

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 473  
5455310

BETWEEN                      ELLA NEWMAN  
   Applicant  
  
A N D                              TAXI LEASE LIMITED t/a  
   THE PLANT PLACE  
   Respondent

Member of Authority:      Anna Fitzgibbon  
  
Representatives:              Simon Scott, Counsel for the Applicant  
   Andrea Twaddle, Counsel for the Respondent  
  
Investigation Meeting:      4 November 2014 at Hamilton  
  
Submissions Received:      6 and 12 November 2014 from the Applicant  
   6 and 17 November 2014 from the Respondent  
  
Date of Determination:      19 November 2014

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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- (a)      **Ms Newman’s application for a non publication order is declined.**
- (b)      **Costs are reserved.**

**Application for Non Publication**

[1]      In closing submissions filed on 6 November, following the Authority’s investigation meeting, the applicant, Ms Newman sought for the first time a non publication order. The application was made pursuant to Schedule 2, clause 10 of the Employment Relations Act 2000 (the Act). No reasons or evidence were advanced by Ms Newman in support of her application.

[2]      The respondent, Taxi Lease Limited t/a The Plant Place (The Plant Place), opposed the application.

[3] On 11 November, I directed that both parties could provide any submissions and/or evidence in respect of the applicant's application within a specific timeframe. Submissions and evidence were provided. The parties agreed to have this matter determined on the papers.

### **Determination**

[4] 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order that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the Authority thinks fit.*

[5] In the recent Employment Court decision in *H v A Ltd*<sup>1</sup> 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 Liddell**<sup>2</sup> 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.*

[6] Later in the decision Judge Inglis refers to *Peters v Birnie*<sup>3</sup> 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.*

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

<sup>2</sup> [1995] 1 NZLR 538(CA) at 546

<sup>3</sup> HC CIV-2009-404-8199,19 March 2010 at [22]

[7] At no stage of the investigation meeting, which was a meeting open to the public, did Ms Newman seek an order prohibiting the publication of her identity. Ms Newman has advanced no evidence to support her application. I am not persuaded that there are satisfactory reasons or exceptional circumstances in this case that justify an exception to the fundamental principle of open justice.

[8] Weighing both the particular circumstances of the parties and evidence given during the investigation meeting which was held in public against the strong presumption in favour of open justice I consider there to be no sufficiently exceptional circumstances disclosed to “tip the scales” against applying that presumption.

[9] I decline Ms Newman’s application for a non publication order.

### **Costs**

[10] Costs are reserved.

**Anna Fitzgibbon**  
**Member of the Employment Relations Authority**