

**Your attention is drawn to the non-publication
order at Paragraph 9 of this determination
IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 334/09
5159378

BETWEEN DAVID LLOYD-BARKER
 Applicant

AND THE SOCIETY FOR THE
 PREVENTION OF CRUELTY
 TO ANIMALS AUCKLAND
 INCORPORATED
 Respondent

Member of Authority: K J Anderson

Representatives: Mark Ryan, Counsel for Applicant
 Paul Wicks, Counsel for Respondent

Investigation Meeting: 10 September 2009 at Auckland

Determination: 14 September 2009

INTERIM DETERMINATION OF THE AUTHORITY

Preliminary Matter

[1] The substantive matter was heard on 10th September 2009. Late on the afternoon of 9th September 2009, an application was received from the respondent seeking an order prohibiting the publication of certain evidence currently before the Authority, pursuant to Clause 10 (1) of Schedule 2 to the Employment Relations Act 2000 (“the Act”):

10 Power to prohibit publication

(1) 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order that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published and any such order may be subject to such conditions as the Authority thinks fit.

[2] The order sought by the respondent is that:

“Any evidence given or matters raised or documents produced before the Authority and referring to or touching upon the claimed historical allegations relating to Bob Kerridge and regarding an animal welfare or other offence is prohibited from publication until further order of the Authority.”

[3] The application is supported by brief written submissions and an affidavit from Mr Garth Halliday, the Chief Executive for the respondent.

[4] For the applicant, Mr Ryan opposes the order being sought. He referred the Authority to *Davis v Bank of New Zealand* [2004] 2 ERNZ 511, and the presumption that all evidence should be given in public and freely reportable. Mr Ryan also points to a reference to *Anderson v Employment Tribunal* [1992] 1 ERNZ 500, set out in *Davis*:

“In most cases the Tribunal [Authority] will find it safe to use as a test the question posed by Penlington J in *R v Patterson* (supra) at p 50: “Are there exceptional circumstances which reveal a real risk that the administration of justice would be frustrated or rendered impracticable if the evidence is published?” The exceptional circumstances must amount to “reasons of compelling principle consonant with the interests of justice” and “plainly cogent grounds” for making the order: see *Duncan v Armed Forces Canteen Council* (supra.”

[5] For the respondent, Mr Wicks referred the Authority to a Brookers Employment Law Commentary. In particular, a reference to *Dallinger v A-G* 17/11/03, A Dumbleton (member), WA162/03, where the Authority found that there were sufficient grounds to order non-publication as allegations had been made about the actions and motives of several non-parties. Mr Wicks submitted that the allegations pertaining to Mr Kerridge, as a non-party to these proceedings, portrayed similar circumstances. While I accept that Mr Kerridge is a non-party to these proceedings, the evidence shows that he was an active participant in the overall events in his management capacity for the respondent.

[6] Mr Wicks also submitted that the respondent is genuinely concerned that the applicant in these proceedings is wishing to use this investigation meeting for the purpose of having publication made of the matters relating personally to Mr Kerridge with malicious intent, causing damage to Mr Kerridge’s reputation and the reputation of the respondent.

Decision

[7] While I accept that there is some evidence¹ that the applicant sees the investigation meeting, and the evidential processes of the Authority, as an opportunity to use the media as a vehicle for his own agenda, I do not accept that there is sufficient evidence to show that the reputation of Mr Kerridge and the Society could be put at any tangible or substantial risk. This is particularly so given that the allegations in question pertain to events that are alleged to have occurred 14 to 15 years ago and they appear to have a very dubious foundation.

[8] It seems to me that while *Anderson v Employment Tribunal* was decided under the Employment Contracts Act 1991, *Davis* confirms the entitlement of the Authority to exercise its discretion “as master of its own procedure”² under the superseding regime of the Employment Relations Act 2000. Nonetheless, I conclude that the law as set out in *Patterson* [para 4] remains relevant in that there must be exceptional circumstances which reveal a real risk that the administration of justice would be frustrated or rendered impracticable if the evidence is published. I do not accept that the grounds advanced by the respondent for an order for the non-publication of the evidence in question, meet this test, hence the order sought by the respondent is denied.

[9] Having indicated my conclusion in an oral decision to the parties, Mr Wicks conveyed that he had instructions from the respondent to exercise the right to challenge my decision within the 28 days allowed by s.179 of the Act. Given that either party also has the right to challenge all or any part of the eventual substantive determination, it was accepted by consent that the practical approach to matters should be, that while it is accepted that the application for the non-publication order is unsuccessful, the decision of the Authority remains subject to a right of challenge, possibly in tandem with the substantive determination. Therefore, to allow the opportunity for due process to be realised, the order of the Authority is that:

Any evidence given or matters raised or documents produced before the Authority and referring to or touching upon the claimed historical allegations

¹ Paragraph 2 of Mr Halliday’s affidavit and at p.180 of the agreed bundle of documents (Facebook extract).

² Page 517.

relating to Mr Bob Kerridge, and regarding an animal welfare or other offence, is prohibited from publication for 42 days from 10th September 2009 and shall be subject to such further order as may be required upon the discretion of the Authority.

**K J Anderson
Member of the Employment Relations Authority**