

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 308
5415550

BETWEEN

HENRY TAUFUA
Applicant

A N D

FONTERRA BRANDS (NEW
ZEALAND) LIMITED
Respondent

Member of Authority: T G Tetitaha

Representatives: H White, Counsel for Applicant
S J Turner and S J Clark, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received: 17 July 2013 from Applicant
11 July 2013 from Respondent

Date of Determination: 19 July 2013

DETERMINATION OF THE AUTHORITY

- A. The witness statement of Eric Holliday is inadmissible;**
- B. The witness statement of C Flynn is admissible; and**
- C. The witness statement of L M Flynn is admitted with the exception of paragraph 8, which is inadmissible.**

Employment relationship problem

[1] The respondent seeks exclusion of the following evidence:

- (a) The whole of the witness statement filed by Eric Holliday;
- (b) Paragraphs 6 to 23 of the witness statement filed by Craig Flynn; and
- (c) Paragraphs 1 to 4 and 8 of the witness statement filed by Lance Flynn

[2] The Authority may take into account such evidence and information as in equity and good conscience it thinks fit, whether strictly legal evidence or not (s.160(2)). The touchstone for admitting evidence is relevance.

[3] Although the Evidence Act 2006 does not expressly apply to the Authority, its principles will affect and guide the exercise of its discretion to admit evidence.¹ The Authority is not entitled to ignore the rules of evidence and is likely to apply them if, in doing so, they support the role of the Authority set out in s.157 of the Act.²

Witness statement of E Holliday

[4] This same evidence was dealt with under a related matter *Craig Flynn v Fonterra Brands (New Zealand) Limited* [2013] NZERA Auckland 307. For the reasons set out therein, the witness statement of E Holliday is inadmissible.

Witness statement filed by C Flynn

[5] The respondent submits Mr C Flynn's statement is irrelevant because it sets out his personal account of events (paragraphs 6 to 10), views on his investigation not Mr Taufua's (paragraphs 11 to 13), personal remorse for his actions (paragraphs 14 to 15) his opinion upon disparity of treatment (paragraphs 18 to 21) and his conduct and explanations thereof (paragraphs 16 to 17 and 22 to 23).

[6] It is common ground that Mr Flynn was involved in the making of at least one of the videos with Mr Taufua. The video is the subject of the personal grievance before the Authority. Accordingly, his eye witness account of these events is relevant to the determination of the issues before the Authority. One of the reasons for Mr Taufua's dismissal includes the failure to report the unsafe actions of others. One of those 'others' is Mr Flynn. An explanation of his conduct and Mr Taufua's liability for it is relevant to a matter to be determined by the Authority. Some of the matters traversed in his investigation are the same or similar to those in Mr Taufua's. His expressed remorse is of less relevance but is not inadmissible. The Authority is capable of dealing with this evidence appropriately.

[7] The substantial merits and equities of this case warrant the admittance of this evidence. Accordingly, the evidence of Mr C Flynn is admitted in its entirety.

¹ *Maritime Union of New Zealand Inc v TLNZ Ltd* [2007] ERNZ 593 (EmpC) at [14]

² *Vollmer v The Wood Life Care (2007) Ltd* [2012] NZERA Christchurch 257.

Evidence of L M Flynn

[8] This same evidence was dealt with under a related matter *Craig Flynn v Fonterra Brands (New Zealand) Limited* [2013] NZERA Auckland 307. For the reasons set out therein, the witness statement of LM Flynn is admitted with the exception of paragraph 8, which is inadmissible.

Costs

[9] Costs are reserved.

T G Tetitaha
Member of the Employment Relations Authority