



Employment Court of New Zealand

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GF v New Zealand Customs Service [2021] NZEmpC 162 (28 September 2021)

Last Updated: 30 September 2021

**ORDER PROHIBITING PUBLICATION OF NAME OR IDENTIFYING
PARTICULARS OF THE PLAINTIFF
IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH**

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

**[\[2021\] NZEmpC 162](#)
EMPC 317/2021**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for non-publication order
BETWEEN	GF Plaintiff
AND	NEW ZEALAND CUSTOMS SERVICE Defendant

Hearing: On the papers
Appearances: A Fechney, advocate for
applicant H Kynaston, counsel for
defendant
Judgment: 28 September 2021

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE INGLIS

(Application for non-publication order)

[1] The plaintiff has filed a statement of claim in the Court challenging a determination of the Employment Relations Authority.¹ The claim is coupled with an application for interim non-publication orders. While the defendant does not oppose the application, the Court must decide whether such orders are appropriate in the circumstances.

1 *GF v New Zealand Customs Service* [\[2021\] NZERA 382 \(Member Beck\)](#).

GF v NEW ZEALAND CUSTOMS SERVICE [\[2021\] NZEmpC 162](#) [28 September 2021]

[2] The Court has a broad power under sch 3 cl 12 of the [Employment Relations Act 2000](#) (the Act) to order that “all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published,” subject to such conditions as the Court thinks fit. While the discretion is broad, it must be exercised consistently with applicable principles. The principle of open justice is a principle of fundamental importance. It forms the starting point for determining whether the circumstances of a particular case justify an order for non-publication.² A party applying for such an order must establish that sound reasons exist for the making of an order of non-publication, displacing the presumption in favour of open justice.³

[3] The discretionary exercise involves the Court balancing other interests with the fundamental principle of open justice. The discretion must also, of course, be exercised consistently with the objectives of the legislative framework that applies in this specialist Court. These objectives include the need to support successful employment relationships and to address the inherent inequality of bargaining power between employers and employees.⁴ In this regard the significant detrimental impact that publication of the names of parties, or even witnesses, can have on their ongoing prospects of employment, regardless of the outcome of the case, is a factor which has become increasingly well recognised in this jurisdiction as

relevant to the weighing exercise the Court is required to undertake.⁵

[4] This case engages issues relating to the vaccination of workers. These issues are contentious and hotly debated, including on social media. The plaintiff is concerned that publication of their name and identifying details will push them into the spot-light and pose a threat to their safety. The plaintiff does not wish to be the “face” of the anti-vaccination movement. I accept that publicity of the plaintiff’s name

2. *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310; *Crimson Consulting Ltd v Berry* [2017] NZEmpC 94, [2017] ERNZ 511.

3 *Erceg*, above n 2, at [13].

4 [Employment Relations Act 2000, s 3\(a\)](#). See *FMV v TZB* [2021] NZSC 102 at [54].

5. See, for example, *FVB v XEY* [2020] NZEmpC 182, [2020] ERNZ 441 at [12]; *WN v Auckland International Airport Ltd* [2021] NZEmpC 153 at [43]- [44]; *JGD v MBC* [2020] NZEmpC 193, [2020] ERNZ 447 at [8]. See also the discussion in James Crichton “Employment Institutions – an argument for reform” (paper presented to the Marlborough Colloquium of the Society of Local Government Managers, Blenheim, January 2019): “As Chief of the Authority, I regularly get letters from employee parties who appeared in the Authority in earlier years, [had] been successful in claims against their former employer, and then not worked again because potential employers have been able to access the information, which of course is public, about the individual’s previous success against another employer.”

would likely expose them to intense public scrutiny and comment in light of the high level of interest in the vaccination of workers, and strongly held views in relation to those who choose not to be vaccinated.⁶

[5] The fact that non-publication orders have been made in the Authority and interim orders have been made in related proceedings in the High Court, also weighs in favour of orders being made in this case.⁷

[6] I am satisfied that the interests of justice require that an interim non-publication order be made. There is accordingly an order prohibiting publication of the plaintiff’s name and identifying details pending further order of this Court.

[7] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 9.00 am on 28 September 2021

6 See also *GF v Minister of COVID-19 Response* [2021] NZHC 2337 at [37]- [41].

7 *GF*, above n 6, at [37]-[41]; *GF*, above n 1, at [1]-[4].