

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 531  
5519338

BETWEEN	ASCOT ALUMINIUM LIMITED Applicant
AND	JINSI LEE First Respondent
AND	JOE MANOA GRIMA Second Respondent
AND	TASI FELETI-FAANAMA Third Respondent
AND	MOCHAMAD GHALIB Fourth Respondent
AND	SINGARASA NIMALAN Fifth Respondent
AND	SOUTHERN CROSS INSTALLATION LIMITED Sixth Respondent
AND	ROYALE ALUMINIUM LIMITED Seventh Respondent

Member of Authority: Vicki Campbell

Representatives: Eska Hartdegen for Applicant  
No Appearance for First Respondent  
Chris Eggleston for Second, Third, Fourth and Seventh  
Respondents  
Shehan Ebenezer for Fifth Respondent  
No appearance for Sixth Respondent

Investigation Meeting: 16 December 2014

Determination: 22 December 2014

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**A. The application for interim orders is dismissed.**

**B. Costs are reserved.**

### **Employment relationship problem**

[1] Ascot Aluminium Limited (AAL) has applied for an urgent interim injunction, preventing the first to fifth respondents from breaching their employment agreements with respect to confidentiality, non-solicitation and restraint of trade provisions.

[2] The orders sought by AAL are:

- a) a direction that respondents one to five comply with their duty of fidelity and not to use confidential information belonging to AAL;
- b) an order that respondents two, three and four cease working for, or be in any way involved in the business or running of the sixth respondent, Southern Cross Installations Limited (SCIL) or seventh respondent, Royale Aluminium Limited (RAL);
- c) a direction that respondent two comply with the non-solicitation and restraint provisions in his employment agreement;
- d) a direction that respondent three comply with the non-solicitation and restraint provisions in his employment agreement [the Authority has assumed this is the meaning of the wording set out at paragraph 4 of the statement of problem];  
and
- e) a direction that respondent four complies with the restraint provision in his employment agreement.

[3] Despite directions that the first respondent was to be personally served by the applicant, Mr Lee has not been served with either the amended statement of problem or the notice of investigation meeting. The Authority is unable to make any orders in respect of Mr Lee. For the avoidance of doubt, the applicant is directed to personally

serve the amended statement of problem, all documents and all future notices on the first respondent.

[4] The second to fifth respondents say the application is without foundation and should be dismissed.

[5] While some of the facts have been canvassed in the process of findings I express in this determination, the determination is solely related to the claim for interim injunction. Final findings of fact and law will be made only once I have had an opportunity to fully test all of the relevant evidence.

[6] Documents referred to in the affidavit filed in support of the application and the briefs of evidence lodged by the applicant have not been produced to the Authority. This is to be rectified and the applicant was directed during the Authority's investigation meeting to lodge and serve all documents on or before 24 January 2015.

[7] The Authority is aware the sixth respondent has not been served either the notice of the Authority's investigation meeting or the applicant's amended statement of problem. This was due to confusion as to the correct address for service of these documents. This has now been rectified. There was no prejudice to either the applicant or the sixth respondent in the failure to serve these documents as the application for interim orders does not involve the sixth respondent.

### **Background**

[8] AAL produces aluminium joinery, and uses contractors as well as its own staff to do the installation. A significant amount of the work AAL completes comes from Hamilton firm Architectural Profiles Limited (APL). APL has also provided significant financial support to AAL.

[9] AAL produces aluminium joinery for both residential and commercial clients. The residential clients include builders and building companies. For some residential and all commercial work, aluminium companies such as AAL are asked to submit tenders in order to win work.

[10] The fourth respondent, Mr Ghalib, was employed as an estimator and it was his job to provide quotes based on architectural drawings. At AAL tenders were developed using a software program supplied by APL. APL and glass company, Metro Glass, enter their prices into the software system then the Estimator enters the specifications from the architect drawings.

[11] The software system calculates the price for the job based on all of the data provided by APL, Metro Glass and AAL and includes a provision for labour costs. AAL then adds its margin. The margin to be assigned to each tender is either decided by the Estimator or decided in discussion with the General Manager. The completed tender is submitted to the contractor along with three to five other tenders from competing firms.

[12] On 7 February 2014 SCIL was registered for the first time in the Companies Register. The sole director is named as Haiyue He and the sole shareholder is a company called Hackthorne Trustees Limited a company owned by Mr Gordon Hansen.

