



Employment Court of New Zealand

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Zespri International Limited v Yu [2015] NZEmpC 140 (14 August 2015)

Last Updated: 19 August 2015

IN THE EMPLOYMENT COURT AUCKLAND

[\[2015\] NZEmpC 140](#)

EMPC 25/2015

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

BETWEEN ZESPRI INTERNATIONAL LIMITED
Plaintiff

AND JOSEPH YU Defendant

Hearing: By memoranda filed on 31 July, 5, 6, 10, 13 and 14
August
2015

Appearances: M Richards and C Loughlin, counsel for plaintiff
P Skelton QC, counsel for defendant

Judgment: 14 August 2015

INTERLOCUTORY JUDGMENT (NO 2) OF CHIEF JUDGE G L COLGAN

[1] Some complexities have been added to the exercise of uplifting the laptop computer from the Anti-Smuggling Bureau (ASB) of the People's Republic of China (PRC) in Shanghai and returning it to the Registrar of the Employment Court at Auckland. Counsel have reached a measure of, but not complete, agreement on these matters and seek directions from the Court and amended orders.

[2] It has now come to light that in addition to the laptop computer seized by the ASB at the time of the defendant's arrest, two USB electronic storage drives were also seized and are in the custody of the ASB.

[3] Ms Richards, counsel for the plaintiff, also advised the Court that it was her understanding that the ASB would prefer not to have any contact with any third party for the purpose of delivery of the laptop to New Zealand. She proposed that this be

delivered to a representative of one of its associated companies in the PRC, albeit in

ZESPRI INTERNATIONAL LIMITED v JOSEPH YU NZEmpC AUCKLAND [\[2015\] NZEmpC 140](#) [14 August
2015]

the presence of the defendant's father (who resides in Taiwan), to witness the handing over of the laptop.

[4] Although counsel agree that the two USB drives should be dealt with in the same manner as the laptop has been directed by the Court to be dealt with, there remains a dispute about the way in which these documents will be transferred to the Registrar of the Court and, if this involves the defendant's father travelling to Shanghai, responsibility for the cost of that exercise.

[5] Mr Yu asserts that the two USB drives are his personal property and not that of Zespri International Limited (Zespri). He agrees, nevertheless, to those USB drives being returned to New Zealand to be reviewed by the independent information technology expert in the same manner as the laptop. Mr Yu opposes Zespri's proposal that the laptop (and presumably the USB drives) be released by the ASB to a representative of Zespri's Chinese subsidiary. Mr Yu's proposal was that the Court direct that the parties' solicitors jointly instruct an independent firm of lawyers in Shanghai to act on behalf of both parties, liaise with the ASB, uplift the laptop, and arrange

for it to be couriered directly to the Registrar of the Court in Auckland.

[6] Mr Skelton QC, counsel for the defendant, proposed that a representative of the firm DLA Piper, which has an office in Shanghai, be the independent lawyer to undertake this task. Further, in accordance with [33.1]-[33.2] of the Court's interlocutory judgment delivered on 8 July 2015,¹ Mr Yu proposed that both he and Zespri would provide their signed authorisation requesting the ASB in Shanghai to release the laptop and USB drives to DLA Piper. Mr Skelton advised that Mr Yu's

father is to visit him in prison on 18 August 2015 and will be able to obtain Mr Yu's authorisation letter during that visit. Mr Skelton has also proposed an extension of the time provided for under [33.1] of the interlocutory judgment for Mr Yu to sign the authorisation and do whatever else may be required by the ASB to obtain the release of the laptop and USB drives.

[7] The plaintiff does not contest Mr Yu's property in the USB drives, at least in

the physical hardware devices themselves but, nevertheless, considers that there is

1 *Zespri International Ltd v Yu* [2015] NZEmpC 107.

some risk that they may contain the plaintiff's information and/or information relating to the substantive proceeding. In these circumstances, the plaintiff sought to have the USB drives included in an amended court order.

[8] Turning to the controversial aspects of the collection of these devices, counsel for the plaintiff has advised her understanding that the ASB's concern may be that the release of the property may prompt litigation against it by either the plaintiff or the defendant. That is said by counsel to be behind the ASB's wish to release the property to representatives of both parties contemporaneously and not directly to a courier company as directed by the Court. The proposal of releasing the property to representatives of the parties directly rather than to an independent firm of Shanghai based lawyers is apparently ASB's. Further, the plaintiff has suggested that a representative of an independent law firm could be instructed to witness the transaction handing these devices to the parties' representatives jointly, but immediately take possession of the property and then have it securely couriered to the Court in New Zealand. Counsel for the plaintiff warned that there is no guarantee that the ASB will agree to the release of the property in this way and, as an arm of the State of the PRC, the ASB is not bound to comply with the orders of this Court.

[9] Accordingly, the relevant orders made by the Court in its interlocutory judgment issued on 8 July 2015 will be amended. The following paragraphs will replace those so numbered in that first judgment:

[33.1] Within 90 days of the date of this judgment (8 July 2015), both Joseph Yu and Zespri International Limited are to do whatever may be required by the Anti-Smuggling Bureau of the People's Republic of China in Shanghai to enable that Bureau to release from its custody, and to send to the Registrar of the Employment Court at Auckland, the laptop, the property of the plaintiff, which was seized, and two USB electronic storage drives (hereinafter referred to collectively as "the aforesaid electronic devices") that were seized and are subsequently being held by that Bureau.

[33.2] By consent, the parties' solicitors are directed to jointly instruct an independent firm of lawyers in Shanghai to act on behalf of both parties, to liaise with the ASB, and together with the parties' representatives to uplift the electronic devices, and arrange for them to be couriered directly to the Registry of the Court at Auckland. For that purpose the parties' solicitors are to send to DLA Piper in Shanghai the joint instruction letter that has been approved by the parties, a copy of which is attached to Mr Skelton's 5 August 2015 memorandum.

[33.3] Duly authorised representatives of the parties bearing their written authorities are to attend at the offices of the Anti-Smuggling Bureau of the People's Republic of China in Shanghai, together with a duly authorised representative of the law firm DLA Piper based in Shanghai. Upon the aforesaid electronic devices being handed jointly to the parties' representatives, those representatives are to hand them immediately to the representative of DLA Piper who is then to arrange for a reputable international courier company to send those devices to the Registrar of the Employment Court at Auckland. The cost of sending those aforesaid electronic devices to the Registrar of the Employment Court of New Zealand at Auckland (including specifically the costs of DLA Piper and of the courier company) are to be met in the first instance by the plaintiff.

[10] Any subsequent references in the orders to be sealed are to be to "the aforesaid electronic devices" instead of to "the laptop" and/or "USB electronic storage devices" and singulars should be changed to plurals accordingly.

[11] A draft of this judgment having been sent to counsel prior to its issue, and amendments made accordingly, the parties may now have sealed orders following the amendments contained in this interlocutory judgment and the Court's first interlocutory judgment.

[12] Costs are reserved.

GL Colgan
Chief Judge

Judgment signed at 2.50 pm on Friday 14 August 2015