

ATTENTION IS DRAWN TO THE ORDER
PROHIBITING PUBLICATION IN A.OF THIS DETERMINATION

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 34
5646122

BETWEEN	CCL & UTL Applicants
A N D	SB First Respondent
	TWL Second Respondent

Member of Authority:	T G Tetitaha
Representatives:	R Bryant, Counsel for the Applicants B O'Callahan/D (Joy) Yan, Counsel for First Respondent R Milne, representative for Second Respondent
Submissions:	Both parties 8 February 2017
Date of Oral Determination:	8 February 2017
Date of Written Determination:	9 February 2017

**ORAL DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY**

- A. There is an interim non-publication order suppressing the parties' names and restricting access to the Registry file until further order of the Authority.**
- B. I order that CCL and UTL are to pay the respondents the total sum of \$2,250 as a contribution towards their costs for today.**

Employment Relationship Problem

[1] This is an application for an interim injunction restraining SB from working for the second respondent until a substantive hearing about breaches and damages can occur. A hearing was set down for today. For reasons set out below it did not proceed and the respondents seek an award of costs.

Non-publication order

[2] The applicants seek a non-publication order. Following an oral indication that it would not be granted in its totality without evidence, the applicants now seek an adjournment of the interim injunction hearing. This is for the purposes of filing evidence in support of their non-publication order application.

[3] Given the non-publication order application is yet to be heard, there is an interim non-publication order suppressing the parties' names and restricting access to the Registry file until further order of the Authority. The parties are to liaise about parts of the evidence that may be suppressed or redacted by consent.

Costs

[4] The respondents do not oppose the adjournment but seek an interim order for costs reflecting the preparation and the appearance today. They seek costs of half of the applicable daily notional tariff. The applicants oppose any award of costs. They submit costs should be dealt with at the end of the substantive hearing.

Should I exercise my discretion to award costs on an interim basis?

[5] Costs are discretionary. It is accepted SB and the second respondent have incurred costs in preparing and attending today's hearing.

[6] The statement of problem was filed on 20 October 2016. A teleconference was held on 17 November 2016. The purpose of Authority telephone conferences is to identify any preliminary hearing issues that need to be dealt with and allocate hearing time if required to resolve them. The non-publication order was not an issue the applicant had identified. A half day hearing was set down for the purposes of dealing with the application for an interim injunction on the papers only.

[7] It was not until 24 January 2017 that an application for a non-publication order was filed by way of memorandum. The grounds relied upon alleged reputational damage. No evidence was filed in support. The application was strongly opposed by the respondents.

[8] There is some uncertainty whether the applicants can file their evidence on time and when this application may be heard. Counsel has limited availability. The matter may require cross-examination.

[9] Given the delays in filing the application for the non-publication order are attributable to the applicants only, it is an indulgence to grant them an adjournment for today's hearing to deal with those matters.

[10] SB and the second respondent will have incurred legal costs. They have to meet these in the interim while awaiting an interim and substantive hearing. They should not be put to the expense of further delay.

[11] In my view, it is appropriate to make an interim costs order.

[12] Both parties accept the correct approach in the Authority for assessing costs is to adopt the starting point of its notional daily tariff. This matter was filed after 1 August 2016. The applicable daily tariff is \$4,500 per hearing day. This matter involved a half day hearing. Therefore the starting point for assessing costs is \$2,250. There are no factors warranting any adjustment.

[13] Accordingly, I order that CCL and UTL are to pay the respondents the total sum of \$2,250 as a contribution towards their costs for today.

T G Tetitaha
Member of the Employment Relations Authority