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Turners & Growers Limited v Wagner (Christchurch) [2011] NZERA 950; [2011] NZERA Christchurch 198 (13 December 2011)

Last Updated: 25 April 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY CHISTCHURCH

[2011] NZERA Christchurch 198
5363208

BETWEEN TURNERS & GROWERS LIMITED

Applicant

AND MICHAEL WAGNER First Respondent

AND MARKET GARDENERS LIMITED

Member of Authority: M B Loftus

Representatives: Penny Swarbrick, Counsel for Applicant

Peter Macdonald, Advocate for Respondents

Determination: 13 December 2011

DETERMINATION OF THE AUTHORITY

[1] In late November 2011 the applicant, Turners & Growers Limited (T&G), filed proceedings aimed at enforcing a restraint of trade provision (entitled Non- Competition) contained in a written employment agreement between it and the first respondent, Mr Michael Wagner. The application was aimed at stopping Mr Wagner from commencing employment in the Nelson Office of the second respondent, Market Gardeners Limited (MGL), on 12 December 2011.

[2] By determination dated 9 December 2011 an order was made that Mr Wagner comply with the terms of the 'Non-Competition' clause, though the original content was subject to minor amendment by the Authority.

[3] The clause, as amended, reads:

Non-Competition

If this agreement is terminated, whether by expiry or termination for breach or otherwise; then you will not either alone or in conjunction with or on behalf of any other person, directly or indirectly, as

promoter, shareholder, director, consultant, or staff member in any other manner:

(a) for a period of six months following termination solicit or entice away or attempt to solicit or entice away from the employment of the company any of the company's staff or independent contractors; nor

(b) for a period of six months following termination contact, solicit or attempt to solicit the custom in respect of similar goods or services of any person to whom the company provided goods or services during the nine months prior to the termination of your employment and who is not already a client of MGL; nor

(c) for a period of three months following termination, work in the Nelson / Marlborough region or any other geographical area

in which you engaged with T&G's clients for or on behalf of any business or enterprise that is engaged in the purchasing and/or marketing and/or storing and/or importing/exporting and/or distribution of horticultural produce where that business or enterprise is in competition with the business of the company or its subsidiaries or associated companies, either alone or in conjunction with another.

...

[4] On 12 December T&G became aware that notwithstanding the Authority's determination, Mr Wagner had commenced with MGL in Nelson that morning. Correspondence then passed between it, MGL and the Authority which culminated in an application for a compliance order being filed in the Authority this afternoon (13 December).

[5] T&G sought, as a matter of urgency, various orders requiring that both respondents comply with the determination of the Authority issued on 9 December 2011.

[6] During a telephone conference initially intended to schedule an investigation meeting at which the application could be addressed, Mr Macdonald advised that his clients would agree to the Authority making the orders sought by consent.

Orders

[7] Accordingly it is ordered that both the First and Second Respondents comply with the determination of the Authority issued on 9 December 2011, [2011] NZERA Christchurch 196 and, in particular:

(a) that Mr Wagner comply with the Authority's order that he will not, for a period of three months following termination, work in the Nelson / Marlborough region or any other geographical area in which he engaged with T&G's clients for and on behalf of any business or enterprise that is engaged in the purchasing and/or marketing and/or storing and/or importing/exporting and/or distribution of horticultural produce where that business or enterprise is in competition with the business of T&G or its subsidiaries or associated companies, either alone or in conjunction with another; and

(b) that Market Gardeners Limited (MGL) cease to employ Mr Wagner in the Nelson / Marlborough region or any other geographical area in which Mr Wagner engaged with T&G's clients for a period of three months following termination with T&G.

Costs

[8] I reserve the issue of costs.

M B Loftus

Member of the Employment Relations Authority