

NOTE: This determination contains an order prohibiting publication of the names of the parties and other certain information

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2022] NZERA 682
3163441

BETWEEN SDC
 Applicant

AND FTS
 Respondent

Member of Authority: Peter Fuiava

Representatives: Simon Greening, counsel for the Applicant
 Emma Monsellier and Sheridan Climo, counsel for the
 Respondent

Investigation Meeting: 15-16 December 2022

Determination: 20 December 2022

CONSENT DETERMINATION OF THE AUTHORITY

[1] During the investigation meeting, the parties adjourned to discuss alternatives to resolving this employment relationship problem and they have managed to do so on the following terms and conditions:

- a. Should FTS be asked in the future how SDC’s employment ended, the response shall be that it has “concluded”. There is to be no mention of how the employment ended and neither is there to be mention of SDC being dismissed or having resigned.

- b. SDC agrees to pay FTS costs which is to be fixed at the single-day tariff rate of \$4,500 plus GST. Payment is to be by

instalment at \$375 per month with the first payment by close of business Tuesday 20 December 2022. Subsequent payments shall occur by the 20th of every month until the total amount is paid in full.

[2] In addition to the above terms, under s 137(2) of the Employment Relations Act 2000 (the Act), FTS sought the following compliance orders against SDC:

- i. SDC (or anyone on his behalf) is not to use or disclose to any person any confidential information relating to FTS (or any related entity) including any trade secrets relating to its business and/or its customers and clients in accordance with clause 1 schedule 3 of SDC's employment agreement with FTS;
- ii. SDC not to use for his own benefit any information relating to FTS's business and its customers or clients in accordance with cl 3 schedule 3 of his employment agreement.
- iii. For the next two years following the date of this consent determination, SDC is not to correspond or communicate (in any form) with any current employee or key personnel of FTS including any person employed or in any way engaged with FTS (former and current customers and clients included).

[3] Through his lawyer, Mr Greening, SDC agrees to be bound by the above compliance orders.

[4] At the parties request, the terms of settlement described at [1] a. and b. and the abovementioned compliance orders sought by FTS at [2] i – iii, and agreed to by SDC, are by consent and by this determination, the orders of the Authority in this matter.

[5] Finally, the parties ask that their names and details remain confidential. Under clause 10 of the Second Schedule to the Act, the Authority may in respect of any matter, order that all or any part of any evidence or the name of any party or witness or other person not be published.

[6] Requests for non-publication are not taken lightly as the grant of such orders go against the well-established and fundamental principle of open justice.¹ However, given the parties' desire to resolve matters between them, a non-prohibition order is warranted in this case.

[7] The parties are to be commended for settling this matter on their own terms.

Peter Fuiava
Member of the Employment Relations Authority

¹ *Erceg v Erceg* [2016] NZSC 135.