



# Employment Court of New Zealand

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## E Tū Inc v Rasier Operations BV [2022] NZEmpC 196 (31 October 2022)

Last Updated: 4 November 2022

IN THE EMPLOYMENT COURT OF NEW ZEALAND WELLINGTON

I TE KŌTI TAKE MAHI O AOTEAROA TE WHANGANUI-A-TARA

[\[2022\] NZEmpC 196](#)

EMPC 230/2021

IN THE MATTER OF a declaration under [s 6\(5\)](#) of the  
[Employment Relations Act 2000](#)

AND IN THE MATTER OF an application to access audio  
recording

BETWEEN E TŪ INCORPORATED  
First Plaintiff

AND FIRST UNION INCORPORATED  
Second Plaintiff

AND RASIER OPERATIONS BV  
First Defendant

AND UBER PORTIER BV  
Second Defendant

AND UBER BV  
Third Defendant

AND PORTIER NEW ZEALAND LIMITED  
Fourth Defendant

AND RASIER NEW ZEALAND LIMITED  
Fifth Defendant

Hearing: On the papers

Appearances: P Cranney, counsel for plaintiffs  
G Service and S Howard-Brown, counsel for  
defendants

Judgment: 31 October 2022

INTERLOCUTORY JUDGMENT (NO 3) OF CHIEF JUDGE CHRISTINA INGLIS

**(Application to access audio recording)**

E TŪ INCORPORATED v RASIER OPERATIONS BV [\[2022\] NZEmpC 196](#) [31 October 2022]

### Introduction

[1] An application has been made by a journalist from Stuff Ltd, a media outlet, to obtain a copy of an audio recording played during the course of the hearing of this matter. The recording was of a conversation between one of the workers on whose behalf the proceedings were brought (Mr Abdurahman) and a helpdesk operator at Uber.

[2] Stuff Ltd wishes to have access to the audio to aid in preparation for a podcast it is producing in respect of the lives of New Zealanders working in the digital gig economy.

[3] I directed that the application be provided to the parties. The plaintiffs abide the decision of the Court; the defendants oppose the application.

## Analysis

[4] The approach to applications of this sort is now well established and can be summarised as follows. The [Employment Relations Act 2000](#) does not deal with access to documents held on the Court file, nor do the [Employment Court Regulations 2000](#). The [Senior Courts \(Access to Court Documents\) Rules 2017](#) (the Rules) have been applied by way of reference to reg 6 of the Regulations and/or by way of helpful analogy.<sup>1</sup>

[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. The material sought in this case is on the court file. A person may ask to access any document under r 11 of the Rules.

<sup>1</sup> *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 160 at [4].

[6] The principle of open justice is fundamental.<sup>2</sup> The principle may need to be departed from in certain circumstances when it is in the interests of justice to do so.

[7] Rule 12 specifies a range of matters that must be considered when determining an application for access. It provides:

### 12 Matters to be considered

In determining a request for access [under rule 11](#), the Judge must consider the nature of, and the reasons given for, the request and take into account each of the following matters that is relevant to the request or any objection to the request:

(a) the orderly and fair administration of justice:

...

(c) 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:

(d) the protection of other confidentiality and privacy interests (including those of children and other vulnerable members of the community) and any privilege held by, or available to, any person:

(e) the principle of open justice (including the encouragement of fair and accurate reporting of, and comment on, court hearings and decisions):

(f) the freedom to seek, receive, and impart information:

...

(h) any other matter that the Judge thinks appropriate.

[8] Rule 13 deals with the approach to balancing the matters to be considered under r 12:

#### (a) Approach to balancing matters considered

In applying [rule 12](#), the Judge must have regard to the following:

(a) before the substantive hearing, the protection of

2. *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [2] in relation to the principle generally; and, in relation to access to Court documents, see the discussion in *Commissioner of Police v Doyle* [2017] NZHC 3049; and *Berry v Crimson Consulting Ltd* [2017] NZHC 3026 upheld on appeal in *Berry v Crimson Consulting Ltd* [2018] NZCA 460.

confidentiality and privacy interests and the orderly and fair administration of justice may require that access to documents be limited:

(b) during the substantive hearing, open justice has—

- (i) greater weight than at other stages of the proceeding; and
- (ii) greater weight in relation to documents relied on in the hearing than other documents:

(c) after the substantive hearing,—

- (i) open justice has greater weight in relation to documents that have been relied on in a determination than other documents; but
- (ii) the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing.

[9] As the Rules make clear, the timing of the application is relevant. The judgment has now issued.<sup>3</sup> At this stage open justice considerations have greater weight, as r 13(c) makes clear, in documents relied on in the hearing, but the protection of confidentiality and privacy interests are also to be accorded greater weight than would have been the case during the substantive hearing. In the present case the recording in question was relied on by the plaintiffs and referred to in the judgment.<sup>4</sup>

[10] It was submitted that the applicant is not seeking access to the recording in order to give effect to open justice, and so the application should be declined on this basis. I see this as an overly narrow view of open justice and is not one supported by the way in which r 12 is formulated. In this regard r 12(e) refers to open justice including, but not being limited to, the encouragement of fair and accurate reporting of and comment on Court hearings. There is clearly a significant public interest in these proceedings and the conditions under which work is conducted in New Zealand in the gig economy more generally. These interests weigh in favour of access being granted.

<sup>3</sup> *E Tū Inc v Rasier Operations BV* [2022] NZEmpC 192.

<sup>4</sup> At [65].

[11] I accept that providing access to the audio would likely raise confidentiality and privacy issues, as the defendants submit. As I have said, the plaintiffs abide the decision of the Court and have not identified any issues in relation to the identification of Mr Abdurahman, who is one of the plaintiff drivers in these proceedings. I infer that there are no privacy or confidentiality concerns from his perspective. The Uber help centre operator was not a witness and is identifiable in the audio recording, both by reference to their name and (as counsel for the defendants points out) potentially their voice. Such concerns can, however, be adequately managed in other ways, namely by ordering that the call centre operator's name and identifying details be deleted from the recording and that their voice be appropriately anonymised prior to any publication.

## Result

[12] Standing back and considering the matters in rr 12 and 13, I consider it appropriate to grant the application, but on the conditions set out at [11] above.

Christina Inglis Chief Judge

Judgment signed at 2.30 pm on 31 October 2022

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