IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE

[2026] NZERA 233
3358323

	BETWEEN	TRUST CODES GLOBAL LIMITED (now DATARAIL LIMITED) Applicant
	AND	CHRISTINA WORLEY Respondent
Member of Authority:	Helen van Druten	
Representatives:	Paul Ryan as the Applicant Greg Lloyd, counsel for the Respondent	
Investigation Meeting:	21 and 22 January 2026 at Auckland	
Submissions received:	Up to 10 February 2026 from the Applicant 9 February 2026 from the Respondent	
Determination:	20 April 2026	

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Trust Codes Global Limited (TCGL) claims that, upon the ending of her employment with TCGL, Christina Worley accessed, deleted and/or downloaded essential, confidential, customer and company information in breach of clauses 14 and 15 of her employment agreement.

[2] TCGL seeks a compliance order requiring Ms Worley to return all company property (including confidential information and intellectual property) and seeks a penalty for the breach/es of her employment agreement and/or of a Settlement Agreement (SA) signed between the parties on 4 December 2024.

[3] Ms Worley says that all allegations made against her are completely untrue. She maintains that she has not acted in breach of her employment agreement or the SA and

only deleted her personal information, non-essential work information and meeting information she was instructed to delete.

[4] Although the SA included a confidentiality clause, it is necessary for this determination to refer to details of relevant terms.

The Authority's investigation

[5] For the Authority's investigation, written witness statements were lodged from Paul Ryan as the director of TCGL, Michael Saint as an expert witness, Eli Conroy as a full stack developer for TCGL and Ms Worley as the respondent. All witnesses and representatives attended by audio-visual link and answered questions under oath or affirmation from me and the parties' representatives. The representatives were also provided an opportunity to provide submissions.

[6] The parties agreed that an expert witness would be desirable given the technical nature of the issues for determination. Subsequently, as the parties could not agree on a mutually acceptable expert witness, TCGL provided an expert witness, Mr Saint, to give evidence. Ms Worley did not provide any technical evidence.

[7] Mr Saint gave evidence as an expert witness in accordance with the Code of Conduct of Expert Witnesses.[1] While engaged by TCGL, I am satisfied that Mr Saint understood his obligations under that Code of Conduct and that his duty was to provide independent, impartial evidence on the matters within his technical expertise.

[8] 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.

The issues

[9] The issues requiring investigation and determination were:

a. Whether Ms Worley:

i. failed to return all company property, documents, and/or customer records upon termination of her employment as required by the SA document signed by the parties dated 4

[1] High Court Rules 2016.

December 2024 and/or in accordance with the terms of her employment agreement, particularly clauses 14 and 15 of that agreement; and/or

ii. intentionally deleted necessary customer and/or company data from the company computer either during or after the course of her employment.

b. If i. or ii. are established, then should an order be made by the Authority requiring Ms Worley to comply with the specific terms of her employment agreement (IEA);

c. Whether penalties should be issued for one or more breaches; and

d. Whether either party should contribute to the costs of representation of the other party.

[10] Other issues raised by Mr Ryan for TCGL were withdrawn or are outside the scope of the Authority's jurisdiction.

Relevant contractual obligations and legislation

[11] The relevant clauses within the SA signed by both parties on 4 December 2024 read as follows:

> 1. Termination
>
> 1.1 The Employee's employment with the Employer will cease by way of redundancy on 6 December 2024 (Cessation Date).
>
> 1.2 The Employee acknowledges that after the Cessation Date, they will continue to owe ongoing duties to the Employer. This includes, but is not limited to, obligations regarding intellectual property and confidentiality;
>
> 1.3 The Employee will return all Employer property in their possession to the Employer's premises on or before the Cessation Date undamaged and in clean, tidy and working condition. This includes but not limited to any laptops, mobile phones, computer equipment, access cards, recorded information, precedents, software and other documentation (whether relating to the business of the Employer any related companies or the Employers clients and customers) supplied to the Employee or otherwise acquired by the Employee in the course of their employment.

