



Pre-Litigation Discovery Gets Train Driver Back On Track

Date: Thursday November 12, 2015

In December last year our client entered into a Deed of Settlement with his former employer to settle a claim regarding unfair dismissal. The Deed included mutual terms as to non-disparagement and confidentiality.

On 1 October 2015 our client applied for, and was successful in gaining, new employment. The next day he received an email confirming his employment would commence shortly. Less than a week later the new employer advised our client that his employment would not proceed, at the behest of the former employer. Our client suspected that this communication between the former employer and the new employer was a breach of the deed and sought assistance from HPL.

We wrote to the both the former and new employer on behalf of our client, alleging that there had been a breach of the deed. Our correspondence went on to seek certain documents by way of pre-litigation disclosure, so as to ascertain the precise details of the former employer's breach of the deed. The correspondence threatened an application to the Court for pre-litigation disclosure if those documents were not provided.

Shortly after, the new employer responded to our correspondence by re-opening its offer of employment. The offer was accepted by our client and he commenced his new employment on 3 November 2015. Importantly, the offer of employment with the new employer was made and accepted without our client being required to compromise his rights against either of these organisations.

The result in this matter shows the benefit of thinking strategically – the use of pre-litigation discovery meant our client was able to enforce his rights under the deed in order to get the best possible outcome. It also means that, if necessary, our client can still pursue the former employer for breach of the deed.

HPL is experienced in the art of pre-litigation discovery and, in particular, its use in employment and industrial matters. If you should require assistance about such matters, please contact HPL Principal [Luke Tiley](#) (Brisbane), HPL Associate [Joseph Kennedy](#) (Sydney) or HPL Associate William Ash(Hobart), all available on Free Call 1800 659 114.

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