

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2015] NZEmpC 47
EMPC 83/2015**

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

AND IN THE MATTER of an application for stay of proceedings

BETWEEN SSO
 Plaintiff

AND NCE
 Defendant

Hearing: By written submissions filed on 2 and 9 April 2015

Appearances: AF Drake, counsel for plaintiff
 S Greening, counsel for defendant

Judgment: 13 April 2015

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] These are my reasons for making orders staying execution of a determination of the Employment Relations Authority reinstating the defendant in employment.¹

[2] Solely because the Authority, in its determination issued on 30 March 2015, referred to the parties as “C” (the employee) and “D” (the employer”) and the merits of making a further or continued non-publication order in this Court have not been explored, I make an order, pursuant to cl 12 of sch 3 to the Employment Relations Act 2000, that until further order of the Court, no person is to publish the names of the parties or any particulars that may identify them. It should not be presumed, however, that, by making this interim order, any further interim or permanent non-publication order will be made. To avoid any confusion with letters identifying

¹ *C v D* [2015] NZERA Auckland 99.

parties in other proceedings, I will refer to the plaintiff employer as “SSO” and the defendant employee as “NCE”.

[3] By a determination issued on 30 March 2015, the Authority directed NCE’s reinstatement with SSO as its Chief Executive Officer. The Authority’s order was to take effect from 1 April 2015, two days after the release of its determination.

[4] SSO opposed NCE’s reinstatement vehemently and, having obtained an assurance from NCE that he would not seek to enforce the Authority’s interim reinstatement order until 7 April 2015, filed a challenge to the Authority’s determination and an application for stay of the reinstatement, and sought urgency for the hearing of that stay.

[5] Because SSO’s applications were filed after the commencement of the judicial Easter vacation, I made an order in a Minute issued on 2 April 2015 that there be an interim order for stay of execution of the Authority’s determination until 5 pm on Monday 13 April 2015. This was, in effect, a ‘without notice’ order but the plaintiff’s papers filed and the Minute were directed to be served on NCE and his counsel that day. The application for stay on notice was to have been called in court at 10 am on Monday 13 April 2015 and NCE was given until 5 pm on Friday 10 April 2015 to file and serve notice of and any affidavit evidence in opposition to the plaintiff’s application for stay.

[6] As a result of discussions between the parties’ representatives, they jointly sought further stay orders on 9 April 2015. On the following day, 10 April 2015, by Minute, I made those orders, with minor variations, by consent. They provide that NCE is to remain on paid leave (although without any expectation that he will undertake duties for SSO) until his substantive personal grievance of unjustified dismissal is determined either in the Authority or this Court. Counsel were required to report to the Registrar within the following two months about the progress of NCE’s substantive grievance. The hearing scheduled for 13 April 2015 was vacated.

[7] Because the order for stay has been made by consent, there is no need to set out the reasons for its making other than to say that it is an order which the Court is empowered to make and is an appropriate order in all the circumstances.

[8] Costs are reserved.

GL Colgan
Chief Judge

Judgment signed at 3.30 pm on Monday 13 April 2015