

C. Costs are reserved.

What is the employment relationship problem?

[1] Plastic Machinery Works Limited (PMW or the company) is the sole distributor in New Zealand under sole agency agreements for plastics machinery from certain international suppliers.

[2] From 2013 Darryl de Billot worked as a trained service technician for PMW. He and the company are in dispute about the nature of their agreement in terms of whether Mr de Billot was promised a shareholding in PMW. This is the subject of High Court proceedings.

[3] Mr de Billot was made redundant by PMW in August 2020. He has lodged a claim in the Authority.¹

[4] PMW claims that Mr de Billot has breached confidentiality obligations still owed to it and has failed to return company property. Mr de Billot denies both allegations, saying that he is operating his own business but not using PMW's information and that he returned all the PMW property that was still in his possession at the time he finishing working there.

[5] The interim orders sought were heard. Consideration was given to whether some or all of Mr de Billot's claim could be heard as part of the matters to be dealt with by affidavit evidence but ultimately it was decided they should not.

[6] Due to Auckland being in Covid-19 Alert Level 3, in-person investigation meetings were not able to be held and there were difficulties getting evidence sworn. On 13 October 2021 meetings by Zoom and phone were held in the presence of Ms England-Hall for PMW, with the affidavits of collections agent Aaron Sewell, computer analyst Cameron Hansen-Beadle and PMW Australia's service manager Thomas Rostig affirmed.

[7] An investigation meeting was held by Zoom on 14 October 2021 to hear submissions and affirm remaining affidavits. The further affidavits of Jeffrey Powers (PMW's managing director) and Mr de Billot's affidavit were affirmed at that meeting.

¹ File no 3119953.

Mr Powers' first affidavit and an affidavit from computer analyst Michael Chappell had already been sworn and affirmed.

[8] As is usual, I have dealt with this application for interim orders on the basis of untested evidence and submissions. Disputed matters cannot be decided on the basis of such evidence.

[9] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded everything received from the parties but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

Should non-publication orders be made?

[10] PMW sought non-publication orders regarding the names of its clients and suppliers including any contact people, and any identifying details. This order was not opposed by Mr de Billot.

[11] PMW's clients and suppliers are not directly involved in this proceeding to date and at least some may not be aware of it. I order that on an interim basis until further order of the Authority, the names and identifying details of PMW's customers and suppliers along with contact people in those businesses not be published.

What are the issues?

[12] PMW seeks:

An interim injunction requiring the respondent to comply with clause 10.1 of his individual employment agreement, which prohibits the respondent from using, disclosing or distributing, otherwise than as necessary for the proper performance of his duties under his employment agreement, confidential information belonging to PMW, including technical information, manuals, price lists, supplier contacts and information, client requirements and specifications, in order to attempt to divert the sale and servicing of plastic machinery parts and equipment away from PMW or to damage its business interests.

[13] The issues for determination at this interim stage are:

- (a) Is there a serious question to be tried that Mr de Billot breached his confidential information obligations to PMW?
- (b) Where does the balance of convenience lie?

- (c) Where, standing back and considering the case, does the overall justice lie until the substantive matter is determined?²

[14] Initially an interim compliance order was sought but that claim was withdrawn.

[15] Claims for permanent orders regarding confidential information and property, damages and penalties remain to be resolved later, along with Mr de Billot's claims.

What does PMW do?

[16] As well as supplying plastic machinery, PMW serviced its customers' plastic machinery in support of its sole agency agreements with suppliers.

[17] Mr de Billot worked principally from a home office, resulting in him storing company equipment and information at home. He refers to using both PMW and his personal computers for work although Mr Powers says he was not aware of this.

[18] Since Mr de Billot's departure PMW in New Zealand does not employ any employees. Mr Powers works in the sales and support role. Technical servicing is provided from Australia where a related company employs three technicians.

What did the employment agreement provide?

[19] The employment agreement between PMW and Mr de Billot contains the following confidential information requirements at clause 10.1:

The Employee shall not, whether during the currency of this agreement or after its termination for whatever reason, use, disclose or distribute to any person or entity, otherwise than as necessary for the proper performance of their duties... any confidential information, messages, data or trade secrets acquired by the Employee in the course of performing their services under this Agreement. This includes, but is not limited to, information about he the Employer's business.

