

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKAURAU ROHE**

[2019] NZERA 703  
3044792

BETWEEN ELECTROPAR LIMITED  
Applicant

AND GRANT SMITH  
Respondent

Member of Authority: Nicola Craig  
Representatives: James Warren and Charlotte Evans for the Applicant  
Tim Oldfield for the Respondent  
Investigation Meeting: 11 September 2019  
Submissions Received: From both parties at the investigation meeting  
Date of Determination: 12 December 2019

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**DETERMINATION OF THE AUTHORITY**

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- A. Grant Smith breached his employment agreement with Electropar Limited by copying confidential information and failing to return company property.**
- B. Within 28 days of the date of this determination Grant Smith is ordered to pay the following to Electropar Limited:**
- (a) \$5,702.28 damages for legal costs;**
  - (b) \$1,983.75 damages for Mr Whale's IT fees; and**
  - (c) \$14,651.72 disbursement costs for Mr Mori's IT fees.**

- C. For breaching his agreement, Mr Smith is ordered to pay a penalty of \$14,000.00 to Electropar Limited within 28 days of the date of this determination.**
- D. A timetable is set for submissions on costs, in the event that the parties are not able to resolve the issue themselves.**

### **Employment relationship problem**

[1] Electropar Limited (Electropar or the company) provides electrical engineering solutions for the Australasian and Pacific electrical transmission and distribution, defence and general industrial sectors.

[2] Grant Smith was employed by Electropar from 19 August 2016 as a Senior Technical Sales Manager. He was specifically recruited to support and promote the company's Cellpack business on the basis of his technical expertise as a qualified electrical engineer with many years industry experience. Cellpack is a product range of cable connection systems and fibre reinforced plastics manufactured by a Swiss company.

[3] Mr Smith gave his notice of resignation by email on Saturday 1 September 2018, when he was on leave in Australia. Although this was a surprise to the company, after meeting with Mr Smith, Electropar retained trust in him and allowed him to continue to work during his notice period.

[4] Shortly before the notice period ended, Electropar discovered that Mr Smith was going to work for a direct competitor. A couple of external hard drives were noticed on Mr Smith's desk one day when he had come into work early. Electropar put Mr Smith on garden leave for the last day of his notice period and an internal IT investigation began.

[5] Electropar arranged for an electronic audit of Mr Smith's laptop to be undertaken by forensic IT analyst Brent Whale. Mr Whale's report referred to Mr Smith copying large amounts of information onto five external hard drives. This included documents concerning Electropar's products, relationships with suppliers, quotes, pricing to clients and product testing. A portion of this copying occurred after Mr Smith had given his notice of resignation. Mr Smith was also found to have emailed Electropar information to his personal email address.

[6] Electropar sought undertakings from Mr Smith at the end of his employment that, amongst other things, he had not misappropriated any of Electropar's confidential information. Mr Smith did not provide the undertakings.

#### **The Authority's investigation prior to devices being provided**

[7] This claim was filed in November 2018. Electropar's initial claim was focused on ensuring that personal electronic storage and other devices held by Mr Smith could be obtained and subjected to forensic investigation by an independent investigator. The company's representative James Warren had made attempts prior to filing the claim to obtain an agreement to analysis being undertaken on Mr Smith's devices but agreement had not been forthcoming.

[8] By the time the claim was filed Mr Smith was on an extended holiday in Scotland. Mr Smith had a representative but it was identified that the representative was having difficulties getting adequate instructions including to file a statement in reply. Mr Smith arranged for two removable hard drives to be sent to his representative, however initially without instruction on them being provided to the company, Mr Whale or the Authority. Mr Smith's iPad was with him overseas.

[9] An issue also arose about the nature of the orders sought, with Mr Smith's representative Tim Oldfield asserting they were in the nature of a search order which the Authority has no jurisdiction to make. Mr Oldfield also raised the prospect of a privilege against self-incrimination as penalties were being sought against Mr Smith.<sup>1</sup>

[10] I was satisfied that a witness summons could be issued requiring Mr Smith to attend at an Authority investigation meeting and bring devices with him. In anticipating the Authority instructed Bhavesh Mori to conduct a forensic examination and analysis of devices produced in this proceeding and prepare a report. Devices were to be cloned, with Mr Smith being entitled to be present during that process. Mr Smith's personal information was safeguarded. Mr Mori's report was to go firstly to Mr Oldfield.