[13] On 7 August 2014 RAL was registered for the first time in the Companies Register. The sole director is named as Mr Joe Grima. Mr Grima is one of 4 shareholders.

[14] The first to fifth respondents, Mr Lee, Mr Grima, Mr Feleti-Faanama, Mr Ghalib and Mr Nimalan were all employees of AAL until recently. Messers Grima, Feleti-Faanama and Ghalib, are currently employed by RAL.

[15] AAL has provided copies of five employment agreements which contain various confidentiality and protective covenant provisions. I have reviewed each of the agreements and the information provided by the respondents in response to the claims against them.

***Mr Lee***

[16] Mr Lee was employed as Business Development Manager and signed a written employment agreement on 24 March 2014. The employment agreement contains a confidentiality clause which states:

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 and responsibilities under this agreement, or as required by law, 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 the Employer's business.

[17] Mr Lee's employment agreement does not contain a restraint of trade, or non-solicitation clause.

[18] Mr Lee was dismissed from his position on 10 April 2014 after an investigation by AAL found conduct by Mr Lee which amounted to serious misconduct.

[19] I have received no response from Mr Lee and am awaiting confirmation that the applicant has affected personal service of the amended statement of problem on Mr Lee.

***Mr Grima***

[20] Mr Grima was employed as the Operations Manager. A written employment agreement dated April 2011 has been produced to the Authority. The agreement has not been signed by Mr Grima but does bear the signature of a representative of AAL. The relevant clauses from this agreement are:

**CONFIDENTIAL INFORMATION**

You may not disclose to any person, or make use of, personal details of another employee, obtained during the course of your employment.

You may not during the term of this agreement or after its termination, use or disclose to anyone, including employees who are not entitled to it, confidential employer information or trade secrets, unless it is necessary for your work.

You may not use confidential information about the company's business, or information gained through your employment, to your own benefit, as distinct from the benefit of the employer.

You may not use confidential information in any way that could harm the company.

You agree, upon request, to sign a statutory declaration that you have returned all company documents and that you will not disclose any company information, or use it for your own purposes.

**NON-SOLICITATION**

You may not, during your employment or for twelve months after termination of employment, solicit, try to entice away from or discourage from being employed by the company, any other employee or client/customer or prospective client/customer of the company.

### **RESTRAINT OF TRADE**

You may not, during this agreement and for 24 months after termination, establish, buy, or obtain an interest (either directly or indirectly) in, any business in competition with the company. This prohibition applies within a radius of 80 kilometres of the company.

If this clause is held invalid for any reason, the remainder of this agreement will not be affected.

[21] Mr Grima says he applied for a position advertised by APL. He was short listed and met with Mr Aaron Ghee at a restaurant where the two reached agreement on the key employment terms. Mr Ghee is a businessman and husband of Mrs Joycelyne Ghee the sole Director of AAL. Mr Grima says he was offered and accepted employment on the basis of his discussion with Mr Ghee which did not include any indication of restraining provisions.

[22] Mr Grima says that during his discussions with Mr Ghee there was no discussion about the need for confidentiality, non-solicitation or restraint of trade provisions. He says the employment agreement was given to him after he had been employed for 2-3 weeks and he would not sign the agreement as he wanted to discuss the document and its contents with Mr Ghee. Mr Grima says no consideration was offered in exchange for entering into the restraint of trade clause set out in the employment agreement.

[23] The discussion with Mr Ghee did not happen because both men became very busy in the business and no further steps were taken by either Mr Grima or Mr Ghee to conclude the agreement.

[24] Mr Grima was dismissed from his employment in April 2014.

[25] Mr Grima denies breaching any of the express terms of his employment agreement and says he is not bound by them due to the agreement never being accepted by him. This matter will require the testing of evidence at the substantive hearing.

[26] Mr Grima acknowledges that he is the sole director of RAL and that he has employed two ex-employees of AAL. Mr Grima says he was left with little option than to start his own business, after an offer of employment by another aluminium company was withdrawn due to the interference of AAL.

