Employment Court of New Zealand

Hall v Dionex Pty Limited [2014] NZEmpC 12 (10 February 2014)

Last Updated: 20 February 2014

IN THE EMPLOYMENT COURT AUCKLAND

[2014] NZEmpC 12

ARC 66/12

IN THE MATTER OF application for admissibility of evidence

BETWEEN PETER DAVID HALL Plaintiff

AND DIONEX PTY LIMITED Defendant

Hearing: Following filing of an application by the defendant on

7 February 2014 and during hearing on 10 February 2014 (Heard at Auckland)

Appearances: Tony Drake, counsel for plaintiff

Daniel Erickson and Mere King, counsel for defendant

Judgment: 10 February 2014

ORAL INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] Issues arose just prior to the commencement of the hearing about the admissibility of an audio and a transcript of a meeting that occurred on 21 December

2011. While it is apparent that notices requiring disclosure had been served by each party, the plaintiff had not disclosed the existence of the audio and the transcription of it.

[2] An affidavit was filed on 7 February 2014 explaining why the audio had only recently been retrieved and transcribed. Mr Erickson, on behalf of the defendant, opposes the transcript being admitted in evidence and has submitted in summary that the plaintiff failed to comply with the notice for disclosure; that the defendant had

not had sufficient time to scrutinise the transcript;1 that the delays in alerting the

defendant to the existence or possible existence of the audio, and the further delays

1 Referring to s 135(3) of the Evidence Act 2006 in support.

in providing a transcript, have been inadequately explained; and that the defendant has been prejudiced by having to deal with the admissibility issue at a late stage. Mr Erickson has now had the opportunity to have the audio checked as against the transcript and largely accepts the transcript's accuracy.

[3] Where a party has failed to comply with a notice for disclosure the Court may make such an order as it thinks fit, including an order refusing to admit in evidence any document tendered by the party in default.2

[4] The transcript is plainly relevant. It was capable of being disclosed, as Mr Erickson says, in the sense that it was on a computer drive owned by the plaintiff's counsel. However, it is apparent that the audio could not initially be located and it was only after additional searches had been conducted that it belatedly came to light. There were then further delays (apparently because of the Christmas vacation) in transcribing the audio.

[5] Issues relating to possible prejudice relating to authenticity and accuracy, if there were any, could otherwise have been dealt with by way of an adjournment and costs consequent upon any adjournment. However, counsel for the defendant did not wish to pursue such a course. I do not accept the submission that admissibility of the transcript would be contrary to equity and good conscience. The meeting which the transcript relates to is a key one, it is desirable that the Court has all relevant evidence relating to it, and in this sense it is likely to be assisted by it. The application is accordingly dismissed.

[6] Costs are reserved and will be dealt with at the conclusion of the substantive hearing.

Christina Inglis

Judge

Oral judgment delivered at 9.52 am on 10 February 2014

2 Employment Court Regulations 2000, ref 52(3).
