

**Attention is drawn to the
order prohibiting publication
of certain information in this
determination**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2016] NZERA Auckland 47
5465274

BETWEEN VECTOR LIMITED
Applicant

A N D BRUCE TAPLIN
Respondent

Member of Authority: James Crichton

Representatives: Stephen Langton and Chris Hogg, Counsel for Applicant
Aishleen Sluiter, Counsel for Respondent

Date of Determination: 17 February 2016

CONSENT DETERMINATION OF THE AUTHORITY

[1] This matter was set down for a five day fixture to commence on 15 February 2016.

[2] On 11 February 2016, in a telephone conference with counsel, I was advised that the parties had come to terms and that a consent determination would be sought.

[3] On 12 February 2016, a joint memorandum of counsel was filed and that document forms the basis of this determination.

[4] I commend the parties and their counsel for the good sense that led them to this conclusion.

[5] The applicant, Vector Limited (“Vector”), is a provider of electricity and gas transmission and distribution networks and the supplier of electricity and gas to retail and wholesale customers.

[6] The respondent, Bruce Taplin, was employed by Vector between 22 August 2011 and 22 November 2013 as its Health and Safety and Environment Manager, following when, he provided health and safety consultancy services as an independent contractor to third party clients.

[7] Vector employed Mr Taplin pursuant to an employment agreement, material terms of which included:

Individual Employment Agreement

...

3. *Hours of Work*

(a) *The usual hours of work for your position are 40 hours per week, worked during regular business hours, Monday to Friday. However, in order to meet the Company's business requirements and to perform the duties and responsibilities of the position, you may be required to work additional hours but this will be discussed and agreed with you at the time in accordance with Vector's Life Policy.*

(b) *Your salary is payment for the overall performance of the position and all the hours worked. No overtime is payable in your position.*

18. *Termination of employment:*

...

(c) *Upon termination of your employment for any reason, you must return to Vector, all tools, records, documents, letters, books, computer disks, keys and security cards as well as other materials and property of any description including copies of the same, which are within your possession or control and which belong or are related to Vector.*

...

20. *Company Code of Conduct, Policies and Procedures*

(a) *You must agree to familiarise yourself with and observe and comply with all Vector's Code of Conduct policies and procedures. Vector may revoke or amend such policies or introduce new policies from time to time as it considers necessary to meet the operational needs of the business. Any such changes will be communicated to you and we will provide you with reasonable notice.*

...

23. *Proprietary Rights*

(a) *Any patent, design, copyright or other form of intellectual property or proprietary interest in any matter or thing discovered, conceived or developed by you during employment with Vector in any way related to Vector's business will be the absolute property of Vector.*

...

24. *Confidentiality*

(a) *You must not, either during your employment (otherwise than in the performance of your duties) or thereafter, without the prior written consent of Vector, disclose to any person any information concerning the interests, business or finances of Vector and/or any staff member or customer of Vector which has come to your knowledge during your employment.*

- (b) *The importance to Vector of maintaining the confidentiality of its customers' affairs, its own affairs, and its information resources is such that's a breach of the provisions of this clause will be regarded as serious misconduct and, in appropriate circumstances, will justify summary dismissal.*

[8] Pursuant to clause 20 of the employment agreement, Mr Taplin was also bound by the following policies:

Code of Conduct and Ethics

...

2. *Conflicts of interests*

2.1 *You are expected to act in Vector's best interests at all times. Therefore you must not engage in any business, commercial or other activity which would conflict with your ability to perform your duties to Vector, or bring Vector into disrepute.*

2.2 *The perception of a conflict of interest can do as much damage to Vector's reputation as an actual conflict of interest. You must remember that when a conflict may be perceived by others you should take action to avoid or address this risk.*

2.3 *You must seek Vector's written approval if:*

(a) *Any outside interest you have has the potential to be in conflict with your employment, the interests of Vector or Vector's partners, customers or supplier (such outside interests include non-Vector work, paid or unpaid, business ventures, directorships, partnerships or other interests); or*

(b) *You do business with, transact or hold a direct or indirect financial interest in customers or suppliers you deal with in the course of your work with Vector (excluding your interest as a consumer of services from Vector's customers or suppliers eg as an electricity consumer).*

2.4 *You must disclose to your manager any personal associations with a third party that you are involved in evaluating or negotiating with for Vector.*

7. *Proper use of Vector assets*

...

7.2 *You must only use Vector's assets for legitimate business purposes authorised by Vector and not for personal gain.*

IT Acceptable Use Policy

...

3.2 *Forwarding confidential client or company information to web based mail programs e.g. Hotmail, G-mail etc or through instant messaging is not permitted.*

...

[9] The respondent also owed a duty of fidelity to Vector.

[10] On 22 November 2013, Vector dismissed Mr Taplin from his employment because, following an investigation and disciplinary hearing, it considered that he had failed to protect Vector's IP, conducted external business activities without authorisation and failed to devote his working hours exclusively to the respondent.

[11] Subsequent to Mr Taplin's dismissal, Vector discovered that during his employment with it, he had forwarded a number of the applicant's documents to his personal (Gmail) address ("documents"). The documents comprised the applicant's confidential information and intellectual property.

[12] In order to recover the documents from Mr Taplin, Vector issued these proceedings against Mr Taplin and applied for and was granted a summons requiring him to attend the Authority on 27 June 2014 at 10:00 and to bring with him and produce:

- (a) All computer system(s) (as defined in s.248 of the Crimes Act 1961) in his possession or control;
- (b) Documents (including electronic and hard copy documents) containing any confidential information, intellectual property or information belonging to the applicant presently in his possession or control;
- (c) Documents (including electronic and hard copy documents) containing any information that is relevant to the documents described at para.(b) above;
- (d) Any other property of the applicant (including in electronic form) presently in his possession and/or control; and
- (e) Passwords or other information, tools or devices necessary to access such computer records, systems and property.

[13] Shortly after receiving this summons, Mr Taplin deleted his Gmail account.

[14] With the assistance of a forensic expert, it was possible to partly restore Mr Taplin's Gmail account. Upon review of the Gmail account, it is apparent that Mr Taplin admits that he used parts of the documents to assist him in drafting similar documents for third parties as part of his Health and Safety consultancy business.

[15] The Authority determines (and Mr Taplin admits and consents) that Mr Taplin breached his duties and obligations he owed to Vector in the following respects:

- (a) In breach of clauses 20, 23 and 2 of his employment agreement, clause 3.2 of the IT Acceptable Use Policy, and his duty of fidelity, Mr Taplin forwarded the documents to his personal Gmail account;
- (b) In breach of clause 18 of his employment agreement, Mr Taplin failed to return the documents upon the termination of his employment or at any subsequent time;
- (c) In breach of clauses 23 and 24 of his employment agreement, subsequent to the termination of his employment, Mr Taplin misused parts of the documents he had forwarded to his Gmail account, by using the documents to assist in the performance of his services to third parties.

[16] Liability having been established by this consent determination, the matter is adjourned to ascertain whether the parties can reach an agreement in relation to remedies and costs.

James Crichton
Chief of the Employment Relations Authority