



Employment Court of New Zealand

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JGD v MBC Limited [2020] NZEmpC 193 (13 November 2020)

Last Updated: 18 November 2020

IN THE EMPLOYMENT COURT OF NEW ZEALAND WELLINGTON

I TE KŌTI TAKE MAHI O AOTEAROA TE WHANGANUI-A-TARA

[\[2020\] NZEmpC 193](#)

Emp 328/2020

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for an interim non- publication order
BETWEEN	JGD Plaintiff
AND	MBC LIMITED Defendant

Hearing: On the papers

Appearances: Plaintiff in person
A Espie and C Sargison, counsel for
defendant

Judgment: 13 November 2020

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

(Application for interim non-publication order)

[1] The plaintiff seeks a non-publication order on an interim basis pending the outcome of his challenge to the Court.¹ Non-publication is sought on the basis that:

- naming him would likely cause irreparable damage to his personal and professional reputation;
- there is no broader public interest (such as might apply in a criminal matter) in naming him;

¹ *JGD v MBC Limited* [\[2020\] NZERA 393](#) (Member Loftus).

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- naming him would undermine the underlying objectives of the [Employment Relations Act 2000](#), including to acknowledge and address the inequality of power in relationships.

[2] The application for non-publication orders is not opposed by the defendant. Indeed, the defendant accepts that non-publication orders should be made in relation to both parties and a non-party client of the defendant. Such orders were made on an interim basis in the Employment Relations Authority.

[3] While parties may agree a position in relation to non-publication, it is ultimately the Court which must decide whether such orders are appropriate in the circumstances.

[4] The Court has a broad power under sch 3 cl 12 of 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that “all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published,” subject to such conditions as the Court thinks fit. The Authority has a similarly broad discretion to make non-publication orders. While the discretion is

broad it must be exercised consistently with applicable principles.

[5] 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

[6] 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.

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].

[7] The fact the application is made on an interim basis is also relevant, as recently emphasised by Judge Holden in *FVB v XEY*. I agree with her observation that where an application is made on an interim basis, the principle of open justice will hold less weight than at a later stage in the proceedings.⁴ That is because the Courts are cautious about permitting public opinion to form, and potentially reputational damage to occur, on the basis of allegations.

[8] I also agree with Judge Holden's observations about the significant detrimental impact publication of the names of parties, or even witnesses, can have on their ongoing prospects of employment, regardless of the outcome of the case.⁵ The point, also raised by the plaintiff in support of the application in this case, is one that has become well recognised in this jurisdiction over recent years. The previous Chief of the Employment Relations Authority expressed the concern this way:⁶

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.

[9] I accept that there is potential for serious, long-term damage to the plaintiff's reputation and job prospects if his name and identifying details are published at this stage and become searchable on the internet and, accordingly, widely publicly available, including to prospective employers either in the short, medium or long term. I accept too that there is the potential for damage to the defendant's reputation, for the reasons referred to in the Authority's determination. It does not sit comfortably within the legislative framework that a party may approach the Authority or the Court for vindication of their employment rights and, at the same time, attract publicity which has a likelihood of inflicting further damage on their employment relationship or creating a barrier to future employment.

[10] While the principle of open justice, in the broader public interest, is the starting point, the reality is that there is minimal public interest in this particular matter and a

4 *FVB v XEY* [2020] NZEmpC 187 at [11].

5 At [12].

6. James Crichton "Employment Institutions – an argument for reform" (Paper presented to the Marlborough Colloquium of the Society of Local Government Managers, Blenheim, January 2019).

real risk of lasting prejudice if publication occurs. It may be that the landscape will change once the substantive issues have been determined but at this interim stage the scales weigh heavily in favour of non-publication orders being made.

[11] Until further order of the Court, no person is to publish the names or identifying details of the plaintiff, the defendant and the client identified as UTE in the Authority.

[12] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 10:30am on 13 November 2020