[12] Ms Worley says that she was given the SA and led to believe that she had to sign it as part of the restructure process. Information before the Authority shows that Ms Worley was provided a written SA draft on 3 December 2024 and asked to consider and return it on 4 December 2024.

[13] From commencement of employment, the parties also had a signed IEA. Two clauses of that IEA are particularly relevant. Clause 14 provides that:

> 14.1 Upon termination of employment or at any other time upon request of the Employer, the Employee must immediately return any property of the Employer in their possession or control". This includes, but is not limited to, any laptops, mobile phones, computer equipment, access cards, company credit cards, storage devices, recorded information, precedents, software, and other documentation (whether relating to the business of the Employer, any related companies of the Employer, or its clients and customers), as well as any Confidential Information and Intellectual Property belonging to the Employer, or copies thereof.
>
> 14.2 This clause applies both during and after the Employee's employment with the Employer.

[14] Clause 15 is a standard confidentiality clause defining confidential information for the purposes of the IEA. The parties agreed that the confidentiality clause is broad and includes all potentially proprietary information, client, customer, business, product and financial information. The clause included that:

> 15.1 For the purposes of this Agreement, 'Confidential Information' means all records and information relating to the business of the Employer and or any related companies of the Employer, whether held in hard copy form, electronically, or otherwise and including (but not limited to) client and customer information…
>
> 15.2 Other than in the proper performance of the duties and responsibilities or their obligations under this agreement the Employee must not use, copy, or disclose any confidential information and must use their best endeavours to prevent the disclosure or publication of any Confidential Information.
>
> 15.4 This clause applies both during and after the employees employment with the employer.

Background Information

[15] At the relevant time, TCGL provided software and technology to companies enabling product tracking and visibility. As a data-driven company, TCGL considered its data security and integrity were of critical importance.

[16] For the duration of Ms Worley's employment, TCGL was owned by VerifyMe Inc. In 2024, Mr Ryan sought to acquire TCGL from VerifyMe Inc. In November and December 2024, there were significant discussions and changes relating to that proposed share acquisition. On 6 December 2024, that share acquisition was complete.

[17] Ms Worley was employed by TCGL from 9 January 2024 to 6 December 2024. Initially, she was based in New Zealand until she moved overseas in November 2024. She continued working for TCGL remotely until ceasing employment.

[18] As part of her role, Ms Worley was responsible for client relationships – managing accounts for specific clients and liaising with them on progress, service and delivery timeframes. TCGL maintained that as a small company it relied on a high trust model, so Ms Worley had access to significant company information within her role.

[19] From 13 November 2024, all employees were informed in writing of potential restructures and the specific need to retain data prior to acquisition. Mr Ryan emailed all staff on 14 November 2024 with a specific reminder not to change or tamper with customer data in any way as there was a real risk of litigation in relation to the share acquisition.

[20] On 4 December 2024, following the restructure consultation process, Ms Worley agreed terms to settle the end of her employment with TCGL and signed the SA. Among other terms, the SA required Ms Worley to return all company property by courier on or before 6 December 2024.

[21] According to TCGL in its statement of problem, it received the computer (via Fedex from a VerifyMe Inc account) on 15 January 2025 and found that:

a. Necessary customer records had been deleted from it by Ms Worley;
b. Various Microsoft applications and the application used for internal collaboration and communication were entirely removed and reinstalled so all messages (including logs and caches) were lost;
c. An application was downloaded to “scrub” and permanently delete data from her computer so the data could not be recovered; and
d. Several folders of confidential files were compressed and removed from the company computer. TCGL believes these are in Ms Worley’s possession and/or control.

[22] In his written evidence, Mr Ryan provided extensive examples and detailed assessment of specific folders, files, emails and IP information that he examined in his own investigation of the data deleted from the computer.

