

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2021] NZERA 85
3065033
3088052

BETWEEN

WEI JACK HU
Applicant

TOPSTAR NEW ZEALAND
TRADING LIMITED
Respondent

TOPSTAR NEW ZEALAND
TRADING LIMITED
Applicant

AND

WEI JACK HU
Respondent

Member of Authority: Marija Urlich

Representatives: Paul Young, for the Applicant
Mere King, for Respondent

Investigation Meeting: 24 and 25 November 2020

Submissions and further
information received: 26 November, 3 and 7 December 2020

Determination: 4 March 2021

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Hu was employed by Top Star New Zealand Trading Limited (Topstar) as a sales representative selling automotive parts, including auto clips, from 3 September

2018 until his dismissal effective 24 November 2018. Mr Hu says his dismissal was unjustified because the mechanism Topstar purported to use for his dismissal, a trial period, was not effective in law and the substantive reasons for his dismissal are unfair and unreasonable. Mr Hu says the restraint provisions in the employment agreement are not binding and not reasonable and, in any event, the terms of the employment agreement are unenforceable because he could not understand it when he signed it, he did not receive a copy on request and he did not receive any consideration for the restraint.

[2] Mr Hu seeks reimbursement of lost wages consequent to his dismissal, compensation for humiliation, loss of dignity and injury to feelings, public holiday pay for working Labour Day 20 October 2018, unpaid termination holiday pay, penalties for failing to provide a copy of his employment agreement on request and Holidays Act 2003 breaches, a third of which to go to him, and costs.

[3] Topstar rejects the claim Mr Hu raised a personal grievance within the statutory 90 day timeframe and does not consent to the personal grievance being raised out of time. Topstar opposes leave to raise the grievance out of time. It says it is not liable to pay any remedies to Mr Hu and rather, Mr Hu is liable to pay Topstar damages. Topstar says Mr Hu competed with it in breach of obligations contained in the parties' employment agreement including a restraint of trade. Topstar seeks compliance orders requiring Mr Hu to observe the restraint (as modified if so ordered) and to return or destroy confidential information and property retained after his employment ended. General and special damages are sought for costs incurred in pursuing the return of information and property. It also seeks the award of penalties against Mr Hu for breach of the employment agreement and against him and/or his representative Mr Young under section 134A of the Act for obstruction or delay of the Authority process. An award of costs is sought.

[4] This determination deals with the preliminary jurisdictional issue of whether Mr Hu raised his personal grievance within the statutory 90 day timeframe or, if not, whether leave should be granted to do so, the holiday pay claim and breach and penalty claims. If the 90 day issue is resolved in Mr Hu's favour then his personal grievance will be considered. This determination will also deal with whether Mr Hu is liable for

the breaches of the employment agreement as claimed by Topstar. If this issue is resolved in Topstar's favour damages will be considered later.

The Authority's investigation

[5] During the investigation meeting the Authority heard evidence from Mr Hu, Boa Ma, the general manager and director of Topstar and Jiahui Dong, Topstar sales manager. The Authority was assisted by a translator of the Mandarin language.

[6] Subsequent to the investigation meeting Mr Hu's accountant provided information relevant to the investigation of this employment relationship problem including information about Best Holding Limited. Best Holding Limited was a company owned and operated by Mr Hu and which Topstar says is the vehicle Mr Hu used to compete with it in breach of his employment obligations.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Issues

[8] The issues requiring investigation and determination were:

Mr Hu

- a. Did Mr Hu raise a personal grievance within the statutory 90 day period?
- b. If not, do exceptional circumstances exist which would make it just to grant leave for him to do so?
- c. If the preliminary issue is resolved in Mr Hu's favour was he unjustifiably dismissed?
- d. If so, what remedies should be awarded, considering:
 - i. Lost wages;
 - ii. Use of holiday and sick leave;

- iii. Compensation under s 123(1)(c)(i) of the Act.
- e. If any remedies are awarded, should they be reduced (under s124 of the Act) for blameworthy conduct by Mr Hu that contributed to the situation giving rise to his grievance?
- f. If Mr Hu was paid public holiday pay and correct termination holiday pay?
- g. Has Topstar complied with its obligations under s 64 of the Act?