[20] The agreement also contains an obligation to return all PMW information and property on termination of employment.³

² For example, *NZ Tax Refunds v Brooks Homes Limited* [2013] NZCA 90 and *Western Bay of Plenty District Council v McInnes* [2016] NZEmpC 36.

³ Employment agreement, clause 12.2.

[21] The employment agreement does not include a broad restraint of trade provision preventing work in the same field nor a specific non-solicitation provision stopping Mr de Billot from doing business with PMW's clients.

What happened in the lead up to Mr de Billot's departure?

[22] PMW had initiated a restructuring exercise with a week's consultation period from 11 August 2020. The company proposed to disestablish Mr de Billot's position and replace it with an independent contractor role. Mr de Billot notes that this came after he questioned the situation regarding his shareholding.

[23] On 24 August 2020 Mr Powers had a discussion with Mr de Billot, informing him that his job was redundant. This was confirmed by letter, giving one month's notice. Mr de Billot chose to be paid in lieu.

[24] It appears that a schedule of equipment which Mr Powers understood to be in Mr de Billot's possession was attached to the dismissal letter. In addition Mr Powers asserts that Mr de Billot possessed company information including supplier contact information, technical manuals and requirements. These were not listed in that schedule.

What happened in 2020 after Mr de Billot's departure?

[25] Mr Powers claims that the day after he was notified of his termination Mr de Billot deleted sales invoices from the Xero accounting system of over \$10,000 value, as well as forwarding copies to his own personal email address. Mr de Billot denies these things.

[26] The following day, 26 August 2020, Mr Powers arranged for the Xero password to be reset and Mr de Billot's use of the PMW email address, Google Docs account and phone to be removed.

[27] The parties fell into disagreement about the return of property. Lists of property claimed and property held were exchanged. Eventually PMW hired a collection agent and, after some objection from Mr de Billot, the company car was returned.

[28] On 5 September 2020 Mr Powers notified Mr de Billot in writing that he was concerned Mr de Billot was attempting to steal his agencies and that he should stop

contacting the suppliers. A police report was filed. A further list of property Mr Powers regarded as outstanding was sent to Mr de Billot's employment lawyer.

[29] The two lists included equipment and computers. PMW identifies that a hard drive contained a copy of all of PMW's entire electronic file system including tax returns, customer account details, technical service documents and specifications and manuals. A collection agent later picked up some tools and equipment which Mr de Billot agreed to provide.

[30] After his termination Mr de Billot serviced machines where requested by specific clients. Mr Powers says this required the use of confidential information including manuals, technical drawings and specialised equipment, which Mr de Billot disputes. As detailed below, Mr de Billot denies this. Mr de Billot set up his own company, DDB Services Limited.

[31] On 10 September 2020 there was contact between Mr de Billot and a company referred to as A, which was a PMW customer. A attempted to deal with Mr de Billot for the supply of plastic machinery. Mr Powers claims that Mr de Billot was relying on confidential information about a proposed order for machinery which he was aware of through his role at PMW. Mr de Billot's evidence is that A contacted him, asking for technical assistance as they had contacted Mr Powers and not been able to get an answer.

[32] On 25 September 2020 PMW's employment lawyer wrote to Mr de Billot's employment lawyer advising that the company regarded him as being in breach of his employment agreement. An undertaking was sought but not offered.

[33] On 7 October 2020 Mr de Billot's friend brought some equipment to PMW.

[34] Mr Powers refers to taking steps to minimise the risk to the business by contacting clients and suppliers to confirm arrangement going forward and secure sales transactions that were pending. Client A's deal was processed through PMW as sole distributor with the company seemingly not suffering any direct loss.

What happened in 2021?

[35] In June 2021 Mr de Billot sought a quote from PMW's supplier B for equipment for C, a PMW client. He claims that C approached him, providing the original quote to

reference, which is why he was able to provide details to request an updated quote from B. B provided a quote to Mr de Billot.

[36] The client C contacted B directly indicating it wanted to deal through Mr de Billot. B contacted PMW to say C had been in touch. Mr Powers contacted the client and arranged for the sale to occur through PMW. Mr Powers believes that Mr de Billot's actions may jeopardise his relationship with his supplier B and his client C.