[23] Ms Worley denies being in possession of any documents or other property belonging to TCGL and denied the allegations made by TCGL, save some personal material deleted prior to her departure. She says that at the conclusion of her employment she signed out of all work-related accounts, removed personal information and removed outdated company information.

Analysis

Validity of the Settlement Agreement

[24] The SA was signed between Ms Worley and her employer – TCGL. Mr Ryan was not involved in the SA process with Ms Worley.

[25] In submissions, Ms Worley raised several concerns regarding the SA, including:

a. An SA cannot have retrospective application and this SA took effect on 6 December 2025. The acts giving rise to TCGL's claims were made prior to the SA being signed by the parties therefore neither party may bring proceedings on those matters, except for purposes of enforcement.
b. There was insufficient time to consider the SA and seek advice. It was provided on 3 December with instructions to return it by 4 December 2025. In its communications, Ms Worley was told that signing the SA was necessary for the sale of the business to proceed.
c. The 'full and final settlement' clause only prevented Ms Worley's claims against TCGL, not vice versa.
d. the necessary requirements were not present. There was no dispute between the parties, no consideration was provided for Ms Worley's agreement, and the applicant gave up no rights. There was no basis at all for the applicant to insist on Ms Worley entering into the SA or making it a precondition for the sale of the business therefore the SA is prima facie invalid.[2]
e. The SA was not signed by a mediator (apparently due to legal oversight) therefore it cannot be relied upon to seek a compliance order under s 137 of the Act. It could be relied upon as such if it was an agreement certified by a mediator under s 149 of the Act.

[2] As submitted by counsel in its submissions with reference to *Graham v Crestline Pty Ltd* [2006] NZEmpC 93 at [49] – [50].

[26] In those submissions, counsel queried whether acts occurring during the course of Ms Worley's employment fall outside the scope of what can lawfully be pursued given that an SA is not retrospective. I accept that concern is a valid one, though Ms Worley's concerns about the SA both benefit and impede the arguments put forward by her. If the SA is binding then most of TCGL's claims are retrospective. If not, then she should not have received the redundancy payments made to her as part of the SA.

[27] Accepting the concerns about retrospectivity, timing, one-sided finality and whether the necessary circumstances for settlement were present, I consider that, at best, the SA is irrelevant to the issue I have to determine. I refer to it only as another document which outlined the duties and obligations of the employee with the primary obligations remaining rooted in the IEA. As Ms Worley also noted, the SA reaffirmed employee obligations already agreed and that these survived the end of employment.

Was there confidential information and/or intellectual property deleted by Ms Worley?

[28] Mr Ryan explained that it was difficult to establish what was removed from the computer as systems were wiped and reinstalled therefore tracking any deletions was difficult. In written evidence, Mr Ryan says that the MacBook was remotely wiped on 1 May 2025 through Ms Worley's iCloud account while it was in his possession, meaning that any data is no longer recoverable.

[29] In his witness statement, Mr Ryan provided further detail on the alleged deletions from the laptop. These included deletion and reinstallation of Slack (the internal collaboration system) and Outlook in a logged-out status, thereby removing locally held logs and caches. When asked, Ms Worley acknowledged that she logged out of Microsoft One Drive and Outlook for security purposes prior to couriering the laptop. She denied the reinstallation.

[30] TCGL's concerns also related to files accessed outside Ms Worley's duties and/or accessed after 6 December 2025. According to Mr Ryan, this included files relating to secure customer information, intellectual property belonging to TCGL and clients that preceded Ms Worley's time at TCGL. He gave multiple, specific examples of those documents accessed up to and including 7 December 2024 in his written and oral evidence.

[31] I agree with Mr Ryan that the examples he provided are directly relevant to the claims he now makes against Ms Worley. Unfortunately for Mr Ryan and TCGL however, other than his own evidence, there is insufficient supporting documentation to substantiate the claims that Ms Worley remotely accessed and wiped the laptop or downloaded any application to scrub data. For whatever reason, it is now unavailable.