Top Star's counter claim

- h. Are the terms of the Mr Hu's employment agreement concerning restraint of trade, return of property and confidentiality valid and enforceable?
- i. If so, has Mr Hu breached those terms of his employment agreement?
- j. If Mr Hu has breached clauses 10.8 and 12.4 of the employment agreement is he liable to a penalty under section 134 of the Act?
- k. Should general or special damages be awarded?
- l. Is Mr Hu and/or his representative liable for a penalty for obstructing or delaying the Authority investigation pursuant to section 134A of the Act?
- m. Is either party entitled to a consideration of costs?

Relevant law

Raising a personal grievance

[9] Section 114 of the Act provides that a personal grievance must be raised with the employer within a period of 90 days. The period begins with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is the later, unless the employer consents to the personal grievance being raised outside the statutory timeframe.

[10] The grievance is raised with the employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance the employee wants the employer to address.¹

[11] Under s 114(4) of the Act the Authority has discretion, after giving the employer an opportunity to be heard, to grant an employee leave to raise a personal grievance out of time. This may be subject to any conditions the Authority sees fit to impose, if it:

- (a) is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances (which may include any one or more of the circumstances set out in section 115); and
- (b) considers it just to do so.

[12] Section 115 makes further provision regarding exceptional circumstances under s 114(4) as follows:

- (a) where the employee has been so affected or traumatised by the matter giving rise to the grievance that he or she was unable to properly consider raising the grievance within the period specified in section 114(1); or
- (b) where the employee made reasonable arrangements to have the grievance raised on his or her behalf by an agent of the employee, and the agent unreasonably failed to ensure that the grievance was raised within the required time; or
- (c) where the employee's employment agreement does not contain the explanation concerning the resolution of employment relationship problems that is required by section 54 or section 65, as the case may be; or
- (d) where the employer has failed to comply with the obligation under section 120(1) to provide a statement of reasons for dismissal.

Did Mr Hu raise a personal grievance within 90 days of his dismissal?

[13] Mr Hu says he raised a personal grievance with Topstar in a WeChat exchange with co-worker Bobby Xu on 15 January 2019 and/or in a WeChat exchange with Mr Ma on 26 February 2019.²

¹ Section 114(2) of the Act.

² WeChat is a messaging application.

[14] I have read the translations of those WeChat messages and considered what was said about the messages in the evidence. None of these communications amount to raising a personal grievance explicitly nor by implication. Topstar could not reasonably have been expected to understand from them that Mr Hu was raising a personal grievance.

[15] Mr Hu did not raise a personal grievance within the 90 day statutory period.

Should Mr Hu be granted leave to bring grievance out of time?

[16] In the alternative, Mr Hu says leave should be granted for him to bring his grievance out of time because of the following actions of Topstar in:

- not providing him written notice of his dismissal until 12 July 2019 when Topstar filed its statement in reply;
- not providing him with a signed copy of the employment agreement;
- not providing him with key information including the date of dismissal; and
- giving the wrong reasons for his dismissal in bad faith.

[17] As set out above section 115 provides a non-exhaustive list of grounds on which leave can be granted including where an employment agreement does not contain a plain language explanation about how to resolve employment relationship problems (including how to raise a personal grievance) and where an employer has failed to provide the reasons for dismissal under s 120(1) of the Act.³

[18] Mr Hu's employment agreement contained a plain language explanation in fulfilment of s 115(c) and Mr Hu did not request reasons for his dismissal under s 120 of the Act.

[19] The Authority is satisfied Mr Hu was provided with copies of the intended agreement, had sufficient time and ability, including proficiency in the English language, to review the document before signing it and get advice on the document if

³ S 115 (c) and (d) Employment Relations Act 2000.

he so wished.⁴ Even if it was accepted that Mr Hu was not provided with a copy of the signed employment agreement there is not sufficient evidence before the Authority that failure led to the delay in raising a personal grievance. There is evidence which suggests, at the relevant times, Mr Hu was aware of personal grievance processes generally because he had a personal grievance with a former employer at this time. There is also clear evidence of Mr Hu's familiarity with the parties' employment agreement. The WeChat messages show Mr Hu confidently expressing views as to the enforceability of the restraint of trade clause of his employment agreement. It is not clear to the Authority how Mr Hu could so confidently express a view of the employment agreement if either he did not have a copy or was not very familiar with its terms.

