

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2016] NZERA Christchurch 192
5644196

BETWEEN ADVANCED PERSONNEL
 SERVICES LIMITED
 Applicant

A N D GRAHAM PITMAN
 Respondent

Member of Authority: David Appleton

Representatives: Jeff Goldstein, Counsel for Applicant
 Andrew Bell, Counsel for Respondent

Investigation Meeting: 27 October 2016 at Nelson

Date of Determination: 28 October 2016

**CONSENT DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY**

[1] During the course of the Authority's Investigation Meeting, which had been set down to investigate an application for the granting of interim relief to the applicant, it became clear that the parties were close to agreement. With some assistance from the Authority, the parties have reached agreement as to the terms of undertakings that Mr Pitman was prepared to give to the applicant.

[2] The parties have accordingly jointly applied to the Authority for a consent determination to record the terms of those undertakings. I grant that application and set out in this determination the terms of Mr Pitman's undertakings, which are now the orders of the Authority, and take effect immediately.

[3] For a period of three months from 23 September 2016, Mr Pitman shall not carry on the business activities of a recruitment agent in Nelson, including but not limited to:

- a. placing temporary or permanent workers in employment, where their work will be primarily in Nelson;
- b. placing workers in employment who reside in Nelson; and
- c. meeting with or otherwise communicating with prospective clients in Nelson, including clients seeking employees and clients seeking employment.

[4] For a period of six months from 23 September 2016, Mr Pitman shall not, either directly or indirectly, approach, solicit or endeavour to entice away any of the applicant's clients, including temporary or permanent staff seeking employment.

[5] Mr Pitman shall:

- a. immediately return to the applicant all of its property and/or information in any form and wherever situated and provide an undertaking that he has not retained or forwarded to any individual, company or other entity any of that information and/or property;
- b. not use, retain or divulge any information acquired in the course of Mr Pitman's employment with the applicant relating to the applicant's business including but not limited to the details relating to the applicant's clients being employees, job applicants or client companies.
- c. when requested, produce his computer, mobile telephone and other computer devices owned by him to an independent computer expert to be determined by the applicant, so that an audit can be undertaken of those devices to determine whether any of the information relating to the applicant's business:
 - i. is held on that equipment;
 - ii. has been forwarded to any device including USB stick or similar storage device;
 - iii. has been forwarded to any individual, company or other entity;
 - iv. has been modified and/or forwarded to any device;

- v. has been modified and/or forwarded to any individual, company or any other entity; and
- vi. has been stored, copied or printed and where the information was stored, copied or printed.

[6] The applicant undertakes to meet the cost of the computer audit. The results of the computer audit shall be provided in a written report by the expert and contemporaneously be made available to each party's counsel.

[7] The substantive investigation shall proceed on 1st and 2nd December 2016 as already arranged. That investigation shall consider whether the post-employment restraints of trade and restrictive covenants relied upon by the applicant are enforceable, whether Mr Pitman has breached any of them and, if so, what damages may be due to the applicant. It will also consider whether penalties should be imposed upon Mr Pitman, and upon A Temp Limited, which is the second respondent in the substantive matter.

[8] Whilst at this stage I shall not direct the parties to mediation as further evidence needs to be disclosed by the parties, they are urged to consider prior to the substantive investigation when mediation may be of assistance to them.

Costs

[9] I reserve costs until the conclusion of the substantive investigation meeting.

David Appleton
Member of the Employment Relations Authority