

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Gillian Miller (Applicant)  
**AND** Health Alliance New Zealand Limited (Respondent)  
**REPRESENTATIVES** Mark Ryan, Counsel for Applicant  
Anthony Russell, Counsel for Respondent  
**MEMBER OF AUTHORITY** Marija Urlich  
**INVESTIGATION MEETING** 23 November 2005  
24 November 2005  
13 December 2005  
**DATE OF DETERMINATION** 13 December 2005

DETERMINATION OF THE AUTHORITY

**Determination of the Employment Relations Authority**

[1] This determination records, with minor amendments, an oral determination issued to the parties this morning.

[2] The Authority received evidence from Michael Campbell on 24 November 2005. A general objection to the admissibility of Michael Campbell's evidence was raised at the time. Subsequently, the grounds of that objection have been raised by the applicant pursuant to section 52 of the Private Investigators and Security Guards Act 1974. Mr Campbell is a licensed private investigator subject to the requirements of that Act. The objection to Mr Campbell's evidence is that:

- Mr Campbell failed to obtain written prior consent from the applicant to taping his interview with her on 19 and 20 January;
- Mr Campbell failed to obtain written prior consent to photograph items in the Middlemore Hospital bunker;
- Mr Campbell's job sheets of 19 and 20 January were prepared subsequent and consequent to that taping.

[3] The respondent submits Mr Campbell's evidence is admissible because:

- the Authority is not a Court and has wide powers to hear evidence (section 157 and 160 Act);
- oral consent was given by the applicant to the taping of the 20 January interview and it would be overly technical to strictly apply the requirement for written consent in this jurisdiction;

- the photographs are admissible because consent was impliedly given by the respondent and consent was not for the applicant to give because the photographed items were located in her workplace.

[4] Section 52 of the Private Investigators and Security Guards Act 1974 provides that:

- photographs or recordings must be made with consent;
- consent must be given prior to the collection of evidence and in writing.

[5] I have received no evidence that consent, for the purposes of satisfying the requirements of section 52, was obtained by Mr Campbell.

[6] In relation to whether such evidence, obtained without the required consent, is admissible, section 52 provides that:

- such evidence is not admissible as evidence;
- in civil proceedings.

[7] Does section 52 create a statutory bar to the Authority receiving this evidence?

[8] While the Authority is not a Court, these are civil proceedings at which evidence is received.

[9] The wording of section 52 is clear – it creates a statutory bar to the Authority receiving evidence obtained by a private investigator in breach of the consent requirements of section 52. There is no question of the Authority exercising its discretion to receive this evidence or not. A statutory bar exists to this evidence being put before the Authority. The photographs and recordings are inadmissible.

[10] In relation to the job sheets; I accept that they may be tainted by a degree by Mr Campbell's failure to gain consent in the form required by section 52, but they are not barred by section 52. There is no evidence before the Authority that they were obtained other than through Mr Campbell's recollection of his meeting with the applicant. They are admissible and the Authority can determine what weight they should be given.

[11] I have already heard a significant portion of the tape recording in question and in doing so I have heard evidence which will be relevant to any assessment of credibility. It is most unfortunate that I have been placed in a situation where a serious question as to whether I can continue to hear this application has arisen. However, having heard evidence which I have found is inadmissible and given the nature of that evidence it is in the interests of a fairness that I stand down from hearing this application. The file will be reallocated and the parties will be contacted in due course to timetable an investigation meeting.

Marija Urlich,  
Member, Employment Relations Authority

