

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2023] NZEmpC 150
EMPC 249/2023**

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

AND IN THE MATTER OF applications for non-publication

BETWEEN KN
 Plaintiff

AND NEW ZEALAND STEEL LIMITED
 Defendant

Hearing: On the papers

Appearances: AF Drake and RG Judd, counsel for plaintiff
 S Cook and T Sanders, counsel for defendant

Judgment: 7 September 2023

**INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK
(Applications for non-publication)**

[1] The parties in these proceedings have each applied for non-publication orders. The plaintiff seeks a permanent non-publication order in respect of their own name and identifying particulars; the defendant seeks a non-publication order in respect of the name and identifying particulars of one of its former employees.

[2] The plaintiff consents to the defendant's application. The defendant does not oppose interim non-publication orders for the plaintiff (but opposes permanent orders).

[3] By way of a minute dated 21 August 2023, in order to preserve the status quo, Judge Corkill made interim orders for non-publication in relation to the plaintiff's

name and identifying details, with such orders to be reviewed at the first telephone directions conference. That conference has now taken place.

[4] Pursuant to cl 12 of sch 3 to the Employment Relations Act 2000, the Employment Court has the power to prohibit publication, including of the name of any party or witness in a proceeding. While the Court has a broad discretion, this must be exercised consistently with applicable principles, including the principle of open justice, which is of fundamental importance. A party applying for an order must establish that sound reasons exist for making such an order to displace the presumption in favour of open justice.¹

The plaintiff

[5] The plaintiff applied for permanent non-publication orders in the Authority, which were declined.² However, interim non-publication orders were granted for a period of 28 days to allow the plaintiff to file a challenge.³ For the same reason that interim orders were appropriate in the Authority, I accept that there are good reasons to make interim orders in the Court. The issue of permanent orders will need to be addressed by both parties at the hearing of this matter. In the meantime, interim non-publication orders are made prohibiting the publication of the name and identifying particulars of the plaintiff.

The former employee

[6] In relation to the name and identifying particulars of the former employee, as already noted above, the plaintiff consents to the application.

[7] The grounds on which the defendant makes this application are:

¹ *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310; *Crimson Consulting Ltd v Berry* [2017] NZEmpC 94, [2017] ERNZ 511; *GF v Comptroller of the New Zealand Customs Service* [2023] NZEmpC 101 at [190].

² *UCF v B Ltd* [2023] NZERA 362.

³ At [12].

- (a) The former employee is not a party to these proceedings and there is no public interest in their identity being published in connection to them.
- (b) The public interest is advanced by preventing the publication of the former employee's identity because:
 - (i) the defendant found they were subjected to messages from the plaintiff that were found to be of an inappropriate and sexual nature, and amounted to harassment; and
 - (ii) by protecting the employee's identity, other victims of workplace harassment may be encouraged to come forward.
- (c) If the former employee's name is published, they may experience negative impacts to their reputation and career prospects.
- (d) Any negative impact the former employee experiences may discourage other victims of workplace harassment from coming forward.

[8] The former employee was not named or identified in the Authority's determination.

[9] I accept that in a case such as the present the important principle of open justice does not require the disclosure of an employee's identity. Non-publication of their name will not hinder the Court's ability to provide a fair and accurate report of what happened. There is no public interest in their name being published; on the contrary, given the nature of the allegations, the public interest is advanced by protecting their identity.⁴

[10] Accordingly, I make a permanent order of non-publication of the name and identifying details of the former employee.

⁴ See *GF*, above n 1, at [192].

[11] The names of the plaintiff and the former employee will be anonymised accordingly. Further, the Court file is not to be inspected by any person without leave of a Judge.

[12] I direct the Registrar of this Court to draw these orders to the attention of the Authority.

[13] There is no order for costs on the defendant's application. Costs are reserved in relation to the plaintiff's application, pending the outcome of the substantive matter.

Kathryn Beck
Judge

Judgment signed at 12 pm on 7 September 2023