiction in this matter, whilst recognising that the EA06 doesn't cover the Authority.

[5] I accept Mr Sharma's submissions that there are concerns about the nature and quality of the recordings. The recordings were all done secretly. The quality of the recordings is said to be poor. They involved a number of unidentified people and had background music playing. A number of different languages were spoken by the participants.

[6] The recordings are undated and there are no time codes on the transcript. In many places the transcript notes the discussion was inaudible so could not be transcribed. The translator/transcribe notes the audios had garble and muffled voices. There is no context for the recordings and none of the speakers identify themselves.

[7] I am concerned that the recordings are too unclear and therefore unreliable to admit as evidence. I am also not satisfied that the information they contain is probative.

[8] It appears that the Labour Inspector may wish to rely on assertions that Mr Hardeep Singh (who did the secret recording) made during his various conversations but I consider these comments to be self-serving in that he appears to have set out to obtain evidence to assist him in pursuing legal proceedings. There is no 'smoking gun' in the transcripts that I consider would assist the Authority with the matters it is determining.

[9] For these reasons I determine that the transcript and secret recordings are inadmissible.

[10] I do not agree with Shama and Sons that Mr Varinderjit Singh should not be admissible because he is not available to give his evidence in person. Mr Varinderjit lives in India and the labour Inspector has advised that the nearest video conferencing facilities are a 5-6 hour drive away and are not open (due to timezone differences) during the hours the Authority would be sitting.

[11] Mr Varinderjit Singh has filed a signed statement so I am satisfied he has relevant evidence. He has agreed to make himself available by telephone to answer questions about his statement. I consider this is an appropriate way to proceed in the circumstances given there are no other suitable alternatives for taking his evidence.

[12] The parties may address the Authority in closing submissions on the weight to be given to Mr Singh's evidence given he was not seen in person.

[13] I determine that Mr Vanderjit Singh's evidence shall be taken by telephone for the upcoming investigation meeting.

### **Costs**

[14] I consider that each party has had an equal measure of success so costs should lie where they fall. I therefore decline to award costs in respect of this application.

**Rachel Larmer**  
**Member of the Employment Relations Authority**