

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2015] NZEmpC 167
EMPC 276/2015**

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

AND IN THE MATTER of an application for urgency

BETWEEN MIGHTY RIVER POWER LIMITED
 Plaintiff

AND METTALOKA MALINDA ("MAL")
 HALWALA
 Defendant

Hearing: By joint memorandum of counsel filed on 28 September 2015

Appearances: R Upton, counsel for plaintiff
 E L Miles, counsel for defendant

Judgment: 28 September 2015

CONSENT JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] The plaintiff has filed a non-de novo challenge to part of a determination of the Employment Relations Authority (the Authority).¹ The challenge was filed together with an application for urgency. At this stage the plaintiff only seeks to challenge the interim non-publication orders made by the Authority, but has made it clear that a broader challenge against the Authority's determination may follow.

[2] The background to the challenge is set out in a joint memorandum of counsel. In summary, non-publication orders were sought on behalf of the defendant

¹ *Halwala v Mighty River Power Limited* [2015] NZERA Auckland 288.

(including of his own name) well after the Authority's investigation meeting had taken place, but prior to a determination being issued. The Authority was not satisfied that the grounds for making the orders sought had been made out, because the names of witnesses and parties were in the public domain and because there was no evidence that a real and appreciable security or safety risk would likely arise if the orders sought were not made. The Authority considered it appropriate to make an interim non publication order to preserve the defendant's right to challenge this aspect of the Authority's determination. The interim order was put in place for a period of 35 days.

[3] The plaintiff's challenge raised issues as to whether an interim non-publication order ought to have been granted in circumstances where matters were already in the public arena and on the basis that there was a possibility of a challenge resulting, but in the absence of evidence or submission that a challenge would be pursued. In relation to the latter point counsel for the plaintiff referred, by way of analogy, to s 286(1) of the Criminal Procedure Act 2011, which requires that, before making an interim suppression order, the applicant must satisfy the Court that an appeal will be filed against the decision to decline an application.

[4] An urgent telephone conference was convened to progress the plaintiff's application for urgency and its challenge. The parties have now requested that a consent judgment, setting aside the Authority's orders in so far as they relate to non-publication, be issued. I am satisfied that it is appropriate to do so. In particular, counsel for the defendant has advised that the defendant does not intend to challenge the Authority's determination declining his application for permanent non-publication orders, he does not oppose the plaintiff's challenge in the circumstances and he agrees that the non-publication orders can be lifted.

[5] Pursuant to s 183(2) of the Employment Relations Act 2000, the effect of this judgment is to set aside paragraphs E and [12] of the Authority's determination, and to lift the interim non-publication orders made by the Authority.

[6] There is no issue of costs in relation to this particular challenge. Costs in respect of all matters in the Authority remain to be determined.

Christina Inglis
Judge

Judgment signed at 3 pm on 28 September 2015