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Thamer v Massey University WC 16/06 [2006] NZEmpC 87 (1 September 2006)

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Thamer v Massey University WC 16/06 [2006] NZEmpC 87 (1 September 2006)

Last Updated: 11 May 2011

IN THE EMPLOYMENT COURT WELLINGTON

WC 16/06
WRC 6/06

IN THE MATTER of a de novo challenge to a determination of the Employment Relations Authority

AND IN THE MATTER of directions relating to disclosure and further and better particulars

BETWEEN THAMER RADHI THAMER Plaintiff

AND MASSEY UNIVERSITY Defendant

Hearing: 25 August 2006

(Heard at Wellington (in Chambers))

Appearances: T R Thamer, In person

H Kynaston, Counsel for the Defendant

Judgment: 1 September 2006

JUDGMENT OF JUDGE C M SHAW

[1] A hearing was convened principally to resolve a dispute about the scope of disclosure sought by the plaintiff although the defendant also sought directions on some other matters.

Disclosure

[2] The plaintiff asked for eight categories of documents to be disclosed by the defendant. The list is annexed to this judgment.

[3] For the defendant Mr Kynaston advised that on the morning of the hearing he provided the plaintiff with most of the information sought in the last of the

categories. The plaintiff now has the number of users of workstations belonging to

THAMER V MASSEY UNIVERSITY WN WC 16/06 1 September 2006

the information systems department at Massey University. The names of those users are not included in that information but Mr Thamer will not press for those.

[4] Disclosure of the other categories of documents is opposed by the defendant on the grounds that the documents sought are not relevant or necessary.

[5] Following submissions from both parties, I have concluded that the information sought in categories 1, 2, and 4 is relevant to the proceedings.

[6] The plaintiff's claim is that he has been disadvantaged in his continuing employment as the manager in the Massey University information systems department by the defendant which has unilaterally altered his terms of employment including imposing new work requirements, altering his job description and core activities, introducing a sinking lid policy, and increased workloads.

[7] The plaintiff submitted that one of the alterations to his work involved the contracting out of some of his responsibilities to the information technology services department of Massey (IT services) and to other contractors. He says that this and other actions of Massey created an environment of failure for him and has led to his disadvantage.

[8] To the extent that he needs to prove that work he had once been doing has been contracted to others, I hold that disclosure of contracts in categories 1, 2, and 4 is relevant.

[9] However, I find that the information requested in categories 3, 5, and 6 are not relevant to his claim. The plaintiff submitted that he needed detailed information about costs and expenses sought in order to make sure his evidence was correct in all details. However, I do not accept that such detail is relevant to his claim for disadvantage and, even if it were, access to that detailed information is not necessary for the purpose of him freely advancing his case.

[10] There will be an order that the defendant disclose to the plaintiff each of the contracts entered into by IT services or other external contractors for the period 10

January 2006 and 31 July 2006 that relate to IT support activity and the information systems department.

Other matters

[11] Mr Kynaston raised further concerns that the particulars supplied by the plaintiff on 26 June 2006 indicate that the plaintiff may be relying on or raising causes of action that predated a settlement of his grievances on 31 March 2005. I am satisfied that the plaintiff fully understands that he cannot raise such causes of action and that the only purpose of his particularising the details that are objected to by the defendant is to provide background in support of his allegations on the matters that have arisen since 31 March 2005.

Insufficient particulars

[12] Although Mr Kynaston has set out a number of details in a memorandum which he says the defendant would like to have further particularised, he does not wish to advance that in the interests of progressing the case.

Managerial prerogative

[13] Mr Kynaston submitted that in the particulars provided by the plaintiff he has raised a number of matters which are covered by managerial prerogative. I regard this as a defence properly to be raised at the hearing and does not require any further judicial intervention.

Likely further claim

[14] Mr Kynaston outlined the circumstances which have now arisen between the parties which mean that further steps may be taken against Mr Thamer. It is anticipated that a decision in this regard will be made by mid September and it was agreed that beyond finalising disclosure and the plaintiff continuing to work on his bundle of documents there would be no further steps taken in the case until after that time.

**C M Shaw
JUDGE**

Judgment signed at 11.45 on 1 September 2006.

Solicitors: Hamish Kynaston, Buddle Findlay, PO Box 2694, Wellington

Annexure 1

...

NOTICE: The purpose of this request basically, is to provide all the IT support cost and contracts in the department for the periods as indicated below NOT including only the following:

- *IT support manager cost*
- *The 0.5 IT support person cost (in Wellington)*
- *The equipments and software ordered by IT Support Manager*

1. *The details of the cost and expenses to IT Services since 10 January 2006 until 31 July*

2006 for all activities which have been arranged with them by A/Prof. Chris Freyberg.

2. *The details of the cost and expenses to all external contractors which has been sourced out during the same period since 10 January 2006 until 31 July 2006 directly by A/Prof Chris Freyberg or indirectly by other parties.*

3. *Any other costs and expenses like overtime, software or equipments, .. ordered or arranged directly or indirectly by any other person (but not the IT Support Manager) within the same period since 10 January 2006 until 31 July 2006.*

3.[sic] *Any other costs and expenses relevant to IT support like overtime or using casual staff for certain tasks (as for example the IT equipments registry assets) within the same period since 10 January 2006 until 31 July 2006.*

4.[sic] *A copy of all the main contracts of the agreements, sub contracts of agreements, the orders and the invoices which are relevant to all activities indicated in the points above*

6. *The details of the cost to IT Services for the 0.5 ITS support person in Palmerston North. The detail of the cost is by providing a list of the payments since the signed support agreement (and all its renewals) between IT Services and A/Prof. Chris Freyberg. A copy of these support agreements is also required.*

7. *The number of users in the Information Systems Department with a list of their names in Palmerston North and Wellington campuses. The definition of user here is any person who uses a workstation belongs to the department or has an access to some of the IT service facilities in the department. The required lists are during the following indicated time of the years:*

The first of September of the year 2000

The first of April and the first of September of the year 2001

The first of April and the first of September of the year 2002

The first of April and the first of September of the year 2003

The first of April and the first of September of the year 2004

The first of April and the first of September of the year 2005

The first of April of the year 2006