

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2024] NZEmpC 106
EMPC 172/2024**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application to access Court documents
BETWEEN	TELEVISION NEW ZEALAND LIMITED Plaintiff
AND	E TŪ INCORPORATED Defendant

Hearing: On the papers

Appearances: J Hardacre, counsel for plaintiff
S Mitchell KC, counsel for defendant
S Currie for NZME

Judgment: 14 June 2024

**INTERLOCUTORY JUDGMENT
OF CHIEF JUDGE CHRISTINA INGLIS
(Application to access Court documents)**

Introduction

[1] An application has been made by Mr Currie to access Court documents in these proceedings, namely the transcript of evidence from one of the witnesses (Ms Golden) who gave evidence during the course of the hearing. The purpose of the transcript is said to be to report more accurately on the proceedings in the New Zealand Herald (NZ Herald).

[2] The parties are content to abide by the decision of the Court, although Television New Zealand Ltd (TVNZ) seeks for the imposition of two conditions: that the transcript not be reproduced in full or in part in the NZ Herald, and that Mr Currie abide by the existing non-publication and confidentiality orders in place.

Approach

[3] The Employment Relations Act 2000 does not deal with access to documents held on the Court file, nor do the Employment Court Regulations 2000.

[4] It is well accepted that the Court may grant access to documents held on the Court file, and has an inherent power to control the use of information disclosed in proceedings, where such control is necessary for the due administration of justice. A balancing exercise is required, including having regard to each party's interests. In undertaking the analysis, the Court has previously found it helpful to have regard to the approach set out in the Senior Courts (Access to Court Documents) Rules 2017 (the Rules).¹

[5] The Rules are made under the Senior Courts Act 2016. Section 173 of that Act provides that “[a]ny person may have access to court information of a senior court to the extent provided by, and in accordance with, rules of court.” Schedule 2 provides that court information includes the formal court record, the court file, information relating to particular cases and electronic records of hearings. Notes of evidence are held on the Court file. A person may ask to access any document under r 11 of the Rules.

[6] Rule 12 specifies a range of matters that must be considered when determining an application for access. These include the orderly and fair administration of justice; the right to bring and defend civil proceedings without the disclosure of any more information about the private lives of individuals, or matters that are commercially sensitive, than is necessary to satisfy the principle of open justice; the protection of other confidentiality and privacy interests (including those of children and other vulnerable members of the community); the principle of open justice (including the

¹ Applied via reg 6 of the Employment Court Regulations 2000 and/or by way of helpful analogy.

encouragement of fair and accurate reporting of, and comment on, court hearings and decisions); and the freedom to seek, receive, and impart information.

[7] Rule 13 deals with the approach to balancing the matters to be considered under r 12. The balancing act requires regard to be had to what stage the proceedings are at. So, before the substantive hearing, the protection of confidentiality and privacy interests and the orderly and fair administration of justice may require that access to documents be limited; during the substantive hearing, open justice has greater weight than at other stages of the proceeding and greater weight in relation to documents relied on in the hearing than other documents; after the substantive hearing, open justice has greater weight in relation to documents that have been relied on in a determination than other documents, but the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing. In this case the application comes after the hearing.

Analysis and result

[8] I accept that the provision of access to the material sought is appropriate having regard to the reasons underlying the request. Mr Currie is a journalist seeking the transcript to assist in accurate reporting on the proceedings. Accurate reporting on Court proceedings is consistent with the interests of justice.

[9] I agree with TVNZ that it is appropriate for access to be on the condition that Mr Currie complies with existing confidentiality and non-publication orders; a point which Mr Currie acknowledged in his application.

[10] The second suggested condition has fallen away. Mr Currie has confirmed to the Court that he does not intend to publish the notes of evidence in his reporting, emphasising that access is sought only to increase his understanding of the proceeding and as what he refers to as a ‘backstop’ to his own recollection, having been in Court for part of the hearing.

[11] Accordingly, there is an order permitting Mr Currie access to the notes of evidence relating to Ms Golden’s evidence, held on the Court’s file for this proceeding

and for the purposes specified by Mr Currie. The confidentiality and non-publication orders in place must be fully complied with.

[12] No issue of costs arises.

Christina Inglis
Chief Judge

Judgment signed at 4.20 pm on 16 June 2024