

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2024] NZEmpC 65  
EMPC 249/2023**

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

AND IN THE MATTER OF    an application for non-publication orders

BETWEEN                      KN  
   Plaintiff

AND                                NEW ZEALAND STEEL LIMITED  
   Defendant

Hearing:                      On the papers

Appearances:                C Parkhill and C Evans, counsel for plaintiff  
   S Cook and T Sanders, counsel for defendant

Judgment:                    26 April 2024

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**INTERLOCUTORY JUDGMENT (NO 2) OF JUDGE KATHRYN BECK  
(Application for non-publication orders)**

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**Background**

[1]     These proceedings were brought as a challenge to the determination of the Employment Relations Authority that the plaintiff’s dismissal was justified. The Authority declined permanent publication of the plaintiff’s name but made interim non-publication orders pending the filing of a challenge. The Court made its own interim non-publication orders on 7 September 2023.<sup>1</sup>

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<sup>1</sup>     *KN v New Zealand Steel Ltd* [2023] NZEmpC 150.

[2] The parties have now achieved a conditional resolution of claims brought by the plaintiff against his former employer, New Zealand Steel Ltd. The resolution of this claim is conditional on permanent non-publication orders being granted in respect of his name and identifying details.

[3] The plaintiff seeks a non-publication order on the basis that publication will cause stress, hardship, and medical difficulties to himself and also his wife and son. He has filed submissions and affidavits with medical evidence in support of his application.

[4] The defendant initially opposed the application but does not do so now. Both parties rightly acknowledge that the issue of non-publication is a matter for the Court and that the Court will need to be satisfied that the test for permanent non-publication orders is met.

### **Legal principles**

[5] Pursuant to sch 3 cl 12 of the Employment Relations Act 2000, the Court has the power to prohibit the publication of the name of any party to a proceeding. While the Court has a broad discretion, this must be exercised consistently with applicable principles, including the principle of open justice, which is of fundamental importance. A party applying for an order must show “specific adverse consequences” that are sufficient to displace the presumption in favour of open justice.<sup>2</sup>

[6] Embarrassment alone is insufficient to justify non-publication.<sup>3</sup> However, strong medical reasons can constitute “specific adverse consequences” which are often sufficient to displace open justice. The Court has previously ordered non-publication where publication could aggravate the illness of a close relative.<sup>4</sup>

[7] In cases involving allegations of sexual harassment, the public interest in open justice is stronger, and the name of the alleged harasser and their employer should not

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<sup>2</sup> *Erceg v Erceg [Publication restrictions]* [2016] NZSC 135, [2017] 1 NZLR 310 at [2] and [13]; and *Crimson Consulting Ltd v Berry* [2017] NZEmpC 94, [2017] ERNZ 511.

<sup>3</sup> *Erceg v Erceg*, above n 2, at [13].

<sup>4</sup> *Air New Zealand Ltd v V* [2009] ERNZ 185 (EmpC) at [9]; and *H v A Ltd* [2014] NZEmpC 92, [2014] ERNZ 38 at [90] and [97].

usually be protected by a non-publication order while the name of the grievant should usually be protected.<sup>5</sup> However, where sexual harassment is not established, the principle of open justice carries less weight.<sup>6</sup>

[8] Finally, the Court has observed that “the policy imperatives underlying the principle of open justice apply with diluted force” where an employment relationship problem has been settled between the parties, without needing to be resolved substantively by the Court.<sup>7</sup>

### **Analysis**

[9] The plaintiff submits that publication would adversely and disproportionately impact the plaintiff’s future employment prospects, that publication would attract adverse and disproportionate public scrutiny, and that publication would cause disproportionate adverse consequences to third parties.

[10] The most significant potential impact raised by the plaintiff is the risk of adverse consequences to third parties. Both his wife and son suffer from various conditions. His wife has filed an affidavit supported by medical evidence to prove the existence of her conditions and the negative impacts that stress can have on those conditions. I accept that the medical evidence provided to the Court indicates that publication of the plaintiff’s name is likely to trigger or worsen some of her conditions.

[11] The plaintiff’s son has also filed an affidavit supported by medical evidence, which shows that stress during 2023 caused him to partially relapse and lose significant progress in making a recovery. I accept, based on the medical evidence provided to the Court, that publication of the plaintiff’s name is likely to have a significant adverse medical effect on his son.

[12] Additionally, I accept that publication of the plaintiff’s name or identifying details could have a serious impact on the plaintiff’s future employment prospects.

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<sup>5</sup> *Z v A* [1993] 2 ERNZ 469 (EmpC) at 494–495; and *Boyd v OJI* [2023] NZEmpC 231 at [4].

<sup>6</sup> *C v Air Nelson Ltd* [2011] NZEmpC 27, [2011] ERNZ 207 at [78].

<sup>7</sup> *X v A District Health Board* [2013] NZEmpC 160 at [15].

[13] The nature of the allegations and the senior role held by the plaintiff mean that there is a heightened public interest in open justice. I am not persuaded, in the current circumstances, that the risk to the plaintiff's future employment prospects displaces the principle of open justice. There is an argument that any future employer should be able to consider the findings of the Authority before deciding to employ the plaintiff. However, as the Court has not had the opportunity to consider the allegations and evidence in any detail, the principle of open justice applies with "diluted force". Further, and more importantly, in this instance, open justice must necessarily be balanced against the health and welfare of individuals who will potentially be affected by publication.<sup>8</sup>

[14] It is the health and welfare of the plaintiff's wife and son that are the material factors in this instance. As noted above,<sup>9</sup> I accept publication of the plaintiff's name is likely to have a significant adverse medical effect on both these individuals. Accordingly, overall, I consider that the plaintiff has identified specific adverse consequences that are sufficient to displace the principle of open justice.

[15] It is therefore appropriate to make the non-publication orders sought.

## **Outcome**

[16] I make the orders as set out below.

[17] Permanent non-publication orders are made prohibiting the publication of the name and identifying particulars of the plaintiff. His name is anonymised as KN by reference to a system of alphabetical identification.

[18] The court file is not to be inspected by any person without leave of a Judge.

[19] I direct the Registrar of this Court to draw these orders to the attention of the Authority.

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<sup>8</sup> I note that the plaintiff will still need to deal with any future employer in good faith in relation to any inquiries about his departure from New Zealand Steel Ltd.

<sup>9</sup> See above at [10]–[11].

[20] The parties have agreed that there is no issue as to costs.

Kathryn Beck  
Judge

Judgment signed at 9.30 am on 26 April 2024