

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2014] NZERA Auckland 390
5437196

BETWEEN ERIN THERESE DENT
Applicant

A N D WAIKATO DISTRICT
HEALTH BOARD
Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person
A Russell, Counsel for Respondent

Investigation meeting: On the papers

Submissions Received: 18 and 19 September 2014 from Applicant
18 September 2014 from Respondent

Date of Minute: 19 September 2014

DETERMINATION OF THE AUTHORITY

- A. Ms Dent's application to admit Mr Mahagna's evidence is dismissed.**
- B. Costs are reserved.**

Employment relationship problem

[1] Following the issue of my decision on 15 September 2014 determining the evidence of Hamzi Mahagna and others was inadmissible; Ms Dent has now applied to admit Mr Mahagna's evidence by way of sworn affidavit. It is understood Mr Mahagna is unavailable for the hearing.

[2] I directed the parties to file written submissions by 12 pm today and I would determine this matter on the papers.

Determination

[3] Ms Dent submits Mr Mahagna's evidence should now be admitted because the respondent filed a brief in reply from Christine Haysom and she is entitled to use Mr Mahagna's evidence to test Ms Haysom's truthfulness. She refers to s27(3)(a) and (e) of the Evidence Act, although I have taken this to have meant to refer to s37(3)(a) and (e). Ms Dent wishes to examine this witnesses "*motive to be untruthful to protect herself and Mark Tumai and good faith obligation to be truthful to the employer when raising a complaint against Ms Dent*".

[4] The respondent objects to this application. It submits:

- a) There is no reason for the Authority to reverse its ruling as to veracity as contained in its Minute dated 15 September 2014.
- b) The proposed evidence of Hamzi Mahagna remains veracity evidence that is irrelevant to issues that the Authority has to determine as:
 - i. The evidence is about Christine Haysom allegedly being a gossip;
 - ii. It does not relate in any direct way to the complaint made by Ms Haysom about Ms Dent about one single incident, as Mr Mahagna did not witness anything in regard to this incident;
 - iii. Being a gossip (even if so), does not mean that a person has a disposition for lying.
 - iv. The only other evidence refers to alleged bullying of Mr Mahagna by Aileen McGowan. Such evidence already been ruled out already, as it is about the witnesses complaint; not that of Ms Dent.

[5] With respect to Ms Dent, I accept the respondent's submissions in full. My decision determining the evidence of Hamzi Mahagna and others was inadmissible was issued by way of Minute dated 15 September 2014 (the Minute).

[6] As noted in the Minute, Mr Mahagna's evidence is not directly relevant to the personal grievance. The touchstone for the admission of evidence in this jurisdiction is relevance. Mr Mahagna's evidence refers to his experiences with this witness including alleged gossiping and breaching another employee's confidentiality. All it seeks to do is to undermine the truthfulness of a witness, Christine Haysom. It does

not give any direct evidence about Ms Haysom's dealings with Ms Dent's personal grievance claims.

[7] The fact Ms Haysom is now a witness does not change the nature of this evidence. Mr Mahagna's evidence is veracity evidence. I have a discretion under s.160(2) of the Employment Relations Act 2000 to admit this evidence. The Evidence Act is a useful guide in considering whether to exercise my discretion under s160(2) of the Act to admit this evidence. Section 37 Evidence Act 2006 prevents evidence about veracity being admitted "*unless the evidence is substantially helpful in assessing that person's veracity.*"

[8] Mr Mahagna's evidence does not show a lack of veracity by Ms Haysom *when under a legal obligation to tell the truth (for example, in an earlier proceeding or in a signed declaration)* as required by s37(3)(a) of the Evidence Act 2006. The alleged experiences and breaches of confidentiality by Ms Haysom did not occur when she was under any legal obligation to tell the truth such as in a sworn statement in a legal proceeding. They were allegedly occurring in the workplace. This evidence does not meet the test in s37(3)(a). It is not substantially helpful.

[9] Section 37(3)(a) requires evidence of bias towards Ms Dent. Mr Mahagna's evidence does not show bias towards Ms Dent or anyone. What it shows, at best, is Ms Haysom may allegedly gossip and has, in the case of another employee, possibly breached their confidentiality. That is not evidence of bias towards Ms Dent or anyone else under s37(3)(e). It is not substantially helpful.

[10] I (again) decline to exercise my discretion under s.160(2) of the Employment Relations Act 2000 to admit this evidence for the reasons above.

[11] The application to admit Mr Mahagna's evidence is dismissed.

[12] Costs are reserved.

T G Tetitaha
Member of the Employment Relations Authority