

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Kate Meere (Applicant)

AND Gifted Children's Advancement Charitable Trust Inc
(Respondent)

REPRESENTATIVES Margaret Lewis, for Applicant
Penelope Stevenson, for Respondent

MEMBER OF AUTHORITY Marija Urlich

INFORMATION AND SUBMISSIONS RECEIVED 16 February and 7 March 2007

DATE OF DETERMINATION 4 May 2007

DETERMINATION OF THE AUTHORITY AS TO THE PROVISION OF RELEVANT DOCUMENTS

[1] Ms Meere was made redundant from her position with the Trust. She says her dismissal by way of redundancy was unjustified and challenges both the process and genuineness of her dismissal. As a preliminary matter this determination deals with whether the following documents should be provided by the respondent to the applicant:

- (i) a copy of a power point presentation with talking notes; and
- (ii) staff responses during the redundancy consultation process.

[2] By agreement of the parties copies of these documents have been provided to the Authority along with submissions, to enable me to determine the relevance of these documents to these proceedings.

[3] Ms Stevenson, on behalf of the Trust, submits that these documents are confidential and therefore should not be provided. In relation to the first document it comprises notes prepared by the Laraine Martin, the Chairman of the Board, for personal use during a restructuring presentation to staff. In relation to the second group of documents they were received from staff on the basis that they would be confidential to the submitting staff member and the Board and would not be disclosed to any other staff member.

[4] Ms Lewis, on behalf of Ms Meere, submits that no issue of confidentiality attracts to the power point notes and that any issue of confidentiality can be addressed by deleting identifying names and/or information.

[5] Ms Lewis also seeks copies of Board deliberations, decisions and material produced for consideration by the Board relating to the matters before the Authority in particular all relevant communications between September and December 2004.

Determination

[6] The Authority has wide powers to call for evidence or information during an investigation of an employment relationship problem¹. Any exercise of that power must be reasonable and the evidence or information must be relevant to the Authority's inquiry.

[7] The section 103A test for justification of a dismissal requires an inquiry by the Authority into the employer's actions in all the circumstances at the time of the dismissal. What the decision-maker took into regard and how they reached the conclusions they did is tested in this process. For this reason the respondent's assertion of confidentiality as a bar to relevance in relation to the documents listed in paragraph 1 is not accepted.

[8] Ms Martin's personal notes are clearly relevant, she was a decision-maker in the redundancy process and the notes record her views of the process (at least in relation to that presentation). Those notes should be provided to the applicant. For the same reasons the submissions of other staff are relevant to this inquiry because they were invited by the Board, for the purposes of its deliberations, to comment on a restructuring proposal which included Ms Meere's position. Those submissions should be provided to the applicant. Non-publication orders for names or information can be made if appropriate.

[9] I am concerned that all Board communications between September and December 2004, as they relate to the restructuring, do not appear to have been provided to the applicant. That material is clearly relevant and I expect it to be provided to the applicant. Issues around sensitivity or confidentiality can be dealt with by non-publication, but I do not accept that such issues are barriers to relevance.

Costs

[10] Costs are reserved.

Marija Urlich
Member, Employment Relations Authority

¹ Section 160(1)(a) Employment Relations Act 2000