[32] Much of the investigation focused on email deletions and this was a key focus for Mr Saint. Mr Saint, as an information technology systems expert, was asked to undertake a review of specific technical data relating to Ms Worley's use of TCGL technology systems. He reviewed relevant material including raw data logs, retention policy logs, email metadata logs, SharePoint information and user actions audit logs. Mr Saint confirmed that he did not review the laptop itself.

[33] Extracts of the relevant data logs and information were reviewed and discussed at length during the investigation meeting. While the exact number of deletions was questioned by Ms Worley, Mr Saint stood by his evidence that there was a pattern of discrete deletion operations across the SharePoint and Microsoft 365 environments, with the latter showing items not only deleted (as would be usual for a user deleting regular emails) but also soft and hard deletes. Hard deleted emails cannot be recovered and require additional deletion steps beyond those of an ordinary user deleting information. He identified that over 1,034 email deletions were executed including some moved through each 'deletion stage' all within short time intervals (minutes to hours). In his opinion, this showed high-volume deletion activity and a pattern of escalating permanence.

[34] Based on Mr Saint's written and oral evidence, emails deleted went beyond personal data and were identified as work related based on the subject heading. He says that the deletions were sequential and structured often starting in the drafts folder and progressing to inbox messages. He further says that these operations originated from consistent client environments, including IP addresses traceable to Ms Worley's prior access locations.

[35] Mr Saint concluded that "Taken together the e-mail metadata audit trails and deletion time stamps demonstrate systematic and intentional deletion of TCL data by Ms Worley's user account during the period under review."

[36] To illustrate his findings and in response to questions during the investigation meeting, Mr Saint provided four examples where the data deleted referenced live client projects with the company name.

[37] Ms Worley did not consider Mr Saint to be independent as he was engaged by Mr Ryan. I note that concern and balance it against Mr Saint's obligations as an expert witness and the value of that evidence. Additionally, Ms Worley was given an extended opportunity to raise concerns about the robustness and accuracy of the various data evidence provided by Mr Saint. She was unable to raise significant doubts on that email evidence.

[38] Ms Worley acknowledges deleting data that was personal or irrelevant. With one group of emails, she says that she had permission from another manager to do so. Despite Mr Ryan's claims that some of her personal information was gathered for work purposes and therefore belongs to TCGL, I am satisfied that the examples of personal information Ms Worley provided were her private information and do not fall within the definition of confidential information or intellectual property defined in the IEA.

[39] It is also usual to delete some emails and documents when leaving employment and the principles of commonsense would likely not take such a strict view to clause 14 as to prevent every work-related email ever sent, drafted or received being retained when a person departs employment. While 'tidying' prior to leaving her employment, Ms Worley said she was concerned that she had deleted more than she should so asked for those emails to be restored and went through them again, only deleting the ones she believed needed to be deleted.

[40] Ms Worley was unable to comment on the individual emails and files noted in the metadata though suggested that if any were deleted, they were likely duplicates, drafts or incomplete email threads. She says that she likely deleted no more than 50 emails.

[41] Mr Conroy reviewed Ms Worley's mobile phone data on its return. He identified restoration and deletion/reinstallation events of Outlook and WhatsApp on the phone. While he is employed by TCGL and, accordingly, I am cautious about how much weight to place on his evidence, many of his conclusions matched the deletion patterns evidenced by Mr Saint and the restoration evidence given by Ms Worley.

[42] I do not accept Ms Worley's justification for some deletions was that other TCGL employees were copied into or sent the emails, so emails could easily be accessible through their Outlook accounts. I refer specifically to emails to customers and the deletion of a 14 November 2024 email following a complaint about Ms Worley's conduct.

[43] On the balance of probabilities, I prefer Mr Saint's evidence that Ms Worley systematically deleted digitally stored TCGL company information from her laptop with volumes of deletion beyond what one would reasonably be expected to be deleted as personal information or a 'tidying' of files.

