

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**

[2021] NZERA 265
3115617

BETWEEN DAVID PASZKOWSKI
 Applicant

AND HOLY HOP OP LIMITED
 Respondent

Member of Authority: Nicola Craig

Representatives: Chloe Ann-King and Toby Cooper for the applicant
 Paul Wicks QC for the respondent

Investigation Meeting: On the papers

Submissions (and further 11 June 2021 from the applicant
information) received: 27 May and 18 June 2021 from the respondent

Date of determination: 18 June 2021

DETERMINATION OF THE AUTHORITY

**A. An interim non-publication order is made regarding the name
 and any identifying details of an employee of the respondent.**

[1] David Paszkowski brings a claim against his former employer Holy Hop Op Limited (Holy Hop or the company) which includes grievances.

[2] At a case management conference documents regarding a disciplinary process involving another employee (employee L) were identified as having possible relevance

to Mr Paszkowski's claims. Holy Hop's representative foreshadowed likely privacy issues regarding that material.

[3] In accordance with the Authority's direction the company lodged documents concerning employee L. They were accompanied by an application for a non-publication order. That application was opposed by Mr Paszkowski. Both parties lodged memoranda.

[4] Holy Hop identified that employee L has privacy interests regarding their involvement in the disciplinary process and its outcome. It acknowledges the relevance of its actions to the investigation meeting but sees there as being little or no public interest in knowing who the employee involved in that process was. A condition is sought restricting the documents lodged by the company relating to employee L, which I refer to as documents A, B and C.

[5] The submissions on behalf of Mr Paszkowski stress the requirement on the Authority to comply with the principle of natural justice and aim to promote good faith behaviour.¹ Mr Paszkowski does not consider that there is a basis for an order. The time elapsed between the lodging of the claim and the non-publication application is noted although the application followed the first case management conference where it was foreshadowed.

[6] The Authority has wide powers to determine its own procedure. It is able to order non-publication including on such conditions as the Authority considers fit, under clause 10 of Schedule 2 of the Employment Relations Act 2000 (the Act).

[7] However, the test for granting non-publication orders is high.² The starting point must be the open justice principle.

[8] I accept the privacy interest of employee L as someone who was involved in a disciplinary process but who is not a party to this claim and may not even be aware of this proceeding. A narrow order only is sought and I consider that this is an application best dealt with by an interim response rather than the making a permanent order.

¹ The Act, s 157(2)(a) and (b).

² *Erceg v Erceg* [2016] NZSC 135.

[9] I conclude that an interim non-publication order should be made with the matter being more fully considered as part of the substantive investigation.

[10] I make an interim order suppressing the name and any identifying details of employee L who was subject to a disciplinary process and a disciplinary outcome, including the provision of the documents A, B and C.

[11] For the sake of clarification this order does not prevent the applicant's representative discussing, with those identified as potential witnesses, their interactions with employee L nor showing them relevant documents (other than A, B and C) containing the employee's name nor naming employee L in witness statements.

[12] In the event that any difficulties arise in the preparation of this matter in light of this order parties may revert to the Authority. The order will also be further considered as part of the substantive determination.

Costs

[13] Costs are reserved.

Nicola Craig

Member of the Employment Relations Authority