

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2018] NZERA Auckland 273  
3027591

BETWEEN EFTPOS SPECIALISTS (BAY  
OF PLENTY) LIMITED  
Applicant

A N D HEATHER MCCARTHY  
Respondent

AND POS MATE LIMITED  
Proposed Second Respondent

Member of Authority: Nicola Craig

Representatives: Callum McLean for the Applicant  
Warwick Reid for the Respondent  
No appearance for the Proposed Second Respondent,  
POS Mate Limited

Investigation Meeting: On the papers

Date of Determination: 24 August 2018

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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- A. POS Mate Limited is joined as Second Respondent to this proceeding.**
- B. Eftpos Specialists (Bay of Plenty) Limited is to file an amended statement of problem reflecting its claim against POS Mate Limited within 7 days of the date of this determination.**
- C. POS Mate Limited is to file its statement in reply within 7 days of the receipt of the amended statement of problem.**
- D. POS Mate Limited is to file its witness statement/s and any relevant documents by 17 September 2018.**

### **Claim by Eftpos Specialists (Bay of Plenty) Limited and the response**

[1] On 9 April 2018, Eftpos Specialists (Bay of Plenty) Limited (EftPos (BOP) or the company) filed an application in the Authority claiming that Heather McCarthy had breached confidentiality, non-solicitation and restraint of trade clauses in her employment agreement with Eftpos BOP.

[2] Ms McCarthy denies any liability to Eftpos BOP.

### **Case management conference and application for joinder**

[3] At a case management conference held by telephone on 17 July 2018 Eftpos (BOP) indicated that it was considering making an application to join Ms McCarthy's current employer POS Mate Limited (POS Mate) to this proceeding.

[4] An application was subsequently filed to that effect. Ms McCarthy does not oppose the application.

[5] The application for joinder, along with the statement of problem, statement in reply and two minutes from the Authority, were served on POS Mate's registered office on 30 July 2018. A further letter dated 15 August 2018 was also sent by the Authority to the registered office noting the lack of receipt of a response from POS Mate.

[6] The Authority's minute of 27 July 2018 indicated that it was anticipating making the decision regarding joinder on the papers. No objection was received.

### **No response from POS Mate Ltd**

[7] POS Mate was given until 14 August 2018 to file anything in response to the joinder application. Nothing was received by the Authority. I am satisfied that POS Mate has received notification of the joinder application.

### **Determination**

[8] The Authority is an investigative body which has the role of resolving employment relationship problems according to the substantial merits of the case

without regard to technicalities. This is set out in s 157 of the Employment Relations Act 2000 (the Act).

[9] Under s 221 of the Act:

In order to enable the court or the Authority, as the case may be, to more effectually dispose of any matter before it according to the substantial merits and equities of the case, it may, at any stage of the proceedings, of its own motion or on the application of any of the parties, and upon such terms as it thinks fit, by order, –

(a) Direct parties to be joined or struck out...

[10] Eftpos (BOP) applies to join POS Mate as an additional respondent in this proceeding. POS Mate is Ms McCarthy's current employer, becoming so within a couple of weeks of her employment with Eftpos (BOP) finishing. Both companies are in the same business field of point of sale and payment providers and solutions.

[11] Ms McCarthy's employment agreement with Eftpos (BOP) contained clauses regarding confidentiality, non-solicitation of employees and restraint of trade. The claim against Ms McCarthy relates to customers who, it is alleged, moved from Eftpos (BOP) to POS Mate after Ms McCarthy began employment with POS Mate. There is also a claim that Ms McCarthy approached an employee of Eftpos (BOP) to discuss a job opportunity with POS Mate.

[12] Eftpos (BOP) alleges that POS Mate aided and/or abetted Ms McCarthy's breach of her employment agreement with Eftpos (BOP)

[13] I am satisfied that POS Mate should be joined as second respondent to this proceeding, in order to allow the clearly related claim against POS Mate to be investigated with the claim against Ms McCarthy.

[14] EftPos (BOP) is directed to file an amended statement of problem, reflecting its claim/s against POS Mate Limited, within **7 days** of the date of this determination. Given that POS Mate has had notice of Eftpos (BOP)'s claim against Ms McCarthy for over three weeks, I am abridging the time for the filing of POS Mate's statement in reply. POS Mate is directed to file a statement in reply within **7 days** of receipt of the amended statement of problem.

[15] Ms McCarthy is not required to file an amended statement in reply.

[16] The timetable for the filing of evidence prior to the **1 to 3 October 2018** investigation meeting is set out in the minute of 19 July 2018. POS Mate Limited shall have until **17 September 2018** to file its witness statements and any relevant documents.

Nicola Craig  
Member of the Employment Relations Authority