

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2013] NZEmpC 143
ARC 47/04
ARC 70/08**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER of proceedings removed

BETWEEN Q
Plaintiff

AND W
Defendant

Hearing: 29 July 2013
(Heard at Auckland)

Appearances: Q, plaintiff
David France, counsel for defendant

Judgment: 29 July 2013

ORAL JUDGMENT OF JUDGE M E PERKINS

[1] These are proceedings involving a claim by Q against W under ARC 47/04 and ARC 70/08. The matter has a long history and in a way the reasons behind that are effectively the reasons why I am now issuing this judgment. This is because of an issue, which has been raised with me relating to orders prohibiting publication of name.

[2] This is an application by both parties for prohibition on publication of name. The proceedings were set down for a trial commencing today, 29 July 2013, and were expected to take the entire week. My own view is that if the trial had proceeded it would probably have taken longer than that. Q is presently unrepresented. She did have representation by lawyers and an advocate in the past, but obviously she has made the decision, and she is entitled to do that, to represent

herself. I might say, from my observations of the documentation that she has filed since representing herself, and also her attendance at a directions conference, that she has represented herself in an admirable fashion for someone who is clearly not experienced in such matters. In any event, fortunately, and the parties are to be congratulated, a settlement of this entire matter has been reached. I am informed today that a confidential agreement recording the terms of that settlement has been signed.

[3] There is an application now to the Court by Q for prohibition on publication of the plaintiff's name, not only in respect of the proceedings before the Court, but also the proceedings formerly before the Employment Relations Authority, and which came to this Court by way of a transfer and also a challenge.

[4] The defendant, W, does not oppose and indeed consents to the order sought by Q for prohibition on publication of name. It is not a matter which can be dealt with simply by consent. This is because the Court has an overriding jurisdiction to ensure that if an order such as this is made it is within the interests of justice and also has regard to the principle of openness of justice. The openness of the Court's processes is to ensure that when proceedings come before the Court there is the ability for the public to attend if they wish to and also to know of decisions of the Court. That is part of the process and the principle of openness which normally must prevail. That is the starting point for this application.

[5] The Court has a reasonably wide discretion to order prohibition on publication and indeed it is expressed in Schedule 3 of the Employment Relations Act 2000 (the Act) as a power of the Court. Similarly under Schedule 2 of the Act there is a power vested in the Employment Relations Authority to prohibit publication. Again that is a discretion to be exercised in the Authority. In addition to those schedules, I need to have regard to s 183 of the Act because in this case as I have indicated, proceedings have been transferred from the Authority and also there has been a challenge to this Court. Section 183 of the Employment Relations Act states that a party having elected to have the matter heard by the Court, the Court must make its own decision on the matter and any relevant issues. Subsection 183(2) states that once the Court has made a decision the determination of the

Authority on the matter is set aside, and the decision of the Court on the matter stands in its place. There is a power to have any decision reviewed but that does not apply here.

[6] What I understand from s 183 is that if I am called upon to make an order prohibiting publication of name or any other matters relating to the proceedings, then that decision would also stand instead of any decision in the Employment Relations Authority. From that I have decided that I do not need to refer any matter relating to this application back to the Authority to deal with and that I can impose an order prohibiting publication of name and any other matter and also direct that such an order apply to any proceedings in the Employment Relations Authority.

[7] So I now turn to the application itself. As I have indicated, normally the Court might be reluctant to make such an order. Indeed with such applications in the past, it has refused to do so and for the reasons I have mentioned it is a jurisdiction, which is to be sparingly exercised. Nevertheless, there will be occasions where it will be necessary and appropriate to make such an order and I regard the present case as an appropriate instance. The main reason is that this case involves quite a deal of medical issues relating to the plaintiff Q. When such an issue arises in a case, then the Court has to be sure that type of matter which is very personal to a party does not become generally available to the knowledge of the public. The public has no legitimate interest in knowing about such matters and that is the case here. There is a long history. There are matters which have been raised under the accident compensation scheme and they are all set out in the documentation and there is no need for me to go into them in this judgment. As for those matters being before the Court as part of the proceedings, I have decided that it is indeed appropriate that there be an order exercised by the Court using its power under cl 12 of Schedule 3 of the Act and also imposing a similar prohibition in respect of the decisions of the Employment Relations Authority.

[8] The orders that I make are as follows:

- a) I confirm that the parties have reached a confidential settlement of the entire proceeding.

- b) I record that Q, in view of the settlement and in view of this decision has signed a discontinuance of the proceedings and that there are no issues remaining as to costs between the parties. That notice of discontinuance has also been countersigned by counsel for the defendant on behalf of the defendant and that document will now be taken in as filed.
- c) There is no need for the Court to know about the confidential conditions of the settlement, simply that it records that the settlement is completed. For the reasons, which I have expressed in this judgment, there is an order prohibiting publication of the name of either the plaintiff or the defendant and that their names will be anonymised by replacement with initials and in such a way that there can be no means of identifying either of them.
- d) That the past judgments of this Court are also to be recalled and the initialling done in the same way in all of those judgments so that there is no way that anyone reading those judgments would be able to identify either party to the proceedings.
- e) Similarly there is to be a recall of the decisions of the Employment Relations Authority and similarly the parties' names are to be anonymised by replacement with initials and in such a way that their identity cannot be ascertained.
- f) The body of judgments, decisions or determinations will also need to be amended so that the parties' names and any witnesses' names are replaced with an initial in a way that they cannot be identified.
- g) In addition to that, I make an order that the files in the Authority and the files in the Court are not to be viewed by any person, except with the leave of a Judge, and with prior notice of any such application to do so being given to the parties in advance.

M E Perkins
Judge