

**Attention is drawn to the order  
prohibiting publication of certain  
information in this determination**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

[2014] NZERA Wellington 61  
5406230

BETWEEN                      BANK OF NEW ZEALAND  
Applicant

AND                              C R  
Respondent

Member of Authority:       Michele Ryan

Representatives:            Stephen Langton, for Applicant  
Blair Scotland, for Respondent

Determination:                Tuesday 3 June 2014

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**CONSENT DETERMINATION OF THE AUTHORITY**

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- [1] In the lead-up to a scheduled three day investigation meeting the parties reached an agreement between them. I congratulate them on resolving their dispute. They have requested the following matters be included in a consent determination.
- [2] The applicant is a New Zealand trading bank.
- [3] The respondent was employed by the applicant on 8 August 2007 as an “Agribusiness Partner”, based at its New Plymouth Branch in Taranaki.
- [4] On 7 November 2012 the respondent resigned from his employment with the applicant, on one month’s notice, to take up a position with a competitor of the applicant in the Taranaki region.
- [5] The applicant put the respondent on garden leave during his notice period and his employment with the respondent ended on 7 December 2012.

[6] During his employment with the applicant, and without the respondent's new employer's knowledge, the respondent took copies of the applicant's template documents, transferred them to his new employer's computer system and then converted some of them into that employer's templates. He did this without authorisation, in breach of his duties owed to the applicant. These documents included:

- a) The applicant's "historical analysis" template. The respondent says he took it but did not convert them into a new template.
- b) The applicant's template "offer letter". The respondent says he took it, created a new template for his new employer from it, but did not use that template.
- c) The applicant's "quick budget". The respondent says he took and modified it for his new employer, but did not use it.
- d) The applicant's "dairy farm gearing calculator" document. This document was taken by the applicant, modified and used by the respondent.
- e) The applicant's "annual budget" template. The respondent admits he took it and did not use it.
- f) The applicant's "workbook" template, which the respondent says he had on his system but did not use.
- g) The applicant's "statement of financial position" template. The respondent admits he took, modified and used this document.

[7] During the respondent's employment with the applicant, and without the respondent's new employer's knowledge, the respondent also took one of its databases. He transferred this database to his new employer's computer system. He did this without authorisation in breach of his duties owed to the applicant.

[8] During the respondent's employment with the applicant, he copied his company contacts from his work mobile phone. He did this without authorisation and in breach of his duties owed to the applicant.

[9] The respondent also commenced work with his new employer, while still employed by the applicant and, during which time he:

- a) Participated in meetings and discussions with his new employer, contrary to the applicant's best interests.
- b) Failed to advise the applicant of specific threats to its business, mainly the fact that his new employer was pitching to the applicant's existing clients for work and that clients were approaching his new employer.
- c) Was involved in the solicitation of a client of the applicant to transfer their customer/business to his new employer.
- d) Took an "Agribusiness credit workbook" for one the applicant's clients and then discussed this client with his new employer with a view to his new employer soliciting that client's custom.

[10] These actions were in breach of his duties and obligations he owed to the applicant.

[11] During his employment with the applicant, the respondent misused confidential information about the applicant's pitch for a prospective client (by printing the information from the applicant's computer system). He had no reason to be looking at and printing that information.

[12] Liability has been established by this Consent Determination. The parties have reached an agreement in relation to remedies. The questions of remedies and costs are adjourned to allow time for settlement to be effected.

[13] The parties consent to the following orders:

- (i) pursuant to Clause 10 of Schedule 2 of the Employment Relations Act 2000, publication of the respondent's name is prohibited; and
- (ii) pursuant to Clause 10 of Schedule 2 of the Employment Relations Act 2000, publication of the name of the respondent's new employer is prohibited and it may only be referred to as "a competitor of the applicant" (or alike); and
- (iii) pursuant to Clause 10 of Schedule 2 of the Employment Relations Act 2000 publication of the names of applicant's customers and clients (as they relate directly or indirectly to the factual matrix relevant to this matter) is prohibited.

[14] The matters referred to in this determination are orders of the Authority and enforceable under s 137(1)(b) of the Employment Relations Act.

Michele Ryan

Member of the Employment Relations Authority