

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 161
5559723

BETWEEN TEX ONSITE LIMITED
 Applicant

A N D GRAEME BRETT HILL
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Mr Choi, Counsel for the Applicant
 Mr Mitchell, Counsel for the Respondent

Investigation Meeting: 8 June 2015 at Auckland

Oral Determination: 8 June 2015

Written Record Issued: 9 June 2015

**ORAL DETERMINATION OF THE AUTHORITY ON PRELIMINARY
MATTER**

Employment relationship problem

[1] The applicant company, Tex Onsite Limited (Tex Onsite) provides a mobile high voltage testing and calibration service for the electrical, mining and industrial sectors. The respondent, Mr Graeme Hill is a former employee.

[2] Tex Onsite, has lodged a statement of problem and an ex parte application for urgency and interim directions relating to the analysis and retrieval of certain information and property it alleges may be in the possession of Mr Hill. The statement of problem is dated 29 May 2015.

[3] Together with the statement of problem, counsel for Tex Onsite filed a memorandum seeking a direction that the Authority issue a witness summons on an urgent basis requiring Mr Hill to deliver up to the Authority any of its information relevant to the current proceeding.

[4] Tex Onsite alleges that Mr Hill has breached his employment agreement and employment obligations owed to it by breaching the confidentiality and non-solicitation clauses in his employment agreement.

[5] Tex Onsite sought a witness summons to be issued by the Authority and served on Mr Hill to deliver up relevant documents and information held by him including on any computer and mobile devices. Tex Onsite also requested an order that the Authority appoint an appropriately qualified and certified computer forensic expert.

[6] After considering the documents and the affidavit filed by Mr Ross Gamble, Director and General Manager of Tex Onsite, the Authority issued the witness summons and appointed Mr Mike Spence the computer forensic expert to analyse documents including on Mr Hill's computer and mobile devices.

[7] The witness summons was served on Mr Hill's lawyers and came to his attention on Tuesday, 2 June 2015. A telephone conference was convened with Counsel on Friday 5 June 2015 and a procedure agreed to deal with the analysis of documents and information. Mr Hill agreed to cooperate with the process.

[8] An investigation meeting was held today primarily for the purposes of interviewing Mr Hill in relation to the witness summons and for the purposes of having Mr Hill's computer and mobile devices analysed by Mr Spence.

[9] Attending before the Authority today for Tex Onsite is Mr Gamble, and his counsel, Mr Choi. The respondent, Mr Hill, attended with his counsel, Mr Mitchell.

[10] Mr Hill confirmed under oath that all relevant information to the proceedings before the Authority held by him and downloaded by him or retained on any of his computer or mobile devices:

- (a) During the period of non-solicitation from 3 October 2014 to 3 April 2015;
- (b) In the months immediately prior to his departure from Tex Onsite, leading up to his resignation and departure, i.e. from 3 August 2014 to 3 October 2014 and

- (c) in the period immediately after the expiration of the non-solicitation period from 3 April 2015 leading up to 3 May 2015;

had been delivered up and produced to the Authority today.

[11] Mr Spence confirmed under oath that he would analyse all digital information on the devices provided by Mr Hill. Mr Spence confirmed under oath that he would not release any information analysed by him and any information included on the client list provided to him by Tex Onsite today to any third party other than to the Authority.

[12] On the basis of the provision of these undertakings, Mr Spence, with the agreement of Mr Hill, proceeded to undertake a forensic analysis of information on the devices and computers provided. Mr Spence has undertaken to provide a report to the Authority by 12 June 2015 for viewing by the Authority.

[13] The following directions were discussed and agreed upon by the parties.

- The statement in reply is to be lodged by 22 June 2015.
- The parties will attend mediation by 31 July 2015, unless the matter is resolved prior to that date.
- Either party can seek a telephone conference at any time to request further directions.

Anna Fitzgibbon
Member of the Employment Relations Authority