

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 226
5549325

BETWEEN

GAY VALDA LAURIE
Applicant

A N D

PLANTS NORTH LIMITED &
FLOWER FEVA LIMITED
Respondents

Member of Authority: Anna Fitzgibbon

Representatives: Sally Leftley, Representative for the Applicant
Damian Luiten, Director of Respondents

Investigation Meeting: On the papers

Date of Determination: 31 July 2015

PRELIMINARY DETERMINATION OF THE AUTHORITY

- (a) **There are to be Non Publication and Non Disclosure Orders in respect of information directed by the Authority to be provided to the Authority and to the applicant's representative, by the respondent.**
- (b) **The information referred to in (a) above, concerns wages and personal information of employees and former employees of the respondents, who are not parties to this proceeding, provided to the Authority and to the applicant's representative.**

Non Publication and Non Disclosure of Information

[1] The Authority has directed the respondents to provide it with certain wage information concerning its employees and former employees. The information is to assist the Authority in investigating the applicant's claims. The information is not sought for any other purpose.

Determination

[2] Schedule 2, Clause 10(1) of the Act confers a broad discretion on the Authority to make non-publication orders. It states:

10. *Power to prohibit publication*
- (1) *The Authority may, in respect of any matter, order that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the Authority thinks fit.*

[3] In the recent Employment Court decision in *H v A Ltd*¹ Judge Inglis had the following to say about applications for non publication orders:

The Court of Appeal has repeatedly stated that the principle of open justice is an appropriate starting point in cases involving non-publication orders and that this applies in both civil and criminal proceedings. In R v Liddell², the Court emphasised the importance of freedom of speech, open judicial proceedings, and the right of the media to report the latter fairly and accurately as “surrogates of the public.

[4] Later in the decision Judge Inglis refers to *Peters v Birnie*³, a decision of the High Court in which Asher J states:

There is then, in civil proceedings, an onus on a party to establish a proper foundation for a confidentiality order, just as there is in criminal proceedings. Given the paramount principle of open justice, it is necessary for a person seeking confidentiality orders to point to some public interest such as particular circumstances relating to the privacy of an individual, to justify a departure from the open justice process,...I conclude, therefore, that a party seeking to justify a confidentiality order will generally have to show specific adverse consequences that are exceptional.

[5] Mr Luiten is concerned to ensure the confidentiality of personal information sought by the Authority in respect of employees and former employees of the respondents. The information sought by the Authority is to assist it with its investigation into the applicant’s claims. In particular it is sought to assist the Authority in determining the applicant’s correct employer.

¹ [2014] NZEmpC92 ARC 3/14 at para [33]

² [1995] 1 NZLR 538 (CA) at 546

³ HC CIV-2009-404-8199, 19 March 2010 at [22]

[6] There is no reason why information directed to be provided to the Authority and to the applicant's representative, regarding specific employees and former employees of the respondents who are not party to these proceedings should be disclosed to any third party. I am satisfied the privacy of the individuals concerned justifies orders for non publication and non disclosure.

[7] Accordingly, a non publication and non disclosure order as set out in (a) and (b) above, is made in relation to all information concerning wages and all personal information of employees and former employees of the respondents, who are not parties to this proceeding, provided to the Authority and to the applicant's representative.

Anna Fitzgibbon
Member of the Employment Relations Authority