

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 135
3082552

BETWEEN TBN
 Applicant

AND UQE
 Respondent

Member of Authority: Rachel Larmer

Representatives: Time Oldfiled, counsel for Applicant
 David Grindle, advocate for Respondent

Investigation Meeting: On the papers

Date of Determination: 31 March 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] A random letter generator has been used to select three letters each to stand in for the parties' names. The letters used do not bear any relation to the parties' actual names.

[2] TBN has sought a non-publication order. UQE does not oppose that.

[3] The Authority's discretion to grant non-publication orders is contained in clause 10 of the Second Schedule of the Employment Relations Act 2000 (the Act). Clause 10(1) of the Second Schedule of 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order that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the Authority thinks fit.

[4] This discretion must be exercised on a principled basis.

[5] The Employment Court in *Crimson Consulting Limited v Berry* reviewed and summarised a recent Authority's order regarding non-publication in the employment jurisdiction¹.

[6] The Court recognised that the general principle that justice should be administered openly was a strong one and that a party seeking to depart from the fundamental principle of open justice was required to provide evidence identifying specific adverse consequences that should result in a non-publication order being issued.

[7] The onus is therefore on TBN to show that a non-publication order should be made because it is in the overall interests of justice to do so.

[8] The Employment Court 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.

[9] TBN has filed claims that involve alleged breaches of a settlement agreement that was signed by a mediator from Mediation Services under s 149 of the Employment Relations Act 2000 (the Act).

[10] Publishing the parties names in this particular case (because of the nature of the claims) would likely render some if not all of the benefits of the confidential settlement nugatory. That is not in the overall public interest.

[11] Conversely, there is a strong public interest in preserving the confidentiality of settlements that are entered into under s 149 of the Act and in maintaining public confidence

¹ [2017] NZEmpC 94.

in mediation as an appropriate forum that assists parties to resolve their problems without the need for litigation.

[12] The public interest in open justice and the public interest in maintaining confidence in mediation can be maintained, in this particular case, by a public determination by the Authority that does not identify the parties by their actual names.

[13] The Authority therefore exercises its discretion to order that the parties names should not be published in connection with these proceedings, until further order of the Authority.

[14] The condition of “*until further order of the Authority*” leaves open the possibility that new evidence, or evidence heard during the substantive determination, may make it appropriate for the non-publication order to be reviewed.

[15] It also leaves open the possibility that when issuing a substantive determination, the Authority considers that one or both parties should be named. For example, if the penalties sought by TBN are imposed or UQE, then that may be a material factor that changes the Authority’s assessment of where the public interest lies.

Costs

[16] Costs are reserved pending the outcome of the substantive matter.

Rachel Larmer
Member of the Employment Relations Authority