***Mr Feleti-Faanama***

[27] Mr Feleti-Faanama was employed by AAL in 1999 as the Production Manager. He signed a written employment agreement on 4 February 2005. Except for the non-solicitation clause being for a period of six months instead of twelve, and the restraint of trade limiting the geographical area to 10 kilometres and not 80 kilometres, the relevant clauses from the agreement are identical with those set out above.

[28] Mr Feleti-Faanama says he did not seek independent advice about the agreement before he signed, however, he has signed the agreement which includes an acknowledgement that he did seek independent legal advice.

[29] Mr Feleti-Faanama resigned from his employment with AAL on or about 14 May 2014 and his final day of work was 16 May 2014.

[30] Mr Feleti-Faanama says he went on holiday to Samoa for a month and when he returned about the end of June 2014 he contacted Mr Grima and enquired about what Mr Grima was doing. As both he and Mr Grima were out of work, Mr Feleti-Faanama says they agreed to combine their resources and look for work together.

[31] Mr Feleti-Faanama says he decided to assist Mr Grima in his new business venture after an offer of employment by another aluminium company was withdrawn due to the interference of AAL.

***Mr Ghalib***

[32] Mr Ghalib was employed as an Estimator. A written employment agreement dated 10 July 2014 has been produced to the Authority. The agreement has not been signed by either party. Except for the restraint of trade limiting the geographical area to 50 kilometres and not 80 the relevant clauses from the agreement are identical with those set out above.

[33] Mr Ghalib recalls signing an employment agreement in or about March 2013. A copy of this document has not been provided to the Authority. Mr Ghalib says he has no knowledge of the employment agreement dated 10 July 2014. Mr Ghalib says he resigned from his role with AAL on 8 July 2014 and had no reason to execute a

fresh employment agreement at that time. However, he concedes that his most recently executed employment agreement does contain the clauses as stated. Mr Ghalib says he did not seek independent advice before signing the agreement.

[34] Mr Ghalib denies breaching the confidentiality and non-solicitation clauses of his agreement and says he is not bound by the restraint of trade provision as it is unlawful.

[35] Mr Ghalib acknowledges that he is employed by RAL. He says he contacted Mr Grima after he left his employment with AAL and asked him to be a referee for him. During the course of that conversation Mr Ghalib asked Mr Grima what he was doing and Mr Grima told him he was intending to open his own business. Mr Ghalib asked if Mr Grima would employ him if he had a vacancy in the future and Mr Grima agreed.

### ***Mr Nimalan***

[36] Mr Nimalan was employed as the Company Accountant and signed a written employment agreement on 18 July 2012. Except for the restraint of trade limiting the geographical area to 50 kilometres and not 80 the relevant clauses from the agreement are identical with those set out above.

[37] Mr Nimalan denies breaching the terms of his employment agreement. Mr Nimalan resigned from his employment on or about 16 April 2014. He now works for HCB Technologies Limited as an assistant to the Financial Controller. HCB Technologies imports batteries for cars and forklifts.

### **The applicable test**

[38] In determining this application for interim orders, the Authority must have regard to<sup>1</sup>:

- a) Whether there is an arguable case;

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<sup>1</sup>*Pottinger, Nine Dot Consulting limited & Carew v Kelly Services (New Zealand) Limited* [2012] NZEmpC 101.

- b) Where the balance of convenience lies between the parties in the period until the substantive application has been determined; and
- c) The overall justice of the case.

[39] The remedy is discretionary. The purpose of interim relief is to protect an applicant against injury for which it cannot be adequately compensated in damages in the event that it succeeds at the substantive hearing.

[40] Protection for the applicant needs to be balanced against the damage that might be done to a respondent, through being prevented from exercising their rights if the applicant fails in its substantive hearing.

#### **Arguable case**

[41] I have approached this question by examining each of the contented breaches. For the reasons I have set out earlier in this determination I have not included Mr Lee in my discussion or final determination.

#### ***Duty of fidelity***

[42] AAL submits that Messers Grima, Feleti-Faanama, Ghalib and Nimalan are in breach of their implied duty of fidelity, confidentiality and honesty and seeks an order directing each of them to comply with the duty. The submissions made on behalf of AAL overlooks the important point that the duty of fidelity does not survive the termination of the employment relationship.<sup>2</sup> All of the cases cited in support of AAL's submission relate to cases where employees breached their implied terms while they continued to be employed. The actions complained of by AAL in respect of the first to fifth respondents in this matter all relate to actions after the employment relationship ended. The duty of fidelity does not extend to actions undertaken after the ending of the employment relationship.

