

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN X (Applicant)
AND Y (Respondent)
REPRESENTATIVES Kristina Anderson, Counsel for Applicant
Gregory Bennett, Advocate for Respondent
MEMBER OF AUTHORITY Leon Robinson
CONSIDERATION ON PAPERS 4 July 2006
DATE OF DETERMINATION 4 July 2006

DETERMINATION OF THE AUTHORITY

Application to prohibit publication

[1] The applicant Trust Board asks the Authority for a permanent non-publication order.

The facts

[2] The parties resolved an employment relationship problem between them using mediation. The resolution of that problem is formally recorded in a record of settlement made under section 149 of the Employment Relations Act 2000 ("the Act") and is dated 30 June 2006. One of the terms of that record of settlement is this:-

The parties agree that by consent there shall be a permanent non publication order relating to matters filed in the Authority.

[3] The respondent trust board by facsimile application of 3 July 2006 asks the Authority to make an order accordingly, by consent.

[4] The applicant's counsel executed the terms of settlement on her behalf and her counsel takes no part in this present application because she is advised to be unavailable until 10 July 2006.

The merits

[5] The parties consent is not decisive of the matter. The order must be one which it is proper and lawful for the Authority to make. The Authority has previously made an order prohibiting publication of the identity of the applicant and an interim order prohibiting publication of the identity of the respondent.

[6] I asked Mr Bennett to clarify the scope of the order sought because it seemed to me information already in the public domain is not properly the subject of the order sought. He has now clarified the position.

[7] I do not consider it desirable to make permanent or final orders without the applicant being heard and accordingly, on that basis, I make interim orders now until the applicant by her counsel, can be heard.

[8] I have considered the pleadings¹ on the Authority's file. They contain allegations in relation to specifically identified persons. As a result of the resolution reached between the parties, no conclusive findings have been made about those allegations. The allegations have not been tested and the persons the subject of them have not had an opportunity to challenge them.

[9] I understand then, the sensitivity the identified persons and the parties might have in relation to publication. I consider it in the interests of justice that the pleadings and the identities of the parties not be published and I exercise my discretion to prohibit the publication of the same, but on an interim basis, until the applicant can be heard and the matter further considered by the Authority.

[10] Accordingly, I now order that:-

1. (i) the identity of the Respondent and anything tending to identify them; &
(ii) the pleadings filed² on the Authority's file numbered 5041006;
be prohibited from publication, until further order of the Authority.
2. The Authority's file numbered 5041006 concerning these parties is not to be available for inspection.

[11] Mr Bennett should now ensure a copy of this Determination is provided to the applicant and her lawyer. Once the lawyer is available to be heard, Mr Bennett may seek further order from the Authority.

Leon Robinson
Member of Employment Relations Authority

¹ Note "pleadings" is the word used in the Act at clause 10 Schedule 2 "Power to prohibit publication".

² This is also the word used in the same clause.