[37] Mr de Billot contacted another client of PMW, D, according to Mr Power attempting to get involved in quotes for new and second hand machines, which Mr Powers was already discussing with the client and supplier. Mr Powers claims Mr de Billot could only do this with knowledge of the client's requirements from information obtained from his work with PMW. Mr de Billot accepts that he dealt with D but denies using any confidential information. He claims that he instead used the machine specifications which the client had with its machine.

[38] Mr Powers is particularly concerned that Mr de Billot is attempting to jeopardise PMW's relationship with its supplier B. However, Mr de Billot owes no duty of fidelity to PMW any longer and subject to not breaching any other obligations he is entitled to seek to take away business from PMW.

What is Mr de Billot's business?

[39] Mr de Billot is the only New Zealand based qualified injection moulding technician for two brands. PMW has sole distributorships for the plastic machinery manufacturers but that does not prevent a third party from servicing the machines.

[40] Mr de Billot admits having now having many customers in his new business that he used to work with when at PMW. He approached some, he says using publicly available information and requesting contact details of those who he dealt with previously, to inform them he was going out on his own. Some former customers contacted him, including via social media.

[41] Mr de Billot is aware that he was not an agent for the suppliers which PMW has a sole distribution agreement with and is not authorised to obtain quotes or sell parts or machinery here. If he orders parts or machinery from suppliers for whom PMW is the agent, the company gets the commission.

[42] Mr de Billot denies using any of PMW's confidential information in his dealings with clients or suppliers.

What happened with devices?

[43] Mr de Billot had several PMW computers, laptop and desktop, from his work at home.

[44] Mr de Billot, via his friend returned a Dell computer to PMW. Mr Powers says the computer returned was not the computer PMW provided to Mr de Billot. After some time Mr de Billot returned what appeared to be the correct computer but Mr Powers says when he opened it, it did not have the correct hard drive. Rather it had a replacement hard drive which was not the drive Mr Powers installed and which contained no files. Mr de Billot disputes that a replacement hard drive was given to PMW. Mr Powers says that a copy of PMW's entire electronic file system could be saved on the hard drive.

[45] Similarly with Mr de Billot's work mobile phone, whereby he gave one phone to the collection agent but it was not the right one. His friend dropped off the correct one almost three weeks later. Mr Powers thought this was to allow Mr de Billot more time to access information although it does not appear that the phone was analysed in order to establish this.

[46] Mr Powers believes the references and return of different computers and phones were done to cause confusion and allow Mr de Billot more time to access information on or through the devices. On the other hand it seems possible that if Mr de Billot was using the devices to extract PMW information that could have been done rather more quickly than the time which elapsed here. That may suggest other reasons.

What about the electronic files?

[47] The current evidence is that PMW's file system is a cloud based Google Drive which is accessible by individual accounts with a login based on a PMW email address and a password. It can be accessed from any computer as long as the user has the account. While a user has access it is possible to copy information permanently to the device's hard drive or potentially share it with other cloud-based services such as One Drive.

[48] Mr Powers identifies that in August 2021 he discovered what appeared to be Mr de Billot accessing a One Drive account, with his PMW email address as the user name. Mr Powers received an email to Mr de Billot's work email address advising that the One Drive was full. Mr Powers had been monitoring that email address since Mr de Billot finished. The One Drive account had been set up whilst Mr de Billot was employed without Mr Powers' knowledge.

[49] Mr Powers regards a number of the files or folders on the One Drive account as containing confidential information. This includes technical information to assist PMW technicians to fix problems. At least some documents show Mr Rostig, PMW's lead technician, as the creator of the documents.

[50] Mr Powers also identifies that Mr de Billot appears to have copied PMW's terms of trade and PMW's client/supplier phone and email contacts from his work phone are stored on the One Drive account.

[51] After Mr Powers received the email about the OneDrive account he changed the password to remove any access by Mr de Billot.

[52] Mr Hansen-Beadle examined a Microsoft 365 account, using Mr de Billot's PMW email address as login, and the OneDrive storage application within that account. In the Microsoft account he found a folder named "Desk Jun 2021". Within it was a sub-folder called "Technical Info Folder". Those folders were dually created on 31 May 2021, meaning they were copied onto the OneDrive on that date.

