

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

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2020] NZERA 533  
3108892

BETWEEN                      JOH  
   Applicant  
  
AND                              DZL  
   Respondent

Member of Authority:        Nicola Craig  
  
Representatives:              Applicant in person  
   Kevin Thompson, counsel for the respondent  
  
Investigation Meeting:        On the papers  
  
Submissions received:        16 December 2020 from the applicant  
   21 December 2020 from the respondent  
  
Date of determination:        22 December 2020

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**SECOND DETERMINATION OF THE AUTHORITY**

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**A.        A permanent non-publication order is made regarding the names of the parties and witnesses as well as any information leading to their identification.**

[1]        The Authority issued a determination in this matter which declined JOH's application against DZL for interim reinstatement.<sup>1</sup> In that determination an interim non-publication order was made.

[2]        Since then the parties have resolved all the matters between them.

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<sup>1</sup> *JOH v DZL* [2020] NZERA 298.

[3] JOH now applies for an order for permanent non-publication regarding his, DZL and witnesses' names and any information which would identify them. He also seeks a non-publication order of statements made by witnesses.

[4] As set out in the earlier determination, JOH has worked in the industry concerned for the majority of his working life and there are only a small number of employers in that industry. He is very concerned about the negative effect on his career prospects, particularly in the current job climate, if he is publicly identified.

[5] JOH's son has severe autism along with intellectual disability and some other conditions. There is medical evidence identifying any changes of routine as problematic for him. Stability is thus very important. JOH is worried that publication of his details will likely affect his employment prospects as well as the stability of his family's life, which would seriously impact on his son's condition.

[6] The earlier determination identifies serious allegations JOH made against some of the company's managers. They gave affidavit evidence at the interim reinstatement stage. If JOH and the company's name are identified that could lead to the identification of those managers.

[7] DZL consents to the application for a permanent order.

[8] The test for granting non-publication orders is high.<sup>2</sup> The starting point must be the principle of open justice. However, the negative impact of publication on JOH and his family has the potential to be significant. I also take into account that the parties have been able to resolve the issues between them and the terms of that agreement are not publicly available.

[9] I conclude that JOH should be the subject of a non-publication order, along with DZL and witnesses. While the identify of witnesses should be protected, the seeking of non-publication of all of the evidence given by witnesses goes too far. Some of that evidence is already publicly available through other sources, as well as through the earlier determination.

[10] I make a permanent order prohibiting publication of the names of the parties and witnesses as well as any information leading to their identification.

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<sup>2</sup> *Erceg v Erceg* [2016] NZSC 135.

## **Costs**

[11] There is no issue of costs.

Nicola Craig

Member of the Employment Relations Authority