[20] The issues raised by Mr Hu have been carefully considered.⁵ However, the Authority is not satisfied Topstar failed to meet any obligation owed to Mr Hu which denied him information which led to his failing to raise a personal grievance within the statutory period. For these reasons the Authority declines to exercise its discretion and grant leave to Mr Hu to raise his personal grievances out of time.

Breaches and penalties for which Mr Hu says Topstar are liable

Breach of s 64 Employment Relations Act?

[21] Mr Hu says Topstar has breached the obligation owed to him under section 64(3) of the Act to provide him a copy of his employment agreement on request. He says he asked for a copy of the employment agreement about four days after he started employment with Topstar, that he made the request again on 19 November 2018, the day he was dismissed, and referred to the failure to provide a copy of the agreement in WeChat messages subsequent to his employment ending.

[22] The Authority is not satisfied Mr Hu requested Topstar provide him with a copy of his employment agreement. Mr Hu's claim that requests for the employment agreement were made during his employment are not supported by corroborating

⁴ Findings regarding Mr Hu's English proficiency are set out later in the determination.

⁵ Including the suggestion Mr Ma was not authorised by Topstar to offer employment to Mr Hu because he is not a director of that company. The argument is not accepted and the Authority accepts Mr Ma was so authorised.

evidence and are disputed by Topstar. Mr Hu's references to not having received a copy of the employment agreement in the parties' post-employment WeChat messages are not requests for a copy of the employment agreement. In those messages Mr Hu asserts the alleged failure as an error on Topstar's part and as part of Mr Hu's response to Topstar raising the restraint of trade clause. Further, for reasons set out above the evidence suggests Mr Hu had a copy of the employment agreement at all relevant times. If he had been able to establish a failure to provide, given this, it would likely only be a technical breach.

[23] No breach of section 64 has been established.

Breach of the Holidays Act 2003

[24] Mr Hu claims unpaid public holiday entitlements and termination holiday pay.

[25] The evidence was overwhelmingly clear Mr Hu has been paid both entitlements.⁶ There are no outstanding holiday arrears. As no breach of the Holidays Act 2003 has been established there will be no consideration of the penalty sought.

Miscellaneous issues that need to be addressed

[26] Mr Hu has raised factual disputes which have, disproportionate to their relevance to the issues for investigation and determination, absorbed significant time for both the parties and the Authority. They are:

- (i) did Mr Hu leave the signed and initialled the employment agreement on Mr Ma's desk at the end of his first day (Mr Hu's view) or did Mr Hu and Mr Ma execute the employment agreement together (Topstar's view)?
- (ii) Did Mr Ma give Mr Hu a letter of dismissal when he dismissed him?

[27] The resolution of these disputes is unnecessary to investigation and determine this employment relationship problem given there is no dispute the parties executed an employment agreement and, for reasons set out above Mr Hu did not raise personal

⁶ Refer wage records and bank statements produced in evidence.

grievances within the 90 day statutory timeframe and the Authority declined to grant leave to do so.

[28] Notwithstanding, because of the persistence with which these issues have been advanced on behalf of Mr Hu it is necessary to address the issues he says support his view of the factual disputes listed above.

Mr Hu's proficiency in English

[29] Mr Hu asserts his lack of proficiency in English has disadvantaged him in dealings with Mr Ma including his understanding of the employment agreement.

[30] When Mr Hu started employment with Topstar he held a student visa which allowed him to work 20 hours per week. He was enrolled at Otago Polytechnic in a level 9 Master's degree course in professional practice. He confirmed to the Authority the course was conducted in English and that the curriculum vitae he provided to Topstar in support of his job application states twice "fluent English; native Mandarin speaker". Mr Hu did not say to Mr Ma he could not understand the proposed agreement. There was nothing to indicate to Topstar that Mr Hu did not knowingly enter the employment agreement – Mr Hu had represented to Topstar he was fluent in English, he was presented with the employment agreement and, on his evidence, he returned it signed and initialled on every page some time later that same day. After his employment ended he asserted a sophisticated understanding of his obligations under the employment agreement.

[31] The Authority is satisfied Mr Hu's proficiency in English (or lack thereof) was not a factor which disadvantaged him in his employment or was a factor of which Topstar knowingly or unreasonably took advantage.