[11] The two devices which had been sent to Mr Oldfield were provided to the Authority.

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<sup>1</sup> *Radius Residential Care Ltd v NZNO & anor* [2016] NZEmpC 86 and *New Zealand Meat Workers' Union v South Pacific Meats Ltd* [2015] ERNZ 104.

[12] An investigation meeting was held on 14 December 2018 to investigate remaining interim issues. Mr Smith was summonsed and required to bring electronic and/or media devices in his possession or control or otherwise which he was entitled to utilise and/or access. Mr Smith attended with over a dozen devices. These were handed over to Mr Mori who then began his process.

[13] Mr Smith co-operated by providing undertakings regarding a device which belonged to his wife and his iPad. He also provided a password to a personal/family email account and attempted to provide a password to another such account.

### **The investigation after provision of devices**

[14] Once received, Mr Smith asserted privilege over the entire of Mr Mori's report. Although Electropar's representative questioned the applicability of privilege to the whole report, it was accepted that some aspects of the report were privileged. Electropar was not prepared to withdraw its penalty claim. As a result I decided to firstly hold an investigation meeting into the penalty issue without seeing Mr Mori's report, to be followed by an investigation into the remainder of the issues, having seen the report.

[15] As it turned out, that was not necessary. The parties attended mediation and were able to resolve some of the issues between them. This included a partial settlement agreement on a process to manage the return, review, analysis, deletion and destruction of Electropar information that may have been held in email accounts and on devices. The parties appointed Mr Whale to assist with that process. Without admission of liability, Mr Smith agreed to meet the costs of Mr Whale deleting information on devices. Mr Smith agreed to allow Mr Mori's report to be used as evidence in this proceeding, including in relation to the penalty claim, but did not otherwise waive his privilege.

[16] I commend counsel for their work on dealing with those issues.

[17] Remaining were the penalties, damages and costs issues. Electropar filed an amended statement of problem providing more particulars of its claims.

[18] An investigation meeting was set for September 2019. Mr Smith's representative advised in advance that Mr Smith would offer no evidence and was not challenging on liability issues but reserved the right to question Electropar's witnesses

and make submissions on remedies and penalties issues. The investigation meeting proceeded on that basis. There was no formal admission of liability.

[19] At the investigation meeting on 11 September 2019 I heard evidence from Electropar's Brett Hewitt (Managing Director) and Peter Stern (Chief Financial Officer).

[20] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded everything received but has stated findings, expressed conclusions and specified orders made as a result.

### **Issues**

[21] The issues for investigation and determination are:

- (i) Did Mr Smith breach the confidentiality provision (clause 25) of his employment agreement with Electropar?
- (ii) Did Mr Smith breach his obligation to return Electropar's property on termination of his employment (clause 27)?
- (iii) Should Mr Smith have to pay any special damages to Electropar regarding legal costs, forensic costs and management time?
- (iv) Should penalties be imposed on Mr Smith, and if so, for how much and to whom should they be paid?

### **Resignation events**

[22] I turn back to look in more detail at Mr Smith's departure from Electropar, along with attempts to gain agreement on the analysis of devices prior to the proceeding being filed. These matters are relevant to the assessment of damages and penalties in particular.

[23] Electropar's views that the downloading or copying of information was for improper purposes are reinforced by Mr Smith's actions in relation to his resignation.

[24] On receiving the resignation, Mr Hewitt tried to contact Mr Smith urgently but was unsuccessful. Mr Hewitt's impression was that Mr Smith was avoiding him. He was eventually able to arrange a meeting to discuss the resignation.

[25] During the meeting Mr Smith indicated that he was going to work for a named product, based in Brisbane where Mr Smith had previously worked. Although this product was in competition with Electropar's products, Mr Smith indicated that Electropar need not worry as he was going to be working in the extra high voltage area, where Electropar did not compete. Further, the product had difficulties with its New Zealand distributor (Electropar's competitor) regarding a major client and Mr Smith was being sent for six months to sort that out, before returning to Brisbane.

[26] On Mr Smith's last day of employment it became apparent to Electropar that Mr Smith was going to be employed not by the product producers but by the New Zealand distributor, Electropar's competitor. Mr Hewitt saw a message on Mr Smith's work cell phone that the managing director of the competitor was "sorting a vehicle" for Mr Smith.

[27] Mr Hewitt believes that Mr Smith had deliberately not been honest with him about the new employment. I have no evidence about Mr Smith's perspective on that.