[53] Mr Hansen-Beadle finds it likely that the "Technical Info" sub folder was within the parent "Desk Jun 2021" folder when copied to the Microsoft application on 31 May as the timestamp shows both folders were created within the same minute timestamp. This does not help to establish where the "Technical Info" folder was located prior to 31 May 2021.

[54] Mr Hansen-Beadle reviewed a PMW terms of trade electronic document within "Desk Jun 2021", finding it to be created in Mr Rostig's system before 17 June 2017. It had been modified on the de Billot system on 23 March 2021. A sample of files from inside "Desk Jun 2021" have the creator as Mr Rostig whereas a sample from outside that folder have Mr de Billot as the creator.

[55] Mr Hansen-Beadle found what appear to be six attempts in August and September 2020 to reset the password for the account.

[56] Mr Hansen-Beadle's view on balance is that the folders and files of concern ("Desk Jun 2021" and "Technical Info Folder") came into being on the Microsoft account while under the access and control of Mr de Billot on 31 May 2021.

[57] Mr Rostig describes the "Technical Info" documents as included material compiled by PMW technicians to use as a reference when working on customer's machines. It comprises manuals which customers receive with machines and printed manufacturer's information from training manuals in a concentrated electronic form including customer specific electrical drawings, hydraulic diagrams and machine data sheets. Some of this information is from training manuals for technicians. Additional documents were written locally with specific instructions for machinery by technicians for technicians only.

[58] Mr Chappell examined Mr Hansen-Beadles report. He notes that every Microsoft Office 365 account has, by default, a OneDrive account. He identifies some limitations to Mr Hansen-Beadle's report. These include not showing what computer had user profiles, who was using the OneDrive account associated with Mr de Billot's PMW email address and what device was used to modify the folders or files on the OneDrive account. The report demonstrates that PMW had access to that OneDrive account and could have accessed the files using that account. The report does not indicate any forensic examination of the computers themselves.

[59] The proposition that the OneDrive account could have by default synchronised with PMW's office accounts is rejected by Mr Powers on the basis that PMW uses a cloud based Google Drive to store its information, not Microsoft 365.

[60] Mr de Billot accepts supplier technical documents, drawings and manuals are not available to the public but says he does not need them as clients have their own copies when he goes to service their machines. He says he does not need PMW's information about client requirements as they tell him what those are.

[61] Mr Powers disputes this, saying that the customer gets a manual that describes the function of the machinery for the end user, without sufficient information for a technician to fix the machine. The technical information is held by PMW and was saved in the "Technical Info" folder on the PMW Google Drive.

What is in dispute?

[62] The order sought by the applicant is focused on requiring the respondent to comply with clause 10.1 of his employment agreement prohibiting the use, disclosure or distribution of PMW's confidential information.

[63] There is no dispute that Mr de Billot is bound by the obligation in his agreement so far as he has any confidential information. PMW relies heavily on inferences which it says should be drawn from Mr de Billot's conduct regarding delays in returning property, especially computers, and the forensic evidence suggesting Mr de Billot was accessing and moving PMW data.

[64] However, even if inferences were drawn and there is sufficient evidence of breach/es, it must still be established that the information PMW is concerned about is confidential information.

What can be protected by confidential information provisions?

[65] The recent decision of Associate Judge Bell in *Donovan Group NZ Limited v Reid* provides a useful summary and guidance on the breach of confidence claims, noting the distinction between what can be done during employment and after:

- (i) Employer's confidentiality claims must be stated clearly so that the employee is free to use non-confidential know-how gained while working for the employer;
- (ii) The use of information will only be restricted post-employment when it amounts to a trade secret or is so confidential that it requires the same protection as a trade secret;
- (iii) The information claimed as confidential must have been imparted to the employee in confidence;
- (iv) To be confidential the information must be confidential to the employer and not merely to the customer. It must be confidential as against the customer. The employer cannot, after employment, prevent the employee from

disclosing it to the customer or the customer from doing the same to the employee;⁴ and

- (v) Generally former employees are entitled to contact former customers or suppliers of the employer, with information about key people not being confidential once employment has ceased.⁵

[66] The need for specificity in an injunction was emphasised in *Nedax Systems Limited v Waterford Security Limited*.⁶ The wording sought by PMW is broad in the sense that it refers generally to confidential information, although going on to say that includes specific types of material and adding that the prohibition would be where use relates to attempts to divert the sale and servicing of plastic machinery parts and equipment away from PMW or damage its business interests.