[43] The applicant has not established the necessary arguable case that Messers Grima, Feleti-Faanama, Ghalib and Nimalan have breached their duty of fidelity.

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<sup>2</sup>*Marsden Providors (1988) Ltd v Cotterill (1989) 2 NZELC 97,094(HC); Medic Corp Ltd v Barrett [1992] 3 ERNZ 523.*

[44] AAL also submits that Messers Grima, Feleti-Faanama, Ghalib and Nimalan have breached their express obligations not to use confidential information and seeks an order directing each of them to comply with their obligations.

[45] In his affidavit Mr Ghee says Messers Grima, Feleti-Faanama, Ghalib and Nimalan have knowingly taken confidential information from AAL premises prior to leaving their employment. In particular Mr Ghee says they have taken customer details, phone numbers, emails, details of upcoming signed contracts, building plans for upcoming contracts, pricing methodologies and spreadsheets, and historical records of tenders submitted but awaiting confirmation.

[46] In submissions on their behalf the respondents say there is no evidence they have removed the information, nor is there evidence that they have been using or have used the information to their advantage or to the detriment of AAL.

[47] In his sworn affidavit Mr Ghee says that in July 2014 Mr Chris Buchanan, the of Savory Construction Ltd contacted him and informed him that Mr Grima and Mr Feleti-Faanama had approached Savory Construction Ltd and had with them the project plans, the first stage of which had been completed by AAL. Mr Ghee was told the two respondents also had a copy of AAL's pricing and background information with them.

[48] The Authority has not received any evidence from Savory Construction regarding this allegation.

[49] Attached to Mr Grima's brief of evidence were copies of:

- a) emails between Messers Ghee, Lee, Mr Nimalan and Mr Frex Vincent;
- b) AAL invoices raised against Walton 18 Limited; and
- c) extracts of online bank statements of AAL;

[50] These documents are documents relating to the business of AAL and are confidential in nature. Mr Grima has produced the documents but they appear to have been printed by Mr Nimalan or Mr Lee. There is no direct evidence of how Mr Grima came to have access to these documents.

[51] AAL's evidence about the approach to Savory Construction Ltd and Sina Lei Resort is largely corroborated by both Mr Grima and Mr Feleti-Faanama. Both respondents acknowledged they approached both Savory Construction Limited and Sina Lei Resort with a view to seeking opportunities to tender for work. In both cases AAL had successfully tendered for initial stages of work for both companies.

[52] There are issues which will need to be resolved by the testing of evidence with respect to the approaches by Mr Grima and Mr Feleti-Faanama will be whether they had copies of confidential information with them at the meeting. The applicant has established an arguable case in this regard.

### *Non-solicitation*

[53] AAL seeks an order that Mr Grima and Mr Feleti-Faanama comply with the non-solicitation provision in their employment agreements.

[54] AAL says Mr Grima and Mr Feleti-Faanama approached at least two clients, Savory Construction Ltd and Sina Lei Resort (based in Fiji) and attempted to solicit work from them. Mr Ghee's affidavit references an email received on 10 September 2014. That email has not been appended to the affidavit and therefore the Authority is unable to take it into account.

[55] Mr Grima acknowledges that he approached Savory Construction Ltd. He says it was common knowledge in the industry that AAL had undertaken work for Savory Construction Limited and therefore it was not confidential information.

[56] Mr Grima and Mr Feleti-Faanama were aware AAL had successfully tendered for Stage 1 of projects undertaken by Savory Construction Limited and they enquired whether the company would consider inviting Mr Grima's new venture to tender for Stage 2. Mr Feleti-Faanama says they approached Savory Construction Limited while he and Mr Grima were in discussions with Vistalite regarding employment opportunities for each of them.

[57] Both Mr Grima and Mr Feleti-Faanama deny attending that meeting with any confidential information. RAL has not been invited to submit any tenders to Savory Construction Limited.

[58] Mr Feleti-Faanama acknowledges that he made contact with Sina Lei Resort. He says AAL secured the first stage of a development project as a result of his personal standing in Samoa. He says he sent an email with his new contact details advising Sina Lei Resort that he had moved on from AAL. Mr Feleti-Faanama was hopeful the Resort would invite RAL to tender when the future stages of the development were ready to proceed. RAL have not tendered for any work with the Resort.