[44] Claims of any further systematic deletions other than those provided by Mr Saint and Ms Worley, was not established.

Knowledge of contractual and SA obligations

[45] The commercial integrity of data is central to TCGL's business operations. Ms Worley had a position in an organisation who deals in data and therefore she could be expected to be particularly aware of the importance of confidentiality, intellectual property and data security. She acknowledged that she was aware of her contractual obligations in that regard and that the confidentiality obligations within her employment agreement were broad.

[46] As part of Mr Ryan's anticipated acquisition of TCGL shares, he sent two emails on 14 and 29 November 2024 specifically reminding all employees (including Ms Worley) not to change customer data in any way and to ensure that nothing was deleted from company records. On Ms Worley's last day, he also emailed Ms Worley directly with "…can you also ensure that you do not delete or remove anything from your company machine, or files/systems/emails etc..."

[47] Based on the SA, emails and the signed employment agreement, it is reasonable to conclude that Ms Worley was aware of her contractual obligations regarding company property. Additionally, she had received a specific instruction not to delete or remove anything from her computer, and, significantly, that this was of particular importance to TCGL at that time and Ms Worley knew the reason for that additional sensitivity to data retention.

Was there a breach of clause 14 of the employment agreement?

[48] The wording of clause 14 in the IEA is clear – Ms Worley was expected to return all company property upon termination of her employment including "*any Confidential Information and Intellectual Property* belonging to the Employer, or copies thereof" (emphasis added). By Mr Saint's evidence, she did not do so, returning the computer with significant deletions of work information and therefore in breach of clause 14 of her employment agreement.

[49] Ms Worley's counsel submits that:

> to conclude a breach has occurred requires a finding that deleting a small number of emails or documents in the course of her employment amounts to a failure to return company property at the cessation of employment. Neither the facts nor a proper construction of the agreement and ROS supports that conclusion.

[50] Based on Mr Saint's evidence (even including the 3-stages of email deletion in the numbers), this was more than a small number of emails and documents in the course of her employment. It was a technical breach of the employment agreement deleting emails which fell within the confidentiality definition in clause 15 of the IEA.

Was there a breach of clause 15 of the employment agreement?

[51] TCGL raised concerns that Ms Worley had accessed files that were not relevant to her work or were created before her employment at TCGL. It provided examples of these files with some accessed on her last day of employment. Mr Ryan claimed that there was no reason to do so other than to use those documents in some way.

[52] After Ms Worley's departure, Mr Conroy identified confidential information in Ms Worley's draft emails posted into ChatGPT including proprietary information, customer issues and leadership transition arrangements following the acquisition by Mr Ryan. This was a breach of confidentiality at the time and increases the risk of an external breach, though there is no indication that any loss occurred.

[53] Ms Worley did not provide any explanation why those files were accessed as Mr Ryan identified. Given the nature of the files accessed, it is reasonable that Mr Ryan had concerns about a breach of confidentiality. Despite this, there is insufficient information before the Authority to indicate any breach of Ms Worley's confidentiality obligations, including that she has TCGL information in her possession or control.

Quantification of the breach

[54] The challenge for TCGL is that with the December 2024 changes to its retention compliance policies (as noted by Mr Saint), it does not know what information was permanently deleted. It is not suggested that Ms Worley was involved in any way with that policy change but it means that any assessment of the quantum of data deleted is limited.

[55] Both parties present opposing views on the quantum and content of the data deletion. Ms Worley claims no significant work data was deleted and her actions were ordinary, unremarkable work activities. Mr Ryan claims hundreds, if not over a thousand, work related files, folders and emails were deleted and evidence, inter alia, exfiltration and mass deletion of company records. On the basis of the information presented to the Authority, the true extent of that data deletion likely tilts in Ms Worley's favour.

[56] I find it unlikely that customer files were only stored on Ms Worley's laptop as Mr Ryan submits. In her written evidence, Ms Worley explained that all customer documents were saved into SharePoint, and all emails were accessible in her Outlook account. Evidence showed that the Outlook account was accessed by TCGL prior to the laptop return.