Is there an arguable case?

[67] The threshold for an arguable case is low.

[68] Mr de Billot's current work involves him dealing with PMW's customers. There is nothing in the way of a restraint of trade to prevent this in itself. What needs to be focused on is whether there is an arguable case that Mr de Billot has access to confidential information and has breached his duties regarding such information.

Technical manuals and drawings

[69] A key focus here is the "Technical Info" folder. This was found in the de Billot OneDrive account accessible with his PMW email address as username. The information contained is arguably confidential in that technical material compiled by technicians as reference material, drawings and diagrams. Although arguably some may be the suppliers' information, Mr Rostig's evidence supports the folder including material written locally by technicians. The information was available only to employees.

[70] From the forensic report that folder was transferred on 31 May 2021 well after Mr de Billot's employment finished. He denies any knowledge that that information

⁴ *Nedax Systems NZ Ltd v Waterford Security Ltd* [1994] 1 ERNZ 491.

⁵ *Donovan Group NZ Limited v Reid* [2020] NZHC 3367, including references to *Nedax Systems NZ Ltd v Waterford Security Ltd* as above.

⁶ *Nedax Systems NZ Ltd v Waterford Security Ltd*, as above.

was available to him and says he did not access it. I accept that there is an arguable case on that via technical information or manuals in the form of the “Technical Info” electronic file, Mr de Billot may be using technical information accumulated by PMW which it is entitled to protect as confidential information and goes beyond what customers have regarding their own machines. Whether customers hold sufficient information about the machines they own will need to be decided later as it is disputed.

[71] I have considered whether other technical information and manuals can be considered confidential information. Mr Powers refers to Mr de Billot having supplier technical documents, drawings and manuals for the sales and servicing of machinery and parts. Little further evidence is provided on these. The fact they are referred to as suppliers’ documents, makes it questionable whether they are PMW’s confidential information. I have insufficient evidence on which to find an arguable case established regarding any further material in this category.

Contact information

[72] There are restrictions on former employees taking lists of contacts when leaving employment. The OneDrive held a list of contacts from Mr de Billot’s phone but he identifies it as being an old list from around 2017.

[73] Given the nature of the job and industry it is credible that Mr de Billot was able to recall the names of at least key contacts in supplier and client organisations. He says he also used publicly available means such as companies’ websites to make contact or using the first name/last name pattern for names followed by the company’s web address to make email contact. In addition he is friends on social media with some people and contact was made that way.

[74] It is also credible that clients would want to deal with Mr de Billot who they previously dealt with for some years and who has technical expertise. He is entitled to exploit that expertise in his own business. PMW may wish to prevent any contact between Mr de Billot and its customers but that is not sufficiently provided for in the employment agreement.

[75] Even, as Mr Powers’ claims, there is confusion amongst suppliers or customers regarding whether Mr de Billot currently works for PMW or someone else, that does not of itself provide a basis for establishing that he has breached his confidential information obligations.

[76] Former employees not on restraint of trade or non-solicitation provisions are generally entitled to contact former clients or suppliers.⁷ I am not persuaded that PMW has an arguable case that Mr de Billot breached any obligation in relation to confidential information in this regard.

Client order information

[77] PMW asserts that Mr de Billot relied on confidential information about a specific proposed deal for client A which he was aware of through his PMW role. However, the email trail shows that the client contacted Mr de Billot. Mr de Billot says he was contacted for technical advice, which fits with the email and is not contradicted in Mr Powers' reply evidence. In any event the deal was processed through PMW.

[78] Regarding client C, Mr de Billot states that it was the client who provided him the information. He was then able to present it to a supplier.

[79] Whilst Mr Powers may have been annoyed about Mr de Billot's involvement with PMW's clients, PMW cannot prevent clients providing their own information to Mr de Billot. There is no arguable case on this point.

Information about supplier agreements and pricing

[80] PMW's exclusive distributorships are known in the industry. Mr de Billot is entitled to approach suppliers for pricing and if they chose to provide it, it is not PMW's confidential information.

Conclusion

[81] In summary there is an arguable case but only as regards technical information and manuals in the electronic "Technical Info" folder.

What is the balance of convenience?

