

**Attention is drawn to the order
prohibiting publication of
certain information in this
determination**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2020] NZERA 157
3096692

BETWEEN P
 Applicant

AND Q
 Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Maria Dew QC, counsel for the Applicant
 Andrew Schirnack and Emma Crowley, counsel for the
 Respondent

Investigation Meeting: On the papers

Date of Determination: 17 April 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] In its determination of 03 April 2020¹ the Authority declined the applicant's application for interim reinstatement pending investigation and determination of his substantive personal grievance claim of unjustifiable suspension from his employment.

¹ PvQ [2020]NZERA 140

[2] The applicant has resigned and withdrawn his employment relationship problem in the Authority. Accordingly, the Authority will not be investigating and determining the applicant's substantive personal grievance claim.

[3] An interim non-publication order was issued by the the Authority until further order of the Authority².

[4] By consent, the parties request the Authority to make the interim non-publication order permanent.

Discretion to Grant Non-Publication Orders

[5] Clause 10(1) of the Second Schedule of the Employment Relations Act 2000 (the Act) states:

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that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the Authority thinks fit.

[6] This discretion must be exercised on a principled basis. The general principle to be applied when considering an application for a non – publication order is that justice should be administered openly. The Employment Court in *Crimson Consulting Limited v Berry*³ recognised that every case would be very fact specific, and that the employment institutions had to weigh and assess all of the competing factors carefully and in a principled manner when considering an application for a non-publication order.

[7] The Authority is satisfied on the facts of this particular case that it is necessary and appropriate to exercise its discretion to issue a permanent non-publication order in similar terms to the interim non-publication order.

[8] In making this order the Authority has taken into account that its interim determination⁴ did not determine the merits of the applicant's personal grievance claim, the evidence before the Authority was in affidavit form and untested. Further, the respondent's investigation into complaints about the applicant and which lead to his suspension did not reach an outcome. The

² *ibid* para [13]

³ 2017] NZEmpC 94

⁴ fn 1

applicant has established an impressive reputation in his chosen career and has an unblemished employment record. The complainant and the respondent would also in my view be adversely affected if a non-publication order was not issued.

[9] Accordingly, I exercise my discretion and make a permanent non-publication order prohibiting the publication of the names and any identifying features of the parties to these proceedings and the complainant.

Anna Fitzgibbon
Member of the Employment Relations Authority