

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 198
3358923

BETWEEN	BIDFOOD LIMITED Applicant
AND	CLAIRE HOW First Respondent
AND	SERVICE FOODS LIMITED Second Respondent

Member of Authority: Sarah Blick

Representatives: Linda Ryder, advocate for the applicant
Josh Nyika, counsel for the first respondent
James Warren, counsel for the second respondent

Investigation Meeting: On the papers

Determination: 9 April 2025

CONSENT DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Bidfood Limited (Bidfood) and Service Foods Limited (Service Foods) are food distributors operating throughout New Zealand, specialising in supplying wholesale foods to the hospitality industry. They compete with each other for their business.

[2] Claire How was employed by Bidfood as a sales manager based in Taupō at the time her employment ended on 10 January 2025. She is now employed by Service Foods as a Business Development Manager. Bidfood claims Ms How has not been complying with certain terms of their written employment agreement (IEA), including non-solicitation and restraint of trade clauses. Among the remedies sought are interim orders that Ms How comply with the relevant terms of the IEA until its substantive claims are heard.

[3] The respondents deny Bidfood's claims. Ms How's position in her statement in reply (SIR) is that the obligations Bidfood is attempting to enforce are not enforceable and are unreasonable, but if she has breached any obligations, it was not intentional.

[4] In her SIR, Ms How further stated she was prepared to provide certain interim undertakings, while preserving her position with respect to the substantive matters, in the interests of dispensing with the need for an urgent investigation meeting on the interim relief sought by Bidfood.

The Authority's process

[5] Shortly after lodging its application, the Authority directed the parties to attend mediation. The parties attended mediation but were unable to resolve any matters.

[6] Following mediation the parties appeared to be in agreement about jointly seeking a consent determination or order from the Authority recording that Ms How's interim undertakings were accepted by Bidfood. Subsequently, Bidfood became concerned that the proposed agreement, if recorded in a determination, would not appear to be enforceable by way of a compliance order under s 137 of the Employment Relations Act 2000.

[7] During a case management conference with the parties on 21 March 2025, the Authority queried the need for Authority orders in light of Ms How's willingness and ability to provide written undertakings. The parties remained at odds about what if any orders should be sought from the Authority. Bidfood's representative subsequently provided "draft orders" for the Authority's consideration. Both respondents objected to the wording of the draft orders.

[8] The parties have since agreed to have the interim undertakings recorded as interim orders.

The orders

[9] Until 10 July 2025 Ms How:

- (a) Will not endeavour to solicit or entice away from Bidfood, directly or indirectly, any employee of Bidfood or any customer of Bidfood; and

- (b) May have communication (in the normal course of her role) with pre-existing customers of Service Foods, but she will not pursue new work from any person or business who she knows to be a customer of Bidfood; and
- (c) In situations where her role would potentially involve communicating with Service Foods' pre-existing customers that she is aware happen to also be customers of Bidfood, Ms How will refrain from communicating with them entirely.

[10] Until 10 April 2025 Ms How:

- (a) Will refrain from working in the geographical area of that within a 50km radius of Bidfood's Taupo premises (excluding any work Ms How undertakes remotely from her place of residence); and
- (b) Will continue to work for Service Foods in areas including Hamilton, Tauranga and Putāruru but she will not otherwise work in Taupō.

[11] This consent determination deals with Bidfood's claims for interim injunctions only and does not determine or resolve the substantive claims which will continue. These orders are made on the understanding the respondents intend to preserve their positions with respect to the substantive matters and that they rely on the undertaking offered by Bidfood dated 20 February 2025 to abide by any order of the Authority in respect of damages sustained by the respondents through the issue of these orders.

[12] The Authority will be in contact with the parties to confirm a telephone conference for the purpose of progressing the substantive matter.

Costs

[13] Costs are reserved pending determination of the substantive matters.

Sarah Blick
Member of the Employment Relations Authority