[82] I now move on to weigh the interests of PMW against those of Mr de Billot, including a consideration of the adequacy of damages.

⁷ *Donovan Group NZ Limited v Reid* as above, referring to *Nedax Systems NZ Ltd v Waterford Security Ltd* as above.

PMW

[83] If PMW loses its sole agency Mr Powers describes that the whole business could be in jeopardy. It earns a substantial amount of revenue from its agency relationship. He does not consider that the harm could be adequately remedied by damages.

[84] Mr Powers is concerned that its supplier may get tired of the difficulties between PMW and Mr de Billot and may end up giving the agency rights in New Zealand to another company entirely, not involving Mr Powers or Mr de Billot. PMW is also concerned about the damage to its reputation if it loses the agency.

[85] However, Mr Powers and Mr de Billot are in agreement that PMW has the appropriate distributorship or agencies in New Zealand for the key suppliers and that if Mr de Billot makes sales of machinery or parts via customers, those sales will need to be processed through PMW with the company presumably receiving a benefit.

[86] The risks to PMW seem longer term. Mr Powers has confirmed that key suppliers are still supporting him and he is taking steps to shore up his business and maintain good relationships with customers. Longer terms it is feasible that such an arrangement could result in the supplier looking elsewhere for a distributor.

[87] Damages may be an adequate alternative as regards any losses suffered by PMW in terms of parts or machinery which if it would have received a higher profit had Mr de Billot not been involved. Mr de Billot's ability to meet any order for damages is not clear. Also, the risk of loss of reputation and agencies may be more difficult to adequately compensate.

Mr de Billot

[88] I now look at any detriment which Mr de Billot would or could suffer if orders are made against him.

[89] Orders requiring Mr de Billot to stop contacting or servicing customers would be likely to have a serious effect on his new business which is based on his specialist skills and expertise. That would be a substantial hardship and the effect on Mr de Billot and his family may be difficult to compensate by damages.

[90] A more limited order regarding PMW's technical information should not have that serious effect. Given that Mr de Billot says he does not need PMW material as

clients supply him material, an order preventing him using any PMW material he still holds should not be a heavy burden.

Conclusion on the balance

[91] Although more possible than actual, there are risks to PMW. The balance, on the basis of a limited order, favours PMW.

Where is the overall justice of the case?

[92] In terms of the merits, I would not categorise PMW's case as extremely strong. It is arguable Mr de Billot had access to both paper and computer information and may still do so, but PMW will need to establish that the information used was truly confidential and its own, rather than the client's own information, to undertake the work he has been doing. That said, further computer forensic work may provide more evidence.

[93] A broad order may have impacted third parties, as Mr de Billot is the only qualified injection moulding technician, as regards the products of two PMW suppliers, in New Zealand. However, on the basis of Mr de Billot's evidence that he only needs the information held by clients to undertake the servicing work, a limited injunction should not affect third parties.

[94] PMW is seeking a broad order which could be seen as attempting to prevent competition when there were no restraint of trade or non-solicitation provisions in the employment agreement it provided. PMW also chose to declare Mr de Billot redundant, he argues because he had raised concerns about not having received what he saw as his promised shares in PMW.

[95] On the other hand, on the face of Mr Powers' evidence Mr de Billot deleted invoices and sent these invoices to his own email during his notice period. He may have been also have retained company computer equipment and accessed information remotely after his termination. These are matters which will need to be decided as part of the substantive investigation.

[96] Mr Powers, becoming aware in 2020 that there were problems with property and Mr de Billot doing work for a PMW client on his own account, chose not to initiate

legal action. It was only in 2021, about a year after the dismissal, when he became aware of further dealings with clients/suppliers that he decided to proceed.

[97] Weighing all of the above, in conclusion, an interim injunction should be issued on the limited basis outlined above, adopting wording sought by PMW.

[98] I order that on an interim basis, until this matter can be heard and determined, Darryl de Billot not use, disclose or distribute any of PMW's confidential information in the "Technical Info" electronic folder, in so far as that is done in order to divert the sale and servicing of plastic machinery parts and equipment away from PMW or to damage its business interests.

Costs and next steps

[99] Costs are reserved.

[100] An Authority officer will be in contact with the parties to make arrangements regarding a case management conference to discuss the next steps in this proceeding.

Nicola Craig

Member of the Employment Relations Authority