

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Shane Bruhns (Applicant)
AND Deloitte Consulting NZ LLC (Respondent)
REPRESENTATIVES Phillip Skelton, counsel for the applicant
John Hannan, counsel for the respondent
MEMBER OF AUTHORITY Marija Urlich
INVESTIGATION MEETING 15 February 2005
DATE OF DETERMINATION 15 February 2005

**DETERMINATION OF THE AUTHORITY IN RELATION TO THE
PROVISION OF DOCUMENTS**

Issue for determination

[1] The applicant, Mr Shane Bruhns, filed a statement of problem with the Authority on 23 December 2004 seeking resolution of a dispute over the interpretation of the redundancy provisions of his employment agreement and payment of redundancy compensation.

[2] By extension of the usual timeframe the respondent, Deloitte Consulting NZ LLC (“Deloitte”), filed a statement in reply on 26 January 2005. In a covering letter to the statement in reply the following documents were sought to be provided by way of a sworn list:

“Letters, emails, faxes, file notes and diary notes between or relating to the applicant and Spendvision Pty Ltd or Spendvision Ltd relating to offers of employment or any other form of engagement to the applicant, in particular in the period February/March/April 2004;

Letters, emails, faxes, file notes and diary notes relating to the engagement of or offers of engagement to the applicant or the applicant’s consultancy company, Seaview Solutions Ltd;

Letters, faxes, emails, file notes and diary notes relating to arrangements between the applicant, Seaview Solutions Ltd and Spendvision Pty Ltd or Spendvision Ltd relating to the arrangements made for Spendvision Pty Ltd or Spendvision Ltd to make the bonus pool payment of \$75,000 to the applicant and any document relating to or recording the actual payment of this obligation;

The applicant (sic) also requests an order or subpoena to produce documents requiring that Spendvision Pty Ltd and Spendvision Ltd make full disclosure of all documents relating to the above issues including the engagement of the applicant of the applicant’s company Seaview Solutions Ltd by either Spendvision Pty Ltd or Spendvision Ltd and also including offers of engagement and negotiations relating to that engagement.”

[3] Mr Bruhns has not agreed to provide these documents to Deloitte. This is the first issue to be determined.

[4] The second issue concerns the orders sought against Spendvision Pty Ltd and Spendvision Ltd. Mr Skelton has advised the Authority he does not act for Spendvision Pty Limited or Spendvision Ltd.

[5] I raised with the parties a possible conflict of interest on my part in relation to these proceedings. As a consequence this application will be reallocated. However, by agreement I will move to determine this preliminary issue.

Submissions

[6] I have received written submissions from the parties regarding this issue and heard further submissions this morning during a telephone conference.

[7] Mr Hannan submits it is necessary for the classes of documents sought should be provided given the nature of the applicant's claims. He argues these documents are necessary to give the Authority the full factual context of Mr Bruhns' transfer to Spendvision and whether that transfer was within the parameters of the disputed provision of the employment agreement. He also says the documents are relevant to the estoppel defence raised by Deloitte; it says Mr Bruhns is estopped from claiming he was made redundant from Deloitte as a consequence of a deed of settlement entered by the parties on 29 February 2004.

[8] Mr Skelton submits the documents which are sought to be provided are not relevant or necessary to deal with the issue in dispute. He argues Mr Bruhns acknowledgement in the statement of problem that he was engaged by Spendvision Pty Ltd on terms and conditions "generally no less favourable than the terms and conditions that he was employed under while employed by Deloitte" avoid any investigation into the context of that engagement. Mr Skelton submits it is not Mr Bruhns intention to conceal relevant documents from the Authority.

Determination

[9] Section 160(1)(a) of the Employment Relations Act 2000 provides:

"The Authority may, in investigating any matter, -

(a) call for evidence and information from the parties or from any other person"

[10] In exercising this power it is accepted the usual criteria for ordering the provision of documents applies ie, is the material for which disclosure sought relevant and necessary to the issues for determination.

[11] The respondent has raised an estoppel defence. This is an issue which the Authority will have to consider in its investigation of this employment relationship problem. The Authority will not be able to fully consider the estoppel defence if it does not know the context of Mr Bruhns' engagement with Spendvision Pty Ltd and/or Spendvision Ltd.

[12] Mr Bruhns is ordered to provide to the Authority and Deloitte all documentation relating to his engagement with Spendvision Pty Ltd and Spendvision Ltd during February, March and April 2004. Orders as to how such documentation will be provided to Deloitte are set out below.

[13] All documents so directed by way of this determination are to be used only for the purposes of this investigation.

[14] The examination of documents directed to be provided to Deloitte is to be limited to counsel for Deloitte and one employee of Deloitte.

[15] I am reluctant to make the orders sought against Spendvision when the provision of documents is not yet complete between the parties to these proceedings. No such order will be made at this time.

Timetable

[16] Filing and service of a sworn list of documents is to occur by **1 March 2005**.

[17] Examination by Deloitte in the terms set out in paragraph 14 above of all documents directed to be provided by way of this determination is to occur by **15 March 2005**.

[18] The parties may apply to vary this timetable.

Mediation

[19] Upon the conclusion of examination of the documents the parties may wish to consider further mediation. The Authority may facilitate an early mediation date if the parties so wish.

Marija Urlich
Member of Employment Relations Authority