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HP New Zealand v Keogan (Auckland) [2017] NZERA 102; [2017] NZERA Auckland 102 (7 April 2017)

Last Updated: 13 April 2017

**ATTENTION IS DRAWN TO THE ORDER PROHIBITING PUBLICATION IN A & B.OF THIS DETERMINATION
IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND**

[2017] NZERA Auckland 102
3005591

BETWEEN HP NEW ZEALAND Applicant

A N D JAMES KEOGAN Respondent

Member of Authority: Rachel Larmer

Representatives: Mr Towner, Counsel for Applicant

Mr Patterson, Counsel for the Respondent

Investigation Meeting: On the papers

Date of Determination: 07 April 2017

INTERIM NON-PUBLICATION ORDER OF THE AUTHORITY

A. An interim non-publication order applies to the commercially sensitive information set out in Mr Keogan's Sales Pay Plan which is appended to his Fuji Xerox employment agreement until further order of the Authority.

B. The orders sought by Mr Patterson in paragraph 3(a) and (c) of the non-publication application filed today are granted until further order of the Authority.

C. No order is made regarding paragraph 3(b) of Mr Patterson's application dated 07 April 2017.

Employment relationship problem

[1] HP New Zealand Limited (HP NZ) and Mr Keogan are parties in an Authority investigation meeting scheduled to be held on 12 April 2017.

[2] As per the Authority's timetabling directions Mr Keogan is yet to file and serve a copy of the Sales Pay Plan (the Sales Plan) which is appended to his Fuji Xerox employment agreement.

[3] The parties agree that the Sales Plan contains commercially sensitive information regarding Mr Keogan and his new employer. The commercially sensitive information is as identified in clause 2(a)-(c) of Mr Patterson's application filed today.

[4] Mr Towner has advised that HP NZ does not oppose the Authority making the orders Mr Patterson has sought in paragraph 3 of the non-publication application filed today.

[5] I consider that the item identified in clause 3(b) of Mr Keogan's application is a matter for the Authority's discretion because it refers to the content of the Authority's substantive determination.

[6] I am satisfied this is an appropriate matter in which to exercise the Authority's discretion to grant the orders sought at paragraphs 2(a) and (c) of Mr Patterson's application dated 07 April 2017 prohibiting the publication of the commercially

sensitive information contained in Mr Keogan's Sales Plan and restricting the people who can view that material.

[7] I am satisfied that this non-publication order goes no further than what is necessary to preserve the confidentiality of the commercially sensitive information in issue and that it is in the interests of justice to issue a non-publication order.

[8] Accordingly, pursuant to clause 10(1) Scheduled 2 of the Employment

Relations Act 2000 I make the following orders:

a. An interim non-publication order applies to the commercially sensitive information identified in paragraph 2 (a) - (c) of Mr Patterson's non- publication application dated 07 April 2017.

b. The orders sought by Mr Patterson in paragraph 3(a) and (c) of the 07

April 2017 application are granted on an interim basis until further order of the Authority.

c. The order sought by Mr Patterson at paragraph 3(b) of the non- publication application is declined.

[9] The Authority has noted paragraph 3(b) of Mr Patterson's application and will exercise its discretion regarding the content of its substantive determination however it considers an order restricting the content of its determination is not appropriate and not required.

[10] The parties have leave to apply with urgency to vary this interim non- publication order should that become necessary in order to fully brief evidence required for the substantive investigation meeting on 12 April 2017.

Rachel Larmer

Member of the Employment Relations Authority

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