Was the employment agreement entered into after Mr Hu's employment started so invalidating the trial period?

[32] Mr Hu signed his employment agreement on 3 September 2018. The parties dispute whether Mr Hu commenced work that day. If Mr Hu started work that day and

before he signed his employment agreement then the trial period is invalid.⁷ This does not invalidate the balance of the executed written employment agreement.

[33] The Authority is satisfied Mr Hu commenced work with Topstar on 3 September 2018 and that the trial period was not entered before he started employment because the employment agreement expressly states “the employment shall commence on 03, Sep, 2018” and he was paid for the full day.⁸

Requests for CCTV footage

[34] Mr Hu has made repeated requests for provision of the CCTV footage of Mr Ma’s office on 3 September 2018. The Authority is satisfied the first of these requests was made about 26 June 2019, almost 10 months after the subject date and around the time Mr Hu filed his statement of problem. Mr Hu, through his representative asserted recovery of the footage is possible. The specifics of such recovery and estimated cost have not been provided.

[35] Topstar says the CCTV footage is no longer available because it is written over every seven days. The Authority accepts the CCTV footage has been overwritten and it cannot be reasonably recovered.

Unsigned witness statements

[36] Mr Hu has also sought to place significant emphasis on unsigned witness statements filed in support of Topstar which were refiled with different information after issues were raised by Mr Hu. Mr Hu has attributed improper and dishonest motivation to the witnesses and counsel for Topstar of a flagrant nature. This attribution has been repeated. This has been unhelpful and has not assisted the Authority in the investigation and determination of this matter. It has taken up time and distracted from the key issues for investigation and determination.

[37] The issue of the contents of unsigned and unsworn evidence can only be taken so far. It is not grounds to cast doubt on or strike out all the evidence of the witnesses.

⁷ S 67(A)(2)(a) Employment Relations Act 2000.

⁸ Clause 3.1 of the employment agreement.

As the parties can see from the determination the Authority has preferred to resolve factual disputes, where possible, using contemporaneous documents and events.

Backdating of the employment agreement and notice of dismissal

[38] Mr Hu has repeatedly asserted Topstar “backdated” the employment agreement and notice of dismissal. The implication of the assertion is that the documents have been tampered with or claims made about them which are inaccurate. Mr Hu has asked the Authority to direct Topstar to provide computer screen shots of date of modification and printing of these documents.

[39] The direction sought is denied because there is no reasonable basis on which to make it and the screen shots would not assist in the investigation and determination of the issues before the Authority. The parties executed the employment agreement. Simultaneous execution is not a general or, in the case of this employment agreement, a specific requirement of contract formation. There is no dispute the employment agreement Mr Hu signed was the intended agreement Topstar presented to Mr Hu.⁹ The notice of dismissal is not relevant given Mr Hu’s personal grievances are not within jurisdiction. For completeness Mr Hu signed and dated the dismissal letter and there is no compelling evidence to suggest otherwise. The Authority finds it is more likely than not he was dismissed on 6 November with two weeks’ notice in accordance with the terms of his trial period and employment agreement.

Bobby Xu

[40] Mr Hu asked the Authority to summons Mr Xu. The request was declined on grounds of relevance. Notwithstanding Mr Hu could have summonsed Mr Xu as a witness. He did not. At the hearing Mr Hu applied for an audio clip attached to a WeChat message between Mr Xu and Mr Ma on 3 September 2018 be located and played on grounds the audio would locate Mr Xu on that day. Again the request was declined for want of relevance.

Topstar’s counter-claim

⁹ S 63A(2)(a) Employment Relations Act 2000.

[41] Topstar says Mr Hu unfairly competed with it by selling the same auto clips to its customers at a cheaper price within the sales territory he worked during his employment with Topstar.¹⁰ Topstar says Mr Hu has breached the terms of his employment agreement which survive after the parties' employment ended.

Cease and desist letter

[42] On 24 June 2019 Topstar's lawyers wrote to Mr Hu formally outlining its concerns, seeking undertakings and information about solicited clients and his use of confidential information and payment of losses. The letter advised if the undertakings were not provided Topstar may file legal proceedings. On the same day a similar letter was sent to Mr Hu in his capacity as director of Best Holding Limited.