### **Mr Smith's initial response**

[28] On 28 September 2018 Mr Hewitt wrote to Mr Smith advising him that Electropar was exercising its right to place him on garden leave, in light of his intention to work for a competitor. The letter was handed to Mr Smith in person. It included a reminder that:

You must not use or disclose confidential or sensitive information relating to Electropar, our business, our products our customers or our clients with anyone else. You must also not remove, copy or distribute any confidential or sensitive information, including customer, supplier and product information from Electropar's premises.

Given that you have resigned from your employment and you are joining a competitor we require you to return any confidential or sensitive information which you have in your possession (whether in hardcopy or electronic form) and delete or destroy any copies immediately... We require you to sign the undertakings at Schedule 1 ... to confirm that this has been done.

[29] The undertakings were not signed by Mr Smith. He had solicitors representing him from this point. On 3 October 2018 they wrote regarding a restraint of trade issue and included Mr Smith's instructions that he:

has complied and will comply with cl25 (confidentiality) of his employment agreement. He takes no issue at all with this clause and intends to comply with it to the fullest

extent...He believes he has complied with cl 27 (return of property) ... and takes no issue with it.

### **Mr Smith's degree of co-operation**

[30] The parties disagree regarding how co-operative Mr Smith was with Electropar's attempts to identify whether Mr Smith had its information on his electronic devices or emails.

[31] I accept that Mr Smith made some effort to respond to Electropar's requests but I certainly would not describe him as being fully co-operative.

[32] Although his travel could be seen as explaining this, I cannot be satisfied that that was entirely the case. Mr Smith was made aware of Electropar's concerns before he left New Zealand and yet, despite being represented, he did not leave instructions regarding a draft terms of reference which had been discussed previously between the representatives. Mr Smith's representative wrote that if Electropar agreed to meet all of Mr Smith's costs associated with the request "we anticipate we would receive instructions".

[33] There was a picture of offers being made but with multiple conditions, not entirely reasonable, being imposed. So for example, an offer to have the two electronic storage devices analysed but with a number of caveats. These two devices were then sent to his solicitors, but without instructions to release them prior to Mr Smith's return from overseas in December 2018. He was able to arrange for these two devices to be sent at the same time as professing to be unable to provide prompt or sufficient instructions to allow matters to progress whilst he was overseas. In addition it was clear from Mr Whale's initial report that more than two devices were involved.

[34] Mr Smith's commencement of work with Electropar's competitor was approaching as was the Christmas break which would have delayed the transfer and analysis of devices.

[35] There were several references in correspondence to Mr Smith denying having taken any of Electropar's confidential information and questioning the necessity for the legal proceedings.

[36] I accept the statement by Electropar that, given Mr Whale's report and the lack of sufficient response from Mr Smith, legal action became the only viable recourse for

some reasonably prompt action. Mr Smith's attempts to co-operate were partial and belated.

### **Mr Mori's report**

[37] Mr Mori's report was based on analysis of a laptop, an iPad, a cell phone, two portable drives and 12 flash drives or USB sticks produced by Mr Smith. Mr Mori identified various documents, particularly in the two portable drives, which contained the key words specified by Electropar as relevant to its confidential information. Many of these were client names, but also included references such as "costing sheet" and "pricing file".

### **The nature and quantity of the documents taken**

[38] The forensic evidence establishes that Mr Smith accessed and downloaded large amounts of Electropar's information during his time working for the company.

[39] Mr Whale undertook further work after Mr Mori had reported on the contents of Mr Smith's devices. Mr Whale's review received on 13 April 2019 identified 22,792 files, approximately 75 gigabytes of data, which contained the keywords. These included product information, customer details, pricing schedules and customer reports.

[40] Mr Whale also identified files contained in an "EPLP" folder on Mr Smith's external hard drive. This contained 60,938 files, albeit only 14,541 including one of the keywords.

[41] A range of examples of the files were examined in more detail at the investigation meeting on 11 September 2019.

### *Cellpack*

[42] Electropar's claim initially focused on documents related to Mr Smith's work with the Cellpack range. There are competitors to the Cellpack range, particularly products sold by Mr Smith's current employer. There was evidence that the key determining factor in purchasing decisions with these products is price. Some elements of pricing are known in the marketplace, overall strategies were described as complex involving considerations of volume, bundling, support, training and other factors.

