

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2018] NZERA Christchurch 23
Not published

**Attention is drawn to the
order prohibiting
publication of certain
information in this
determination**

BETWEEN HIA
 Applicant

AND QJR
 Respondent

Member of Authority: Vicki Campbell

Representatives: Applicant in person
 Andrew Caisley for Respondent

Investigation Meeting: On the Papers

Submissions Received: 9 February 2018 from Applicant
 22 February 2018 from Respondent

Determination: 23 February 2018

DETERMINATION OF THE AUTHORITY

- A. Pursuant to clause 10 of the Second Schedule of the Employment Relations Act the names of the parties shall be prohibited from publication on this, and previous determinations of the Authority and access to the registry file is restricted until the Employment Court has disposed of HIA's claims before it.
- B. Costs will lie where they fall.

Employment relationship problem

[1] This determination deals with an application by HIA for non-publication orders. QJR does not oppose the application.

Background

[2] In a determination issued in August 2017 the Authority found there was no basis to one of HIA's claims that one or more conditions of HIA's employment had been affected to HIA's disadvantage by unjustified actions of the respondent. The Authority held it did not have jurisdiction to investigate and determine two further claims on the basis that HIA had failed to raise personal grievances within 90 days as required by s 114 of the Employment Relations Act 2000 ("the Act").

[3] In September the Authority issued a further determination ordering HIA to pay a contribution to QJR's costs.

Non publication orders

[4] HIA has applied for non-publication orders prohibiting the publication of the names of the parties or any particulars that may identify the parties and for those orders to apply to the two determinations issued in 2017.

[5] The grounds upon which the application is made relate to HIA's personal circumstances and HIA's professional reputation and career.

[6] The Authority has broad discretion to make non-publication orders pursuant to clause 10(1) of schedule 2 to the Act which provides:

12 Power to prohibit publication

- (1) The Authority may, in respect of any matter, order that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the Authority thinks fit.

[7] The Supreme Court has considered the issue of non-publication orders and identified the following principles:¹

- (a) Open justice is a principle of constitutional importance.
- (b) Courts have routinely declined to make non-publication or confidentiality orders simply because the publicity associated with particular legal

¹ *Erceg v Erceg* [2016] NZSC 135 at [2] and [13].

proceedings may, from the perspective of one or another party, be embarrassing ... unwelcome.

- (c) Where a party seeks a non-publication order, they must show specific adverse consequences that are sufficient to justify an exception to the fundamental rule of open justice, and that standard is a high one.

[8] This approach was applied by the Employment Court (“the Court”) in *XYZ v ABC*.²

[9] I find this case has nothing out of the ordinary which would warrant a departure from the principle of open justice. As noted by Judge Ford in *Timmins v Asurequality Ltd* persons who engage in litigation as:³

... litigants or witnesses will necessarily be publicly identified. They might well prefer that that were not so. However, that is seen as a necessary consequence of the public administration of justice.

[10] In *Y v D* the Court accepted that a risk of publicity would not amount to an exceptional circumstance warranting a non-publication order.⁴

[11] I am not satisfied HIA’s circumstances warrant non-publication orders. However, as the parties have rights to challenge this determination, it is appropriate to make orders on an interim basis. Without such an interim order a challenge could be futile.

[12] Further, I am aware HIA has challenged the two earlier decisions of the Authority and has made an application to the Court for non-publication orders relating to the challenges. For those reasons it is appropriate to make the orders sought.

[13] Pursuant to clause 10 of the Second Schedule of the Act the names of the parties shall be prohibited from publication on this, and previous determinations of the Authority and access to the registry file is restricted until the Court has disposed of HIA’s claims before it.

² [2017] NZEmpC 40.

³ [2011] NZEmpC 167 at [17].

⁴ [2004] 1 ERNZ 1.

[14] The Authority is aware HIA has copied correspondence relating to this application to a number of third parties. HIA is bound by the non-publication orders set out in this determination.

Costs

[15] Costs will lie where the fall.

Vicki Campbell
Member of the Employment Relations Authority