

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2023] NZERA 104
3202801

BETWEEN ANNABELLE SKOGLUND
Applicant

AND FCL
Respondent

Member of Authority: Marija Urlich

Representatives: Applicant in person
Murray Osmond, advocate for the respondent

Investigation Meeting: On the papers

Determination: 6 March 2023

DETERMINATION OF THE AUTHORITY

[1] Ms Skoglund applies for a non-publication order to be varied so a certificate of determination can be issued in the name of her and FCL the parties for enforcement purposes. The non-publication order is contained in a consent determination which rectified a record of settlement to which Ms Skoglund and FCL are party and orders FCL to pay Ms Skoglund arrears of wages and holiday pay as agreed under the record of settlement.¹ The arrears of wages and holiday pay remain unpaid.

[2] FCL lodged a statement in reply on 25 January 2023. It opposes the application to vary the non-publication order.

The Authority Investigation

¹ RFK v URB & 2 Ors [2022] NZERA 513.

[3] By direction dated 7 February 2023 the Authority proposed that this matter be determined on the papers and a timetable for filing evidence. The timeframe for comment passed and the directions were confirmed.

[4] Ms Skoglund duly filed an affirmed affidavit in support of her application. No further information or communication has been received from FCL.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all information received.

Issues

[6] The issues for investigation and determination are:

- (i) does the Authority have jurisdiction to vary its own non-publication order for the purposes of issuing a certificate of determination so the determination may be enforced?
- (ii) if so, should it? and
- (iii) is either party entitled to an award of costs for professional representation or disbursements?

Discussion

[7] The subject non-publication order relates to the identity of the parties. FCL, in its statement in reply, says the Authority cannot revisit this order because the determination containing the non-publication order has not been challenged or recalled, the rectified record of settlement is a matter settled in mediation and is confidential, the Authority is 'functus officio', the application is misguided and an abuse of process and when Ms Skoglund lodged her application she filed no evidence. FCL seeks indemnity costs.

[8] The Authority has a wide jurisdiction to make determinations about employment relationship problems including those arising from or related to an employment relationship.²

² Employment Relations Act 2000, section 161(1)(r).

[9] This employment relationship problem has arisen because Ms Skoglund seeks to enforce the orders made in her favour against FCL, her former employer. She reasonably apprehends a difficulty in taking enforcement action if the non-publication order is not varied so that a certificate of determination can be issued with the names of the parties.

[10] The Authority has broad powers to order non-publication in respect of any matter including consent orders.³ Implicit is the ability to vary any such order, which could be sought by way of application to the Authority.

[11] FCL has not provided information to the Authority as to why it is important to it that Ms Skoglund's and/or its identity are not on the requested certificate of determination. The concerns it has raised in the statement in reply have been considered but do not defeat the application because the consequence would likely make what could readily be considered a straightforward matter unwieldy and inconsistent with a "fact based, problem solving approach".⁴

[12] The Act allows a party to enforce an order of the Authority by filing it in the District Court and is then enforceable in the same manner as an order made or judgment given of the District Court.⁵ Providing a certificate of determination is part of that process. It is in the interest of public policy and the administration of justice generally if Ms Skoglund's application is granted. To do otherwise would allow a party to defeat or delay enforcement of its obligations to pay amounts due (in this case by consent) simply by insisting on non-publication of its name.

[13] Accordingly, it is appropriate for the non-publication order in determination *RFK v URB & 2 Ors* [2022] NZERA 513 to be varied to the extent necessary for enforcement action to be taken by:

- (i) the Authority to issue a certificate of determination in the name of the applicant Annabelle Skoglund and the first respondent FCL; and
- (ii) correspondence to and from the District Court with any individual or party.

³ Employment Relations Act 2000, schedule 2, clause 10.

⁴ *FMV v TZB* [2021] NZSC 102 at [60].

⁵ Employment Relations Act 2000, s 141(1).

Costs

[14] Ms Skoglund is self-represented and has not incurred costs of professional representation. The filing fee of \$71.56 she incurred in lodging the application can reasonably be recovered from FCL is to pay the sum of \$71.56 to Ms Skoglund within 14 days of the date of this determination.

Outcome

[15] The following orders are made:

- (i) the non-publication order in determination *RFK v URB & 2 Ors* [2022] NZERA 513 is varied so a certificate of determination may be issued identifying the applicant as Annabelle Skoglund and the first respondent as FCL;
- (ii) such a certificate of determination is to be issued forthwith;
- (iii) The respondent is to be identified as FCL in the determination published on the Authority website; and
- (iv) within 14 days of the date of determination FCL is to pay Annabelle Skoglund \$71.56 to reimburse the filing fee.

Marija Urlich
Member of the Employment Relations Authority