[43] Information concerning Electropar's existing pricing plan and its future pricing strategies including the extent to which it may offer discounts, sales and other pricing options in order to win customers is dealt with by the company as sensitive confidential and business critical information for the company's Cellpack sales.

[44] I am satisfied that at least some of the information Mr Smith copied was confidential information within the meaning of clause 25.1 of the employment agreement.

#### *Other information*

[45] Significant amounts of Electropar's information, which on its face contained no connection to Mr Smith's work there, was also downloaded. This included not only material within his division but also from other Electropar divisions.

[46] In addition there were files which had nothing to do with Electropar but seemed to be information belonging to Mr Smith's previous employers.

#### *Timing of downloading*

[47] Mr Whale's analysis included an examination of the timing of downloading activity. This covered the entire period of Mr Smith's employment. Of particular significance was his continued downloading of files during his notice period, including as late as three days before the completion of that period.

#### *Purpose for downloading*

[48] Mr Smith chose not to provide any evidence regarding his motivation. A more innocent explanation for some of the downloading is possible, even likely. I acknowledge that, particularly prior to accepting the offer of a new job, Mr Smith may have taken some information for the purposes of carrying out his own work. He lived in a different city to where Electropar's base was. He travelled for work with remote access not always perfect.

[49] However, it is clear from the quantity, timing and contents that this was not the only motivation. A massive number of files are involved. The downloads were not accidental. Mr Smith would have had to log into the Electropar system, identify files and download them onto his own personal storage devices. Such actions a few days

before his departure are clearly suspicious. Also, some of the files had no relevance to Mr Smith's work.

[50] I can only conclude that the downloading was deliberate and intended at least in part, to be used for purposes other than the undertaking of work for Electropar.

### **Breach of employment agreement**

[51] Mr Smith downloaded large quantities of electronic files onto personal storage devices, going a great way beyond what could possibly be considered to be legitimate for the purposes of his work.

[52] Under clause 25.2 of the employment agreement Mr Smith agreed not to copy any material containing confidential information for personal use or for use by any other person. By his frequent and deliberate transfer of Electropar's information to personal devices which I find must have been intended for personal use and/or use of a competitor, Mr Smith breached clause 25 of his agreement with Electropar.

[53] In addition Mr Smith breached clause 27 of the employment agreement by failing to return company property, including electronic documents, relating to the affairs of the company.

[54] Electropar alleges that there were breaches of the duty of good faith by Mr Smith and I accept that as Mr Smith's surreptitious actions were not those of an employee actively and constructively maintaining a productive employment relationship. However, as the good faith claims are based on the same actions as the breach of contract claims they should not be the subject of separate penalties. Electropar accepts that. Similarly, arguments about breaches of the duty of fidelity and confidentiality overlap with the breaches of the contractual duties.

### **Damages claims**

[55] Electropar claims special damages for legal costs, IT costs (including disbursement costs) and executive time.

[56] Having established that Mr Smith breached his contractual obligations to Electropar, I now look at whether the company can establish that, as a result of the breaches, it has incurred costs which should be compensated. This includes an assessment of foreseeability of the losses.

## **Legal costs**

[57] In *Stormont v Peddle Thorp Aitken Limited* Judge Inglis, as she then was, held that legal costs could be the subject of a special damages award.<sup>2</sup> In that case a bright line could be drawn between costs associated with legal representation during a fundamentally flawed process and later legal costs associated with pursuit of a bonus and unjustified dismissal claims.

[58] In *Tag Oil (NZ) Limited v Watchorn* the Authority awarded \$54,517 in special damages for the legal costs incurred in conducting Tag Oil's investigation into Mr Watchorn's actions of copying a large amount of data and taking it with him when he left that company.<sup>3</sup>

[59] Potentially in a case such as this there is less of a bright line, time wise, between Electropar's investigation of the taking of confidential information and the proceedings. However, Electropar have avoided this difficulty by only claiming for legal fees incurred in the period from 12 to 30 October 2018, totalling \$5,702.28.

[60] No submissions were received on behalf of Mr Smith on this issue.

[61] I accept that these fees were incurred and related to Electropar's investigation of Mr Smith's breach of his confidential information obligations under the employment agreement. It was foreseeable that some legal costs would be incurred by Electropar's exploration of Mr Smith's downloading and retention of company information. The amount is reasonable.

[62] I order Mr Smith to pay Electropar the sum of \$5,702.28 within 28 days of the date of this determination.