[57] In his oral evidence, Mr Ryan says that there were 1,035 deletion actions (Mr Saint calculated 1034), with 657 individual files or emails deleted from an IP address linked to Ms Worley's overseas location. As noted in evidence, an IP address is not definitive evidence of a location, though the coincidence cannot be ignored. Additionally, in questions from counsel to Mr Ryan, Mr Ryan (and Mr Saint) confirmed that deletion of the same email may count in those figures three times – a move to initially delete, then to soft delete, then to hard delete.

[58] Returning to the employment agreement, there is no middle ground for compliance. The obligations are clear. Whether Ms Worley deleted 50 or 500 work documents, there were lots of emails deleted that belonged to TCGL. With the accepted proviso that there is an element of 'tidying up' upon departure, I agree with Mr Ryan that it is not for an employee to decide what work-related emails are important or not – that decision is for the company to make.

[59] The extent and type of deletion activity identified by Mr Saint indicates a conscious effort by Ms Worley to delete work data that belonged to TCGL. Ms Worley continued to deny this, despite compelling evidence to the contrary and her assertion that prior to her departure she had earlier deleted too many emails and sought them restored.

Penalties

[60] Having established a breach of clause 14 of her employment agreement, it is appropriate to consider a penalty for that breach under s 134 of the Act. The maximum penalty is $10,000.

[61] Sections 133 and 133A of the Act provide the framework for consideration of penalties. In addition, the full Court in *Borsboom v Preet PVT Ltd* has set out other factors that must be considered when determining a penalty application. The proportionality test considers the circumstances of the breach, and the harm done, to determine if the penalty is just in all the circumstances. [3]

[62] The nature and extent of the breach is an important factor to consider. Ms Worley had no need to delete any documents other than her personal information from her computer, yet she went beyond that, removing the ability for TCGL to evaluate what was deleted. In her oral evidence, Ms Worley appeared to minimise the information deleted as emails and a few unnecessary or duplicated files.

[63] I do not consider that the volume of data deleted was as extensive as Mr Ryan claims it to be. However, the deletion of data was deliberate and directly linked to Ms Worley's user account. It could not reasonably have occurred without Ms Worley's knowledge.

[64] One aggravating feature in this matter is that the information was deleted during a difficult company share purchase process and Ms Worley knew TCGL's sensitivities about data deletion during that critical period. She was specifically advised not to delete company data at that time. That the instruction did not come directly from her manager is immaterial – she knew her contractual obligations and that instruction emphasised those contractual obligations. Ms Worley's decision to delete data during a change in company ownership and a specific instruction to retain data was significant.

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[3] *Borsboom v Preet PVT* [2016] NZEmpC 143 at [141] – [148] and at [188].

[65] Other than Mr Ryan's own evidence of deleted documents and his costs in this matter, there is no quantification of any specific financial loss for TCGL though TCGL has had to spend time and resources recovering the information and meeting at least two clients to reset the relationship.

[66] Mr Ryan provided one example of an email that Ms Worley sent on 20 November 2024 (and then deleted) to a third-party and TCGL potentially lost a customer. According to Mr Ryan's statement, the email was discovered during his analysis of file deletions. Ms Worley submitted that she was sending the same email that the COO had sent to customers. A copy of her email to the customer was provided but there was no evidence that it was sent to other customers from the COO, Nancy Meyers, as claimed.

[67] The resulting damage to TCGL from Ms Worley's actions is two-fold – the permanent loss of customer communications and data, even if it seemed unimportant; and the lack of trust created by her actions leading to uncertainty about what Ms Worley may have retained or shared with competitors.

[68] There is no evidence before the Authority in respect of Ms Worley's ability to pay a penalty. Therefore, no weight is given to this factor.