[43] Mr Hu did not directly respond to either letter. His next action was to lodge an application in the Authority for unjustified dismissal.

Confidential information

[44] Topstar seeks to rely on clause 10.1 of the employment agreement which prevents confidential information and trade secrets being used and clause 12.4 requires company property to be returned when the employment ends. Topstar identified the sample board, product flyer and client lists as confidential information and company property.

(i) *Sample board*

[45] The sample board is a piece of board with sample auto clips glued onto it. Mr Hu made these boards during his first week of employment with Topstar. In his role as a sales representative Mr Hu showed customers the boards and orders were taken using the code assigned each item and based on Topstar's pricing system. Mr Hu says he returned the sample board on 16 January 2019 by leaving it at the front door of Topstar's offices and messaging Mr Xu who he understood was in the office that day. Topstar says the sample board was never returned.

¹⁰ Auto clips are plastic fasteners used to attach automotive body parts.

[46] The Authority is not satisfied Mr Hu returned the sample board or took reasonable steps to return the sample board. Even if it was accepted he left it outside the premises, this would not be sufficient to establish it was returned because he did not surrender his custody of the sample board into the custody of Topstar or reasonably secure it so it could be located by Topstar.

[47] The Authority is satisfied the sample board was the property of Topstar and Mr Hu had an obligation to return such property when his employment ended. He has not returned the board or taken reasonable steps to return it in breach of the terms of his employment agreement. The specifics of the confidentiality of the board are not clear to the Authority. Orders will not be made in respect of that aspect of Topstar's claim.

[48] Mr Hu is ordered to return the Topstar sample board in his possession to Topstar within 14 days of the date of this determination.

(ii) Product flyer

[49] Topstar gave Mr Hu a printed flyer with photographs of the auto clips it sold and corresponding codes. The flyer was printed in the factory Topstar contracted with to manufacture the auto clips. It is accepted the flyer was produced for Topstar and that the individual codes are unique to the different types of auto clips. The flyer is not a generic flyer and is made specifically for Topstar. It is accepted the flyer is the property of Topstar and contains confidential information.

[50] Mr Hu had a flyer made up in the producing factory which, on examination, show seven of the 97 auto clips and codes do not match Topstar's flyer. Mr Hu's evidence to the Authority that he only sold seven auto clips the same as Topstar is clearly incorrect. It is not clear to the Authority why Mr Hu would say he only sold seven of the same auto clips as Topstar when the evidence is clear he was selling 97 of the same auto clips. It is clear though that Mr Hu has retained the confidential property of Topstar and substantially reproduced it for commercial benefit in breach of the obligations owed under the employment agreement.

[51] Mr Hu is ordered to return the Topstar product flyer in his possession to Topstar within 14 days of the date of this determination.

(iii) *Client list*

[52] It is accepted Mr Hu would have had access to Topstar information about clients during his employment and that this information having been compiled over a number of years was confidential. It is also accepted Mr Hu has used this client information to further his own business interests in breach of his obligations under the employment agreement.

[53] **Mr Hu is ordered to return Topstar client information in his possession to Topstar within 14 days of the date of this determination.**

Restraint of trade

[54] The parties' employment agreement contains restraints of non-competition (clause 10.6), non-solicitation of customers (clause 10.7) and non-solicitation of employees (clause 10.8), obliges Mr Hu not to use or disclose confidential information belonging to Topstar (clause 10.1) and to return Topstar's information including product boards and sample plates. Topstar says Mr Hu has breached and continues to breach all these obligations under his employment agreement by:

- (i) Setting up a business in direct competition with Topstar through Best Holding Limited within the time (two years) and geographical parameters (30 kilometres) of the restraint;
- (ii) Soliciting or attempting to solicit 127 Topstar customers;
- (iii) Soliciting or attempting to solicit Topstar employee (namely Bobby Xu).