## **Forensic IT costs**

[63] Forensic IT costs were ordered to be paid as special damages in the *Tag Oil* case and in *Tex Onsite Limited v Hill*<sup>4</sup>.

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<sup>2</sup> *Stormont v Peddle Thorp Aitken Limited* [2017] NZEmpC 71

<sup>3</sup> *Tag Oil (NZ) Limited v Watchorn* [2014] NZERA Wellington 58

<sup>4</sup> *Tex Onsite Limited v Hill* [2106] NZERA Auckland 25

[64] Electropar claims for Mr Whale's costs, incurred through his firm Computer Forensic Solutions Limited, for the earlier part of his work. Later fees for Mr Whale's work were met by Mr Smith under the partial settlement agreement. I accept that having breached his obligation of confidentiality in this manner the costs of a reasonable exploration of that by IT experts should be borne by Mr Smith.

[65] An invoice for \$1,983.75 dated 29 October 2018 covers the acquisition of Mr Smith's former work laptop from Electropar, secure storage of the data, and forensic analysis and reporting. I am satisfied that this is reasonable. Mr Smith is ordered to pay the sum of \$1,983.75 to Electropar within 28 days of the date of this determination.

[66] Mr Mori's costs through his firm deCipher Limited were met at first instance by Electropar. The company now claims \$14,651.72 as disbursement costs. This covers the costs of reviewing, analysing and reporting on the devices produced to the Authority by Mr Smith. It has not been suggested that this is an unreasonable amount.

[67] I order Mr Smith to pay the sum of \$14,651.72 to Electropar within 28 days of the date of this determination.

### **Executive time**

[68] Electropar seeks an award of special damages for management time devoted to this matter. Special damages must be specifically proven. The prospect of special damages in this situation is recognised in the *Tag Oil* case.

[69] As a general rule a party's time spent in attending to litigation is not recoverable.<sup>5</sup> On occasions exceptions are made, including for executives whose time is a commodity in which the company dealt.<sup>6</sup>

[70] As Electropar executives did not time record for this matter, the company relied in the records of the time its representatives spent with its lawyers, both in dealing with the breach and dealing with the litigation. There were some difficulties with the evidence regarding particular days.

[71] Although there were pre-existing charge out rates for the executives concerned, the evidence was that their time was not regularly charged out although it did happen

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<sup>5</sup> *Murphy and Routhan t/a Enzo's Pizza v van Beek* [1998] 2 ERNZ 607

<sup>6</sup> *Open Systems Ltd v Pontifex* [1995] 2 ERNZ 211.

on occasions. There was a wide range of amounts of time that were charged out. There was only generalised evidence regarding the possibility that billing of time could have occurred for the time spent dealing with the Mr Smith matter. In addition the hours claimed were the charge out rate to the client and there was no evidence regarding the net profit received by the company.

[72] While I recognise the work put in by Electropar executives in dealing with this matter, I am not convinced that the evidence sufficiently establishes that the situation falls within the circumstances where an award is justified.

### **Interest**

[73] Interest is claimed on damages on the 90 day bill rate plus 2%. However, the damages relate to several invoices and the evidence regarding when each invoice was paid was not specific enough for me to be satisfied about when an interest award should be made from. I therefore award no interest.

### **Penalties**

[74] I do consider this a case where penalties should be imposed. There was a substantial amount of information taken by Mr Smith, including some which had no relationship to his work. The evidence of files from previous employers suggest something of a pattern.

[75] I am guided by the Employment Court decisions in *Boorsboom v Preet PVT Ltd*<sup>7</sup>, *Nicholson v Ford*<sup>8</sup> and *Labour Inspector v Daleson Investments Ltd*<sup>9</sup> in the consideration of penalties.

### *Number of breaches*

[76] While it would be possible to regard each file copied or each incidence of copying activity as separate breaches, I consider that the copying should be regarded as a single course of conduct amounting to one breach. Both parties considered this to be the right assessment. The quantity and frequency of copying will be considered under other heads.

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<sup>77</sup> *Boorsboom v Preet PVT Ltd* [2016] NZEmpC 143

<sup>8</sup> *Nicholson v Ford* [2018] NZEmpC 132

<sup>9</sup> *Labour Inspector v Daleson Investments Ltd* [2019] NZEmpC 12

[77] The failure to return property, including when requested, and thus breaching clause 27 of the employment agreement is a separate matter. There are thus two breaches. Each attract a penalty for an individual of \$10,000. The total is \$20,000.

