

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2023] NZEmpC 159
EMPC 477/2021**

IN THE MATTER OF proceedings removed from the Employment
Relations Authority

AND IN THE MATTER OF an application for compliance with orders
made in an interlocutory judgment

BETWEEN SIOUXSIE WILES
Plaintiff

AND THE VICE-CHANCELLOR OF THE
UNIVERSITY OF AUCKLAND
Defendant

Hearing: 19 September 2023
(via telephone)

Appearances: C W Stewart and D Church, counsel for plaintiff
P Skelton KC, R Judge, S-J Lloyd and K Burson, counsel for
defendant

Judgment: 22 September 2023

**INTERLOCUTORY JUDGMENT (NO 4) OF JUDGE J C HOLDEN
(Application for compliance with orders made in an interlocutory judgment)**

[1] The Court's interlocutory judgment dated 23 August 2023 addressed a challenge to the University of Auckland's (the University's) objection to disclosure of documents sought by Associate Professor Wiles.¹

¹ *Wiles v The Vice-Chancellor of the University of Auckland* [2023] NZEmpC 136.

[2] The Court balanced the interests, rights and obligations of Associate Professor Wiles, the University and affected third parties. It then made orders requiring disclosure of summaries covering circumstances that Mr Phipps was aware of where the University has investigated and cautioned staff who the University considered had gone beyond the constraints of law and University policy when exercising academic freedom and providing public commentary, but confined to the period between 24 August 2017 and 24 August 2022 (inclusive).²

[3] The University says disclosure was done via an affidavit of Mr Phipps, that included within it summaries of four instances that Mr Phipps says he was aware of and that fell within the scope of the disclosure ordered.

[4] Associate Professor Wiles now applies for an order requiring the University to comply with the orders of the Court.³ She says the University has failed to comply with [25] of the interlocutory judgment of 23 August 2023:

The University's affidavit listing the documents ordered to be disclosed is to be provided to Associate Professor Wiles within 14 days of the date of this interlocutory judgment, with disclosure of documents to be attended to by providing copies contemporaneously, or at the latest within seven days of that list being provided.

[5] Ms Stewart, counsel for Associate Professor Wiles, was clear that Associate Professor Wiles was not seeking to revisit the orders made in the interlocutory judgment of 23 August 2023. She submits, however, that Mr Phipps's affidavit does not comply with the orders made as he has simply created, and included within his affidavit, a vague high-level summary. Ms Stewart says that Associate Professor Wiles's expectation was that the University would provide original, but anonymised, documents that together summarised the circumstances of the previous incidents and the outcome of the University's processes.

[6] Associate Professor Wiles seeks an order that:

- (a) a list of documents be provided by the University; and

² At [23].

³ Employment Relations Act 2000, s 139.

- (b) the University disclose documents by providing copies of anonymised source documents to Associate Professor Wiles.

[7] I acknowledge that [25] of the previous interlocutory judgment envisaged there would be an affidavit listing the documents ordered to be disclosed, with disclosure of documents to be attended to separately. The University has chosen to provide one affidavit, which does not include a list, but includes the four summaries as part of the affidavit.

[8] Nevertheless, the issue the Court is concerned with is whether, in substance, the orders made in the previous interlocutory judgment have been complied with. If they have been, no order is required.

[9] Mr Phipps' affidavit contains brief descriptions of four instances in which the University investigated and cautioned staff who made public statements, including the circumstances, the process that followed and the outcome. The four summaries are between three and six paragraphs each.

[10] The summaries cover the points required by the orders in [23] of the previous interlocutory judgment; they may not be in the form that Associate Professor Wiles expected, but, in substance, the previous interlocutory judgment has been complied with.

[11] The interlocutory application for compliance with orders made in the interlocutory judgment dated 23 August 2023 is unsuccessful.

[12] Notwithstanding the outcome of this interlocutory application, it remains open to the parties to discuss what further information might be provided at this stage. Mr Phipps also will be giving evidence at the hearing and, accordingly, he will be available for cross-examination.

[13] The time for any third amended statement of claim to be filed and served by Associate Professor Wiles is extended to 4 pm on Friday 6 October 2023. As the

proceeding has been set down, no further interlocutory applications may be made without the leave of the Court.

[14] Costs are reserved pending the substantive hearing.

J C Holden
Judge

Judgment signed at 10.45 am on 22 September 2023