[55] There is no dispute Mr Hu competed with Topstar after his employment ended. The following is established on the evidence before the Authority:

- he altered the company of which he was a sole director and shareholder (Best Holding Limited) to become an auto parts trader;
- he (or Best Holding Limited) purchased auto clips from the same factory as Topstar;

- the auto clips Mr Hu purchased and the product flyer he used are striking similarity to the auto clips he sold and the product flyer he used in the sales process during his employment with Topstar;
- he (or Best Holding Limited) asserted to Topstar he was not bound by any restraint of trade on grounds of failure of consideration and/or failure to provide a copy of the employment agreement;
- he operated in the same geographical area as he had done during his employment with Topstar;
- he sold auto clips to the same customers to whom he had sold during his employment with Topstar;
- he sold auto clips to such customers at prices lower than he had sold parts for Topstar;
- he asked Mr Dong for client information; and
- he asked Mr Xu to work for him.

[56] Restraints of trade are prima facie unenforceable and invalid. Topstar must establish the restraint is enforceable and reasonable at the time the agreement was entered into, in the interests of the parties and the public interest.¹¹ Mr Hu has advanced an argument that the restraint fails for want of consideration. This argument is not accepted because the restraint existed from the outset of the contract.¹²

Proprietary interest or trade secret to be protected?

[57] It is not sufficient that the former employee operates in competition. What must be established is some proprietary interest or trade secret to be protected.¹³ Proprietary interests include trade connections and confidential information. Topstar says Mr Hu was introduced to key customers and established close relationships with those customers. He obtained knowledge of sensitive information including sales practices, pricing, profit margin and knowledge about Topstar's client base which it had built up over four years of operation.

[58] It is clear on the evidence before the Authority Mr Hu has used his knowledge about auto clips and the businesses which purchase auto clips in his central Auckland

¹¹ *Transpacific Industries Group (NZ) Ltd v Harris* [2013] NZEmpC 97 [37] – [41].

¹² *Fuel Espresso Ltd v Hsieh* [2007] NZCA 58.

¹³ *Ibid* [20].

sales territory to establish a business selling auto clips in Auckland. He gained this knowledge while he was employed by Topstar. He had not worked in the auto clip trade prior to his employment with Topstar.

[59] Topstar did not provide evidence of key customers but it is accepted Mr Hu had access to and would have used a data base of Topstar customers in the course of his duties and it is accepted this information had been built up by Topstar over a period of time and that it was confidential. It was reasonable for Topstar to seek to restrain that information.

[60] Mr Hu had access to Topstar's pricing system. It is not apparent to the Authority what is generally confidential about Topstar's pricing given that information is readily available in its website. That said it is accepted some customers may have accessed particular pricing negotiated to their needs and it was reasonable for Topstar to seek to restrain the use of that information.

Is the period of restraint reasonable?

[60] The restraints are for a period of two years after employment ends. Such lengthy restraints are not reasonable for an employee such as Mr Hu. Mr Hu was a part time sales representative purportedly employed under a trial period who was paid \$16.50 per hour. A period of four months after Mr Hu's employment ended would be sufficient for Topstar to contact customers and attempt to secure their business. Clauses 10.6, 10.7 and 10.8 of the parties' employment agreement are modified accordingly.¹⁴

Is the geographical cover of the restraint reasonable?

[61] The geographical cover of the restraint is a 30 kilometre radius from Topstar's Penrose premises. It is a radius within the Auckland metropolitan area. Mr Hu's sales territory was central Auckland. Given Mr Hu had access to all customer information the geographical scope of the restraint is reasonable.

Penalties – breaches of employment agreement and obstructing or delaying the Authority investigation

¹⁴ S 83 Contract and Commercial Law Act 2017.

[62] The Authority reserves determination of the penalties claimed by Topstar until all evidence and submissions on the losses consequent to the established breaches have been filed.

Outcome

[63] Mr Hu did not raise personal grievances within the statutory 90 day timeframe. The Authority has declined to exercise its discretion and grant leave for him to bring those grievances out of time.

[64] Within 14 days of the date of determination Mr Hu is ordered to return confidential property of Topstar's in his possession namely sample board, product flyer and client list.

[65] Mr Hu has breached the terms of the restraining clauses of the employment agreement by competing with Topstar

[66] Clauses 10.6, 10.7 and 10.8 of the employment agreement is modified to four months.

[67] Topstar's damages consequent to Mr Hu's to be determined later.

[68] Penalties against Mr Hu for breach of contract and against Mr Hu and Mr Young for obstruction or delay are to be determined later.

Costs

[69] Costs are reserved.

Marija Urlich
Member of the Employment Relations Authority