

Attention is drawn to orders prohibiting publication of certain information in this determination

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 716
3405104

BETWEEN QTR
 Applicant

AND BXD
 Respondent

Member of Authority: Sarah Blick

Representatives: Applicant in person
 Johanna Drayton and Ruby Prescott, counsel for the
 respondent

Investigation Meeting: 6 November 2025 by audio visual link

Information and Up to and including 7 November 2025
Submissions received:

Determination: 7 November 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] QTR is an IT engineer who was employed by BXD until QTR's dismissal in October 2025. QTR has made an application for interim reinstatement, and is ultimately seeking permanent reinstatement among other personal grievance remedies. The parties are identified by randomly chosen letters.

[2] BXD believes QTR has, and may continue, to upload information it considers confidential information into a generative artificial intelligence (GenAI) platform. A compliance order is sought to prevent breaches of the confidentiality provisions in the parties' employment agreement (and policies expressly incorporated into that agreement).

The Authority's process

[3] The Authority has received affidavit evidence from the parties, a significant amount of documentation, written submissions, and oral submissions at the investigation meeting yesterday.

[4] Both the interim reinstatement application and compliance order application are accorded urgency. This determination addresses QTR's application for interim non-publication orders, as well as the application seeking a compliance order. The Authority is to shortly issue a determination relating to the application for interim reinstatement.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act), this determination does not record all evidence and submissions received and considered during the Authority's investigation but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

The issues

[6] The following are the issues for investigation and determination:

- (a) Should the Authority make non-publication orders in respect of QTR and BXD's names and identifying details?
- (b) Has QTR uploaded information of BXD's that can be correctly classified as confidential information into a GenAI platform, in breach of ongoing obligations under the parties' employment agreement?
- (c) If so, should a compliance order be issued preventing QTR from uploading further confidential information?

Non-publication orders

[7] BXD neither consents to nor opposes QTR's application for an interim non-publication order, and leaves the application to the Authority's discretion and will abide the decision. It has submitted that if orders are granted in relation to QTR, it is likely QTR will be identifiable

if its name is not also suppressed. I am satisfied interim orders are appropriate. Pursuant to clause 10 of Schedule 2 of the Act, I grant interim non-publication orders prohibiting the publication of the names and identifying details of QTR and BXD until further order of the Authority.

Background

[8] The parties' employment agreement states:

15 Confidentiality

- 15.1 In the course of your employment, you may receive or have access to Confidential Information. Confidential Information includes (but is not limited to) any information relating to the business or financial affairs of [BXD], its stakeholders or its customers, personal information relating to any employee, customer or stakeholder of [BXD] and any proposals, plans, contracts, transactions, specialised knowledge, research, form, formula, process, trade secret, or practice of [BXD].
- 15.2 You agree not to use or disclose any Confidential Information at any time, whether internally or externally and whether during the course of your employment or after it ceases for any reason, except:
 - as is clearly required to perform the duties and responsibilities of your position with [BXD];
 - where such use or disclosure is required by law; or
 - where such use or disclosure is authorised in writing by [BXD].
- 15.3 You agree to take all reasonable steps to ensure that any Confidential Information in your possession is kept secure and protected from unauthorised use, in accordance with [BXD] information security policies.
- 15.4 You must not use any confidential information for your personal benefit, or the benefit of any other person or organisation.
- 15.5 Upon termination of the employment relationship, you are required to return any Confidential Information (including any copies of such information) to [BXD] immediately.

[9] The employment agreement also states 'this agreement including the attached position description together with the [BXD] Policy and Procedures Manual, as amended from time to time and the terms implied by law comprise your entire employment agreement with [BXD]'.

[10] BXD's GenAI policy, within its employee handbook, states '...any requirements to use generative AI tools or of features other than Microsoft Copilot must be reviewed by our privacy and security specialists'.

[11] Having received information from QTR during the disciplinary process and early stages of the Authority investigation, BXD notified QTR of their dismissal on 16 October 2025. Later

that day, BXD also wrote to QTR by letter about a concern QTR had uploaded or copied and pasted its confidential information into an Open AI platform. It said this was in order to generate answers to the disciplinary process and in documentation provided to the Authority. BXD referred to clause 15 of the employment agreement and attached the relevant AI policy extract. BXD asked for an explanation around this, and stated if this was the case, it reminded QTR they should not continue to do this and should immediately stop uploading or copying BXD's information into any AI application. BXD asked QTR to urgently confirm they would not do so by return email.

[12] QTR responded by email the same day, acknowledging receipt of the letter, saying as the matter was not before the Authority (and subject to the Authority's directions) 'will not be providing further comment directly at this stage.'

[13] On 21 October 2025 counsel for BXD wrote to the Authority raising its concern that QTR was using AI to generate responses, including case law, some of which is 'hallucinated' and does not exist, adding to inefficiencies, and increased cost. BXD said QTR had not responded substantively to its 16 October 2025 letter and appeared to be continuing to use an AI platform in a manner where BXD's commercial and sensitive information is uploaded or copied and pasted into the AI platform.