[69] In similar cases, a penalty is usually awarded because there is evidence of retention or misuse of confidential information. In the recent *Boxter Ltd v Wei Song* Authority determination, Mr Song breached confidentiality and actively deleted digitally stored data. The number of data deletions was less than Ms Worley, but there was a direct financial loss to the business and a penalty of $3,000 was awarded to Boxter Ltd.[4] Similarly, in *Bananaworks Communications Ltd v Shi & Ors* the breaches involved deliberately deleting work related data off the employer's computers and using client information obtained during their employment to solicit clients for their new employer.[5] A penalty of $6,825 was imposed on the first employee and of $9,250 on the second employee for these breaches of their employment agreements. In *Key Industries Ltd v Perrin*, Mr Perrin had actively diverted business opportunities from

[4] *Boxter Ltd v Wei Song* [2026] NZERA 49.
[5] *Bananaworks Communications Ltd v Shi & Ors* [2021] NZERA 425 as also discussed in *Key Industries Ltd v Perrin* [2022] NZERA 416 at [212].

Key Industries, solicited its clients and passed confidential information to a competitor, leading to a penalty of $37,500 for five globalised breaches.[6]

[70] Factors considered in support of Ms Worley's actions include that there was no evidence that Ms Worley kept, used or disclosed any confidential TCGL information to any third party. This was a single breach and there is no evidence of previous conduct by Ms Worley relating to confidentiality in her employment. Conversely, the breach was intentional, disregarded the email of 14 November 2025 and deletions included client and customer information.

[71] I therefore impose a penalty of $3,000 on Ms Worley as an appropriate award for this breach after considering all relevant factors. Under s 136(2) of the Act, Ms Worley is ordered to pay the whole of that penalty to TCGL.

Conclusion

[72] This matter took two days to navigate. In large part, the matter was complicated by serious allegations that could either not be investigated due to lack of data or insufficient evidence was provided to substantiate those allegations.

[73] I conclude that Ms Worley was not happy to be ending her employment and went too far deleting more documents and emails than she should have done from TCGL systems. It was a breach of her employment agreement, a breach of a direct instruction and occurred at a commercially sensitive time for the company. Ms Worley knew this and did it anyway. As TCGL submitted it was not for Ms Worley to decide what information was or was not required to be retained.

[74] Based on the information before the Authority, I am not satisfied that the deletions were for Ms Worley's personal financial gain or with any malicious intent. Equally, other than Mr Ryan's analysis and conclusions, there was no evidence presented that Ms Worley removed and used company data or intellectual property in breach of the confidentiality obligations in her employment agreement.

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[6] *Above n 5.*

Orders

Compliance order not to be issued

[75] Section 137(1)(a)(i) of the Act gives the Authority power to order compliance where a person has not complied with the terms of the employment agreement. However, Ms Worley has already provided an undertaking that she is not in possession of any TCGL property and there is no evidence that she has not complied with that requirement. On that basis, a compliance order is not appropriate at this stage.

[76] Within 21 days of the date of this determination, Ms Worley is ordered to pay TCGL (now Datarail Limited) the sum of $3,000 for breaching clause 14 of her employment agreement.

Costs

[77] As TCGL was self-represented, costs would normally lie where they fall. However, TCGL can claim for the cost of any professional representation and for reasonable expenses incurred, which may include expert witness costs and expenses.

[78] The parties are encouraged to resolve any issue of costs between themselves.

[79] If the parties are unable to resolve costs, and an Authority determination on costs is needed, TCGL may lodge, and then should serve, a memorandum on costs within 28 days of the date of this determination. From the date of service of that memorandum, Ms Worley then has 14 days to lodge any reply memorandum. On request by either party, an extension of time for the parties to continue to negotiate costs between themselves may be granted.

[80] Should the issue of costs come before the Authority on this matter, the parties can expect that the Authority will consider the parties' witness costs and expenses along with reimbursement of the Authority filing fee of $71.55 in considering any costs award.[7]

Helen van Druten
Member of the Employment Relations Authority

[7] For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.