

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN PMP Print Limited (Applicant)
AND David Barnes (Respondent)
REPRESENTATIVES Tim McGinn, Counsel for Applicant
David Barnes In person
MEMBER OF AUTHORITY Dzintra King
INVESTIGATION MEETING 24 September 2004
DATE OF DETERMINATION 28 September 2004

DETERMINATION OF THE AUTHORITY

The applicant, PMP Print Limited, sought a determination from the Authority as to whether the applicant's instruction to the respondent, Mr David Barnes, that he comply with a new timekeeping process, which involves finger scanning technology, is lawful and reasonable and in accordance with the contractual provision relating to time keeping.

Clause 6.2 of the Individual Employment Agreement Time and Work records states: Employees are required to complete all time and wage records as required by the Company.

I was told that the respondent had had a number of time recording systems in place over the years ranging from clock-in cards to individual scanning cards to signatures. Despite the changes there continued to be problems with employees making false time claims.

There is no doubt that the wording of clause 6.2 is sufficiently broad and general to encompass a finger scanning system.

Mr Barnes refuses to use the system. He told me that he didn't feel that the company had the power to demand a fingerprint and it went against the grain with him. He seriously doubted its legality but could not point me to any legal argument in support of his view. He did not like the way the company had introduced it. He said he owned his fingerprint.

Mr Barnes also told me that the taking of biometric information would result in his being stamped with the Mark of the Beast. When I asked Mr Barnes what religion he was he told me he was Christian but did not identify a particular branch of Christianity. I asked if he worshipped at a particular church and he told me he met with fellow Christians. I asked him to identify those parts of the bible that referred to the Mark of the Beast. Apart from saying that it occurred in Revelations he was unable to do so even when given the Bible to consult. He did not appear to be familiar with the details of the Mark of the Beast. He said he believed taking the fingerprint was a precursor to the Mark of the Beast but he could not point to any part of the Bible; it was just what he believed.

I inquired whether he would have a problem with using his left hand. Revelation.13:16-18 refers to a person being marked either on the forehead or on the right hand. Mr Barnes believed the Biblical reference was to both hands.

Mr Barnes said he regarded the taking of a fingerprint by the police as the taking of biometric information. He said he would let the police take his fingerprint. I asked why he would do that if the consequence was that he would not be able to participate in the Rapture. This is referred to in Revelation 20:4 And I saw thrones, and they sat upon them, and judgment was given unto them: and I saw the souls of them that were beheaded for the witness of Jesus, and for the word of God, and which had not worshipped the beast, neither his image, neither had received his mark upon their foreheads, or in their hands; and they lived and reigned with Christ a thousand years.

He replied that it was because the Police had a legal right to do so. I asked him what he would do if I were to find that his employer had a legal right to instruct him to use the finger scanner. He said he would not do it because he had a right to his fingerprint.

When this matter first came to my attention I was anticipating an argument on the grounds of indirect discrimination on the basis of religious belief. However, it is clear that Mr Barnes cannot sustain such an argument. If he had a sincere religious belief that he would be denied the Rapture because of the requirement to provide a fingerprint he would have to apply that to the taking of fingerprints by the Police as well as by the employer.

The privacy concerns have been addressed in Case Note 33623 [2003] NZPrivCmr 5. This was formulated in response to a query by the NZ Engineering Printing and Manufacturing Union about the privacy issues involved in PMP's wish to introduce finger scanning technology. My own research indicated that what was stored in the scanning unit was not a fingerprint image. The Privacy Commissioner reached the same conclusion. What is stored is a mathematical representation which cannot be reverse-engineered to reconstruct a fingerprint.

The Privacy Commissioner was of the view that the collection was both lawful and necessary. The issuing of an instruction to use the fingerprint scanner is lawful. It forms part of the employment agreement, and it is reasonable.

Costs were reserved. If the parties are unable to resolve this issue the applicant should file a memorandum within 28 days of the date of this determination. The applicant should then reply within 14 days of receipt of the applicant's memorandum.

Dzintra King
Member of Employment Relations Authority