



Employment Court of New Zealand

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X v Secretary for Justice [2011] NZEmpC 170 (14 December 2011)

Last Updated: 5 January 2012

IN THE EMPLOYMENT COURT CHRISTCHURCH

[\[2011\] NZEmpC 170](#)

CRC 30/11

IN THE MATTER OF a challenge to a determination of the

Employment Relations Authority

AND IN THE MATTER OF an application for stay of proceedings

BETWEEN X Plaintiff

AND SECRETARY FOR JUSTICE Defendant

Hearing: By telephone conference call held on 14 December 2011 (Heard at Auckland)

Appearances: Jeff Goldstein, counsel for plaintiff

Alastair Sherriff, counsel for defendant

Judgment: 14 December 2011

INTERLOCUTORY JUDGMENT OF JUDGE BS TRAVIS

[1] The plaintiff has applied for a stay of the Employment Relations Authority's order that the prohibition of the publication of his name be lifted 28 days after the date of the determination issued on 17 November 2011.^[1]

[2] The plaintiff has also filed a non-de novo challenge against that part of the determination which rejected the plaintiff's application for permanent prohibition from publication of his name and any evidence that might otherwise identify him. The plaintiff has had the benefit of an interim order of non-publication which covered the investigation of the employment relationship problem. In the

determination, the Authority made a further interim order prohibiting from

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publication his name and any details that might identify him for a period of 28 days from the date of the determination to enable him to pursue a challenge in the Employment Court if he desired. Unless there was a further order of the Authority or the Employment Court at the end of those 28 days, the Authority directed that the interim order would lapse and there would be no restriction on publication. The plaintiff was described as "X" for present purposes.

[3] At present, the application for stay and the non-de novo challenge contained in the statement of claim filed by the plaintiff have yet to be formally served on the defendant. However, Mr Goldstein, counsel for the plaintiff, has kept Mr Sherriff, counsel for the defendant, informed of the plaintiff's desire to have the stay application disposed of before the expiry of the Authority's suppression order.

[4] A hearing by telephone was convened for 3 pm today. Mr Sherriff filed a notice advising that his client wished to minimise its costs and requested that unless it was essential to attend, intending no disrespect to either the Employment Court or counsel for the plaintiff, his attendance be excused. I confirmed that his attendance could be excused in these circumstances.

[5] In his notice, Mr Sherriff advised that because of the exigencies of the time remaining before the Authority's interim order expires, the defendant would consent to the stay sought on certain conditions which Mr Goldstein has confirmed on behalf of his client, are acceptable to the plaintiff.

[6] In these circumstances, therefore, there will be an order staying the Employment Relations Authority's order that prohibition of the publication of the plaintiff's name be lifted 28 days after the date of the determination of 17 November 2011.

[7] To avoid any doubt, there will be a further order of the Employment Court that the order prohibiting the publication of the plaintiff's name and any identifying details continue until the challenge to the Employment Relations Authority's determination of 17 November 2011 is decided or until further order of the Court on the following conditions:

(a) The orders made above are by consent subject to the plaintiff prosecuting his challenge with due diligence and leave being reserved to re-examine the order for stay if he fails to do so.

(b) The plaintiff shall be referred to in the challenge as "X".

(c) The plaintiff should now proceed to serve his challenge on the defendant which will have the usual 30 clear days after the date of service of the statement of claim upon it, to file a statement of defence.

[8] As this is a non-de novo challenge, the Court will then have to determine, in terms of [s 182\(3\)\(b\)](#) of the [Employment Relations Act 2000](#), the nature and extent of the hearing.

[9] Costs are reserved.

BS Travis

Judge

Judgment signed at 4.30 pm on Wednesday 14 December 2011

[\[1\]](#) [2011] NZERA Christchurch 177.
