

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

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 178/10
5296230

BETWEEN

LEA BENNETTS
Applicant

A N D

THE BENVENUE LIMITED
Respondent

Member of Authority: Helen Doyle

Representatives: Georgina Burness, Advocate for Applicant
Alyn Higgins, Advocate for Respondent

Investigation Meeting: 13 August 2010 at Timaru

Determination: 3 September 2010

DETERMINATION OF THE AUTHORITY

Prohibition from publication

[1] I prohibit from publication under clause 10(1) of the Second Schedule to the Employment Relations Act 2000 the provisions of the settlement agreement entered into between the parties under s.149 of the Employment Relations Act 2000 that have not been referred to in this determination.

Employment relationship problem

[2] Lea Bennetts entered into a settlement on 22 October 2009 under s.149 of the Employment Relations Act 2000 with The Benvenue Limited (The Benvenue). Ms Bennetts says that during a review hearing under the Injury Prevention, Rehabilitation and Compensation Act 2001, on 20 November 2009, there was a breach of clause 1 of that agreement that provides:

These terms of settlement and all matters discussed at mediation shall remain confidential to the parties.

and clause 4 that provides:

It is agreed that neither party will make any disparaging comments about each other at any time in the future.

[3] There was a further breach of the settlement agreement alleged in the statement of problem but I am advised by Ms Burness following a brief discussion during the investigation meeting and, an action thereafter, this matter has been resolved and does not need to be considered with the other alleged breaches.

[4] The Benvenue does not accept that it breached the terms of settlement.

The review hearing

[5] The Authority was provided with a copy of the decision of the ACC reviewer, Kay Stringleman dated 30 November 2009. The Benvenue had lodged an application for a review of the decision by ACC that Ms Bennetts' claim for cover as a work-related injury had been approved. The application for review of that decision was dated 19 July 2009 and preceded the settlement agreement that was subsequently entered into in terms of employment matters.

[6] Ms Bennetts was present at the review hearing with a support person, Leon Hobbs. Greg Lancaster represented The Benvenue at the hearing. Mr Lancaster is the husband of the director of The Benvenue, Dianne Lancaster, although not an officer of the company or an employee. Mr Lancaster gave evidence that on occasion he does undertake duties at The Benvenue although he said he was not remunerated for doing so. Mr Lancaster had not attended the mediation at which the settlement was entered into. That was attended by Mrs Lancaster.

[7] Mr Lancaster was aware that The Benvenue had entered into a settlement agreement with Ms Bennetts. He said in his evidence he did not see the settlement agreement before the review hearing. He said that he was aware from Mrs Lancaster the settlement agreement was confidential. Mr Lancaster did have some involvement following the settlement to the extent he was asked to make a payment under the agreement to Ms Bennetts.

[8] Ms Bennetts relied on various parts of the review decision to support her view that there had been a breach of the requirement by Mr Lancaster arising from the settlement agreement that the parties not make disparaging comments about each other. Ms Bennetts referred me to p.6 of the review decision and the paragraph at the top of the page that provides:

It was apparent from Mr Lancaster's statement that there had been a number of employment relationship issues between Ms Bennetts and her employer.

[9] That paragraph should not be viewed in isolation from what preceded it. It came at the end of the part of the decision headed *The employer's position*. The reviewer noted essentially that Mr Lancaster repeated the points which he had made in a letter accompanying the application for review dated 19 July 2009. That letter referred to a party during the relevant period around the work-related accident.

[10] Ms Bennetts' concerns in terms of the disparaging comments primarily were about the allegation by Mr Lancaster that she had been partying. Mr Hobbs also gave evidence and confirmed there was mention of partying on the part of Ms Bennetts. Ms Bennetts said that the discussion was wider than simply the period within which she had sustained her injury. Mr Lancaster did not accept that. I am not satisfied that Mr Lancaster referred to more than one period of partying.

[11] The other part of the review decision that Ms Bennetts relied on was found at p.10 of the reviewer's decision and I shall set that paragraph out in full:

The employer has disputed ACC's decision primarily on the grounds that Ms Bennetts was not at work on the stated day of accident. Through Mr Lancaster, the employer made a number of statements intended to discredit Ms Bennetts' statements, such as suggesting that she had left work early to attend a party, and other similar statements which Ms Bennetts denies. I consider, however, that the issues raised by the employer are not particularly helpful to determining the issue, which is whether Ms Bennetts suffered the accident at work.

[12] I am not satisfied that statements made by Mr Lancaster as referred to in the reviewer's decision went beyond the grounds for review in his letter. My view is strengthened by that paragraph.

[13] I find in conclusion that Mr Lancaster in all likelihood confined himself to the matters raised in his application for review of ACC's decision which was provided

prior to the settlement agreement. Those matters were being considered by the ACC reviewer as part of her function in deciding whether or not Ms Bennetts suffered a work injury.

[14] The application for review by The Benvenue was dismissed. I am not satisfied that issues raised or statements made about whether or not Ms Bennetts sustained a work-related incident breached clause 4 of the settlement agreement about not making disparaging statements in the circumstances.

[15] The other alleged breach more properly falls to be considered under the confidentiality provision in clause 1. Mr Lancaster agreed that he told the reviewer the parties had recently been involved in mediation and that the mediation had been ruled in The Benvenue's favour. As soon as Mr Lancaster made that statement Mr Hobbs' spoke to Mr Lancaster and advised him *you can't talk about it*. I think it likely that Mr Lancaster responded with words to the effect that he did not know he could not talk about it.

[16] I have then turned to consider whether that statement is a breach of clause 1 of the settlement agreement entered into between the parties. Clause 1 provides that the terms of settlement and all matters discussed at mediation shall remain confidential to the parties. On a strict interpretation of clause 1 which is required in circumstances where a breach could lead to a penalty being awarded I am not satisfied that there was a breach. Mr Lancaster did not refer to the terms of settlement or the matters discussed at mediation.

Determination

[17] I do not find that Mr Lancaster breached either clause 1 or clause 4 of the settlement agreement during the review hearing. Mr Lancaster was entitled in pursuing the application for review to rely on matters that had been put in the application. The comment that Mr Lancaster made about mediation was unwise. I accept that it caused Ms Bennetts concern and upset. I do not, however, find on a strict reading of clause 1 that the statement breached the clause and I do not therefore impose a penalty.

Costs

[18] I will reserve costs. In the exercise of my discretion as to costs I put the parties on notice that I may well take into account Mr Lancaster's unfortunate comment about mediation in terms of an award.

[19] Ms Burness has already set out the costs she is seeking in her statement of problem. If she wishes to make any further submission then it is to be lodged and served by 17 September 2010 and Mr Higgins is to lodge and serve any submissions in reply by 1 October 2010.

Helen Doyle
Member of the Employment Relations Authority