[59] Mr Feleti-Faanama's signed employment agreement prohibits him from soliciting clients of AAL for a period of six months after his employment ended. Mr Feleti-Faanama says he and Mr Grima did attempt to solicit work from Savory Construction Limited. I am satisfied Mr Feleti-Faanama approached Savory Construction Limited within the six month period and the approach was with a view to tender for the next stage of the development which would have the effect of soliciting the client away from AAL.

[60] It is accepted that Mr Feleti-Faanama was not attempting to solicit work already won by AAL, however, Mr Feleti-Faanama knew Savory Construction Limited was a client of AAL and was attempting to solicit future work from Savory Construction and Sina Lei Resort by seeking an opportunity to tender for future stages of the development projects.

[61] The barrier for AAL in its application for compliance against Mr Feleti-Faanama is that the period covered by the non-solicitation clause expired on or about 16 November 2014. Any orders for compliance will be ineffective.

[62] I consider the applicant has failed to establish an arguable case for a compliance order against Mr Feleti-Faanama.

[63] In order to be successful in its application for a compliance order against Mr Grima, the unsigned employment agreement must be enforceable. While it is strongly arguable that Mr Grima is not bound by the terms and conditions set out in the unsigned employment agreement, I consider AAL has an arguable case on this point

as its resolution will turn on a testing of the evidence as to whether the unsigned employment agreement is enforceable.

[64] AAL alleges Mr Grima actively sought to recruit Mr Feleti-Faanama and Mr Ghalib to work for RAL in competition with AAL which was a breach of the non-solicitation clause of his employment agreement. Both Mr Feleti-Faanama and Mr Ghalib say they approached Mr Grima after leaving their employment with AAL and asked about possible employment opportunities. There was no evidence to the contrary from AAL.

[65] I consider the applicant has failed to establish an arguable case for a compliance order against Mr Grima on this point.

### ***Restraint of trade***

[66] AAL seeks an order that Messers Grima, Feleti-Faanama, and Ghalib cease working for, or be in any way involved in the business or running of SCI or RAL

[67] Contractual provisions restricting the activities of employees after termination of their employment are, as a matter of legal policy, regarded as unenforceable unless they can be justified as reasonably necessary to protect proprietary interests of the employer in the public interest.<sup>3</sup>

[68] The onus of establishing that a restrictive covenant is reasonable is on the employer.<sup>4</sup> Such a provision should be no wider than is required to protect the party in whose favour it is given.<sup>5</sup>

[69] Restraints are enforced only to the extent required to protect a proprietary interest of the employer. The nature of the employee's role and the employer's business, the geographical scope of the restraint, and its nature and duration are relevant factors in assessing whether a restraint is reasonably necessary.

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<sup>3</sup>*Gallagher Group Ltd v Walley* [1999] 1 ERNZ 490 (CA) at [20] citing *Mason v Provident Clothing & Supply Company Ltd* [1913] AC 724 (HL) at 733.

<sup>4</sup>*Ibid* at [28].

<sup>5</sup>*Fletcher Aluminium Ltd v O'Sullivan* [2001] 2 NZLR 731, [2001] ERNZ 46 (CA) at [28].

[70] The issue for the Authority in the context of this application is whether an arguable question arises as to the likely enforceability of the covenants at issue in relation to the first to fifth respondents.

*Proprietary interest*

[71] AAL has not provided any evidence as to the proprietary interest requiring the protection of a restraining covenant.

*Duration and nature of restraint*

[72] The duration for the restraint of trade is 24 months. The restraint provision as written in all three employment agreements is to prohibit Messers Grima, Feleti-Faanama and Ghalib from establishing, buying, or obtaining an interest (either directly or indirectly) in, any business in competition with AAL.

[73] The restraining provision does not prohibit the respondents from being employed in a business in competition with AAL. There is no evidence that Mr Feleti-Faanama or Mr Ghalib have a direct or indirect interest in the business of RAL.

[74] No submissions were made by the applicant as to why the duration of the restraint needed to be 24 months.

*Geographical boundaries*

[75] No submissions were made by the applicant as to the need for the geographic boundary of between 10 and 80 kilometres.