*Statutory considerations 1 to 7*

[78] I have assessed the following factors:

- (i) Objects - The mutual obligations of trust and confidence and the statutory duty of good faith are covered by s 3(a)(i) of the Act are relevant to this claim.
- (ii) Nature and extent – Mr Smith’s copying and retention of Electropar’s information was extensive and frequent. They occurred of the entire period of Mr Smith’s employment and in particular, continued in the period when he was contemplating and then acting on a plan to leave Electropar and join its direct competitor.
- (iii) Intention – I can only conclude that Mr Smith’s actions were intentional, as well as surreptitious. Mr Smith denied on several occasions holding any confidential information.
- (iv) Loss or gains – There was no evidence that the misappropriated confidential information has been used to compete against Electropar or that the company has suffered any loss of income as a result of Mr Smith’s actions. However, Electropar has had to spend a considerable amount of time and money in order to identify and retrieve the information which was taken. I accept submissions for Electropar that the sheer volume of the data and the range of devices on which it was identified has made the exercise extensive and time consuming. Whilst some aspects of this are covered by damages, to the extent that they are not I consider them in this assessment.
- (v) Compensation or mitigation – Mr Smith’s co-operation largely occurred after the forensic examination as ordered by the Authority and it was clear that the results of that would be considered by the Authority. Mr Smith then co-operated in a process designed to return the confidential information to Electropar and provided undertakings that the

information had not been disclosed or used by a third party. After the Authority had decided two investigations meetings were necessary to deal with the privilege against self-incrimination, Mr Smith agreed to waive that privilege.

Mr Smith has met the expert IT costs since mediation and offered to make payments in instalments to settle this proceeding.

There has been no expression of remorse or contrition, nor any acceptance of wrong-doing in taking the information.

- (vi) Circumstances – this is not a case involving exploitation of a vulnerable employee.
- (vii) Previous proceedings – there was no evidence of previous proceedings, although I note below the existence of information from other employers.

#### *Preet considerations*

[79] The additional considerations from *Preet* are:

- (i) Deterrence – There is a need for deterrence for the employee involved. There was evidence of information belonging to previous employers also having been taken, suggesting that the Electropar situation may not have been a one-off. Electropar also wishes to reinforce the seriousness of such breaches and their impact on the company to its other employees and to employees more widely in the industry. There is a risk of a competitive advantage being obtained.
- (ii) Consistency – Factually this case is similar to *Tag Oil (NZ) Ltd v Watchorn*<sup>10</sup>, where a total penalty of \$12,000, from four days of breaches at \$3,000 each, was imposed. Several other cases were referred to in submissions but the start point of the number of breaches, if not globalised, can obviously result in much larger penalties than can be

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<sup>10</sup> *Tag Oil (NZ) Ltd v Watchorn* [2014] NZERA 58

awarded in this case, even if I was inclined to order payment of the maximum on both breaches.

- (iii) Ability to pay – No evidence was provided by Mr Smith regarding his financial circumstances. There is evidence that he is in a well-paid job, has been in fulltime continuous employment for some years and owns his own house. Such as it was, the evidence suggests Mr Smith has some ability to pay.
- (iv) Proportionality – Electropar submits that the maximum penalty of \$10,000 should be awarded for each breach. While this position may be understandable in light of the extensive and flagrant nature of Mr Smith's actions, the maximum penalty must be reserved for the worst possible instances of bad behaviour and taking into account the considerations above, I do not think that this is such a case. In particular there is no evidence of the use of the information, of sale of the information for example, and there has been some, albeit belated, co-operation from Mr Smith.

[80] I conclude that a total penalty of \$14,000.00 for the breaches is appropriate in all the circumstances. Electropar has sought the payment of the penalty to it and I consider that this is a case where it is right for the company should receive the entire penalty. Grant Smith is ordered to pay a penalty of \$14,000.00 to Electropar Limited within 28 days of the date of this determination.

### **Costs**

[81] Costs are reserved. The parties are encouraged to reach agreement on that issue. In the event that they are not able to do so, I set the following timetable, taking into account the Christmas period. Electropar shall file submissions by 30 January 2020 with Mr Smith filing submissions by 13 February 2020. Submissions claiming costs must include a breakdown the costs and be accompanied by supporting evidence.

**Nicola Craig**

**Member of the Employment Relations Authority**