[14] On 21 October 2025, QTR responded saying BXD's claim is speculative, and it had provided no evidence to support it. QTR stated BXD's focus on how QTR prepared their case seemed to be an attempt to discredit and distract from the substantive issue of the unjustified dismissal. QTR further acknowledged using "various digital tools for assistance, but I take care to protect confidential details".

[15] BXD lodged a memorandum with the Authority on 31 October 2025 formally raising the issue of AI use, to which QTR responded, saying the issue should form no part of the Authority's investigation into the justification for the dismissal.

[16] In further documentation lodged with the Authority late on 3 November 2025, QTR stated they no longer have access to BXD systems or confidential data, and they have not shared or uploaded any company information to any AI or external platform. QTR reiterated this during the investigation meeting.

Analysis

Compliance order application

[17] Section 137(1)(a) of the Act gives the Authority power to order compliance where a person has not observed or complied with any employment agreement. The Authority may, in addition to any other power it may exercise, by order require a person to cease any specified activity for the purpose of preventing further non-observance or non-compliance.

[18] Having considered the information and submissions received, on the balance of probabilities I find QTR has utilised a GenAI platform in preparing responses in the Authority investigation process. This is based on a finding that an AI platform has been used to create or populate a lengthy document provided by QTR which includes:

- (a) ‘Hallucinated’ legal cases purporting to be authority for employment law principles throughout the document – citing numerous non-existent cases as well as incorrectly cited cases.
- (b) Although QTR says it is a ‘mistake’ or ‘typo’, there is a reference to the following in the document: ‘Your uploaded evidence shows that the “AI please explain” document was sent after your dismissal (16 Oct 2025 2:34 p.m.), while the Final Disciplinary Decision had already taken effect earlier the same day’. This indicates QTR appears to have uploaded the 16 October 2025 letter, and possibly the dismissal decision letter.
- (c) Reference to numerous tasks carried out by QTR and projects they were involved in within their team.
- (d) Full names of members of QTR’s team, her direct manager, members of BXD’s HR team along with commentary on their alleged statements and actions during QTR’s employment, some of which are particularly negative.
- (e) The formatting and presentation which indicates use of AI – BXD notes the used of ‘M dashes’ throughout, an indicator of AI use, specifically ChatGPT.

[19] I am satisfied the document includes to personal information relating to BXD employees and technical information, which more likely than not is confidential information as defined under clause 15.1 of the employment agreement.

[20] Counsel for BXD refers to a search carried they out on an AI platform which has been provided to the Authority. The platform's response says Open AI retains information, can be used to train (on free AI applications) and supports the sanitisation of information before being put into Open AI. QTR has not confirmed whether they have a paid plan or are a free-tier user of an AI platform and as such there is no assurance that information has not been retained or used to train the particular platform.

[21] In clause 15.2 of the employment agreement QTR agreed not to use or disclose any confidential information at any time, whether internally or externally and whether during the course of their employment or after it ceases for any reason. None of the exceptions in clause 15.2 have been shown to apply. I am satisfied QTR has, on the balance of probabilities, used or disclosed confidential information by uploading and/or copying and/or pasting information into a GenAI platform. In the circumstances this constitutes a breach of clause 15.2 and it is appropriate to issue a compliance order on the terms sought by BXD to prevent this further recurring.

Outcome

[22] The following orders are made with immediate effect as follows:

- (a) Interim orders are now in place prohibiting publication of the parties' names and any of their identifying details; and
- (b) A compliance order is issued under s 137(1)(a) of the Act requiring QTR to cease uploading or copying or pasting any of BXD's confidential information into any Open AI platform. This order does not otherwise limit QTR's AI use, including for case searches and the like decoupled/sanitised from the protected confidential information.

[23] Should QTR fail to comply with the compliance order, BXD has the ability to seek a penalty in respect of it.

[24] QTR is reminded that information provided by generative artificial intelligence ought to be checked before being relied on in tribunal and court proceedings. Going forward, QTR should consider the Guidelines for Use of Generative Artificial Intelligence in Courts and

Tribunals - Non-lawyers in presenting her case in the Authority.¹ These Guidelines make clear that a party should not enter any information that is private, confidential, suppressed or legally privileged information.

Costs

[25] Costs are reserved.

[26] The Authority has the power under Schedule 2, clause 15 of the Act to award costs.² When considering costs, the starting point is the Authority's daily tariff, which is \$4,500 for the first day of an investigation meeting, and \$3,500 for each day thereafter. During the investigation meeting, counsel for BXD indicated BXD would likely be seeking an uplift to the daily tariff in light of significant costs being incurred, which it says is being caused by QTR's approach to the proceedings.

Sarah Blick
Member of the Employment Relations Authority

¹ Courts of New Zealand "Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Non-lawyers" (7 December 2023) <https://www.era.govt.nz/assets/Uploads/generative-ai-guidelines-non-lawyers.pdf>.

² For further information about the factors considered in assessing costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.