

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 264
3131956

BETWEEN	ANA First Applicant
	IHS Second Applicant
AND	RRG Respondent

Member of Authority: Eleanor Robinson

Investigation Meeting: On the papers

Submissions and/or further
evidence 10 June 2021
None from Respondent

Determination: 18 June 2021

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicants, ANA and IHS, claim that they were unjustifiably dismissed and unjustifiably disadvantaged by the Respondent, RRG.

[2] ANA and IHS seek an interim non-publication order of the parties names or details of the circumstances relating to the ending of their employment with RRG until the date of determination of their claim by the Authority.

[3] RRG submit that such an order is not required given that all the parties had already agreed to honouring the request for non-publication prior to the lodgement of the formal application. However it does not oppose the application.

[4] This determination addresses only the interim non-publication application.

Discussion and orders

[5] The principle of open justice and the importance of that concept has been emphasised by the courts on many occasions, noting the judgments in *H v A Limited*, *XYZ v ABC*, *Crimson Consulting Ltd v Berry* and the Supreme Court decision in *Erceg v Erceg*.¹

[6] In the latter case, the Supreme Court noted that a high standard must be met before departing from the principle of open justice.² As a consequence there must be specific adverse consequences or other sound reasons to order non-publication.

[7] This application is based upon the submission of the applicants that RRG has threatened to take action prior to the Authority's investigation of their claims by making public the nature of the reasons for their dismissal in order to deter them from proceeding with their application.

[8] In the email dated 18 May 2021 which was sent to the applicants lawyer, RRG stated that if ANA and IHS continued to pursue legal action, it would publicise its position in relation to their summary dismissal by RRG. The email stated:

We regret to advise that in accordance with previous correspondence provided to you; should your clients's (sic) continue to pursue legal action, we will have no other option but to publicise our position in relation to the summary dismissal of both [ANA] and [IHS].

[9] ANA and IHS submit that publication of the reasons for their dismissal would generate unwanted publicity in the sports fields in which the applicants work and may adversely affect the possibility of their obtaining future employment in their chosen fields.

[10] RRG also claimed that counsel for the applicants has breached without prejudice privileges and mediation confidentiality by openly discussing matters pertaining to the termination of ANA and IHS with interested parties within the sports industry in which RRG operates.

[11] I have carefully considered this issue. It is a serious matter to issue a non-publication order which sets aside the important principle of open justice. The fact of the possibility of adverse publicity for either party is not of such a nature as to persuade me to set aside the principle.

[12] However the possibility that any party would threaten to use publicity as a means of deterring the other party from proceeding with its claim before the Authority is such that I am persuaded that this is a serious matter. One party should not act in a manner of which the aim

¹ *H v A Ltd* [2014] ERNZ 38 at [78]; *XYZ v ABC* [2017]NZ EmpC 40; *Erceg v Erceg* [2016]NZSC 135

² *Erceg n1 above at [63] and [69]*

is to prevent the other party proceeding with its claim. Such would be to remove access to justice.

[13] On that basis, I consider that making such an order would ensure that the parties act in an appropriate manner prior to the matter being heard by the Authority. I see no basis for continuing the order beyond that date, but this would be a matter for the Authority Member who will ultimately act in this matter.

[14] Accordingly until the matter is heard by the Authority, I order that the names of the parties and any information which might lead to their identification is prohibited from publication.

Costs

[15] Costs are reserved.

Eleanor Robinson
Member of the Employment Relations Authority