



New Zealand Employment Relations Authority Decisions

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Blincoe v PGG Wrightson Limited (Christchurch) [2010] NZERA 975 (25 November 2010)

Last Updated: 30 March 2011

**IN THE EMPLOYMENT CHRISTCHURCH
RELATIONS AUTHORITY**

CA 216A/10 5326509

BETWEEN

A N D

ROBERT JOHN BLINCOE Applicant

PGG WRIGHTSON LIMITED Respondent

Member of Authority: Representatives:

Investigation Meeting: Date of Determination: Date of Consent Order:

James Crichton

Lesley Brook, Counsel for applicant Andrew Shaw, Counsel for respondent

24. November 2010 at Christchurch

25. November 2010

9 December 2010

CONSENT ORDER OF AUTHORITY

[1] The respondent accepts that on 22 October 2010 it exercised its discretion under clause 20.6 of the applicant's Employment Agreement electing not to invoke the restraint of trade provisions contained in clause 20 of the applicant's Employment Agreement. The applicant acknowledges that no consideration will be paid to him during the period in which the restraint of trade have otherwise operated.

[2] The applicant accepts that, but for the respondent exercising its discretion in clause 20.6 of his Employment Agreement, the restraint of trade provisions contained in clause 20 of his Employment Agreement would otherwise be reasonable and therefore enforceable, if modified by the Employment Relations Authority pursuant to section 8 of the [Illegal Contracts Act 1970](#), as follows:

(a) the provisions in:

- (i) clause 20.2 of the applicant's Employment Agreement, in respect to being engaged in any trade or business which competes with the respondent; and
- (ii) clause 20.4.3 of the applicant's Employment Agreement, in relation to undertaking work for a client or customer of the respondent,

must be read subject to, and is limited by, clause 20.3 of the applicant's Employment Agreement so as to be defined as the applicant carrying out services, that are contained in his job description and/or his actual duties, for a competitor;

(b) the provisions in clauses 20.4.2 and 20.4.3 of the applicant's Employment Agreement apply only in respect to the geographical area where the applicant was previously employed by the respondent, namely Canterbury, Westland and Nelson/Marlborough; and

(c) the provisions in clause 20.4.2 of the applicant's Employment Agreement are limited to clients or customers of the respondent.

[3] The applicant has withdrawn his claim for unjustifiable action causing disadvantage pursuant to section 103(1)(b) of the Employment Relations Act

2000.

[4] The parties have resolved costs between themselves.

James Crichton

Member of the Employment Relations Authority

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