[76] Mr Feleti-Faanama's agreement limited the boundary of the restraint to 10 kilometres. RAL is located more than 10 kilometres away from AAL therefore the work is outside the geographic boundary of the restraint.

*Consideration*

[77] The Court of Appeal in *Fuel Espresso v Hiesh*<sup>6</sup> held the underlying principle that consideration must be given for a subsequent contract remained and the existence of consideration may be inferred from the contractual terms.

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<sup>6</sup>[2007] ERNZ 60 (CA).

[78] There is no evidence as to the consideration offered to the three respondents for entering into the restraints.

### *Conclusion*

[79] I consider the applicant has not established an arguable case that Mr Feleti-Faanama or Mr Ghalib have breached the restraint of trade clauses in the employment agreements.

[80] In order to be successful in its application for a compliance order on this point the unsigned employment agreement must be enforceable. Again, while it is strongly arguable that Mr Grima is not bound by the terms and conditions set out in the unsigned employment agreement, I consider AAL has an arguable case on this point as its resolution will turn on a testing of the evidence as to whether the unsigned employment agreement is enforceable.

### **Conclusion as to arguable case**

[81] AAL has points available to it which are arguable.

### **Balance of convenience**

[82] The Employment Court has described the balance of convenience as the balance of the risk of doing an injustice.<sup>7</sup> The Authority is required to balance the potential injustice that will be caused to AAL if the injunction is not granted, against the potential injustice to the respondents if the injunction is granted.

[83] Factors that are relevant to an assessment of where the balance of convenience lies includes the adequacy of damages for all parties, the relative strength of each party's case, and the conduct of the litigants. Also relevant is the position of the parties pending substantive determination of the claim and whether an award for damages would be an adequate remedy as this is relevant in assessing where the balance of convenience lies.<sup>8</sup>

[84] AAL must establish at the substantive hearing its claim for damages as a result of the approaches by Mr Feleti-Faanama and Mr Grima to Savory Construction Limited and Sina Lei Resort.

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<sup>7</sup>Supra n 1 at [76].

<sup>8</sup>*American Cyanamid Co Ltd v Ethicon Ltd*[1975] AC 396.

[85] RAL did not succeed in being invited to tender for any work with either company so a claim for damages may be problematic for AAL.

[86] With respect to the conduct of the litigants, delay is a matter which needs to be considered. Submissions on behalf of the respondents are critical of AAL delaying in raising the claims for damages. From the evidence currently before the Authority it seems AAL was aware of the establishment of RAL in or about August 2014. While dates are not clear from the evidence, it seems that about August 2014 Mr Grima had received verbal confirmation of support from an aluminium supplier who agreed to supply aluminium and machinery for a new factory to assist Mr Grima to set up his new business.

[87] After receiving confirmation of the support to be received from the aluminium supplier and while waiting on the formal contractual documentation to be completed, Mr Grima entered into a lease for premises. The supplier delivered and started setting up the machinery. It then returned to the premises and removed it. Mr Grima says the company informed him they had received a call from AAL and on the basis of that call decided to withdraw its support.

[88] A Statement of Problem was lodged in the Authority and served on the respondents on or about 18 September 2014. The Authority is satisfied AAL has not delayed in raising its claims with the respondents.

[89] The respondents submitted that damages for any proven breaches would be an adequate remedy. The Authority has received no evidence from the respondents as to their ability to pay any damages for proven breaches nor has the Authority heard any submissions by AAL as to the effect this has on its application.

[90] Given the extent to which I have found an arguable case, the Authority is satisfied that damages are likely to be an effective alternative remedy, and that this weighs in favour of the respondents in terms of an assessment of where the balance of convenience lies.

### **Overall justice**

[91] The Authority is required to stand back and determine where the overall justice of the case lies until the substantive investigation and determination. The Authority has found AAL has points available to it that are arguable.

[92] The substantive matter can be heard by the Authority in February or March 2015 which is a relatively short delay. The overall justice requires that this application be dismissed.

### **Costs**

[93] Costs are reserved. The parties are invited to resolve the matter. If they are unable to do so, the respondents shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. The 28 days does not include the period 25 December 2014 to 5 January 2015 inclusive.

[94] AAL shall have a further 14 days in which to file and serve a memorandum in reply. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

Vicki Campbell  
Member of the Employment Relations Authority