

**Attention is drawn  
to the order prohibiting  
publication of certain  
information in this  
determination**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2019] NZERA 694  
3082176

BETWEEN XRR  
Applicant

AND EBD  
First Respondent

FVB  
Second Respondent

3082693

BETWEEN XEY  
Applicant

AND EBD  
First Respondent

FVB  
Second Respondent

Member of Authority: Vicki Campbell

Representatives: Michael O'Brien for Applicants  
Kathryn Beck for First Respondent  
David Fleming for Second Respondent

Investigation Meeting: On the papers before the Authority

Determination: 6 December 2019

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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- A. Interim non publication orders have been granted in favour of FVB.**
- B. Costs are reserved.**

### **Parties names**

[1] A random online letter selection tool had been used to select the letters used in this determination in place of the parties' names. These three letters do not bear any relation to the party's real names.

### **Employment relationship problem**

[2] FVB is a professional working in a teaching environment. Allegations against FVB have been made and fully investigated. The allegations were made by two of FVB's colleagues and include allegations of sexual harassment.

[3] An independent employment investigation into all of the allegations made against FVB was undertaken by an external investigator which resulted in a full written report being delivered to EBD on or about 7 October 2019. The allegations were not upheld however, the investigator has recommended FVB undergo external training in sexual harassment and professional boundaries.

[4] XRR and ZEY have raised personal grievances against EBD and have sought various remedies. XRR and ZEY also seek penalties against FVB for aiding and abetting breaches of their employment agreements and for breaches of good faith.

[5] The Authority is still awaiting a response from both respondents regarding the claims made by XRR and ZEY. The statements in reply are due to be lodged and served by 12 December 2019. The Authority understands XRR, ZEY and EBD are due to attend mediation in the near future to attempt to resolve all matters between them.

[6] In the meantime FVB has been contacted by the media seeking answers to questions relating to the complaints that were the subject of the independent investigation.

[7] FVB has applied for interim non-publication orders relating to:

- a) FVB's name;
- b) Details of FVB's current position or previously held positions;
- c) Any other details that would identify FVB;
- d) Details of the historic sexual harassment allegations;
- e) Information about FVB contained in the investigation report.

[8] An application for urgency was sought and granted. The reasons for seeking non-publication orders were set out in a sworn affidavit from FVB. FVB is concerned that publication of the allegations would cause irreparable harm to FVB's reputation, both professionally and personally and FVB's standing with other colleagues and students. FVB is concerned that if non-publication orders are not made it will affect FVB's ability to provide leadership within the department within which FVB works.

[9] FVB is involved in a number of charities and community organisations which if the allegations were published before any investigation and determination by the Authority may affect the willingness of the organisations to have FVB involved.

[10] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result. While I have not referred to all information received from the parties in this determination I have carefully considered everything I have received.

#### **Power to grant the orders sought**

[11] The Authority's discretion to grant non-publication orders is contained in clause 10 of the Second Schedule of the Act. The discretion must be exercised on a principled basis. The onus is on the applicant (FVB) to show that a non-publication order should be made.

[12] The general principle that justice should be administered openly is a strong one and a party seeking to depart from that fundamental principle of open justice is required to provide evidence identifying specific adverse consequences that should result in a non-publication order being issued.<sup>1</sup>

[13] In a recent decision of the Court the Chief Judge commented on the growing awareness of the impact of publication on the future employment prospects of individuals named in employment litigation, whether as witnesses, parties or named as someone involved in the relevant sequence of events.<sup>2</sup> The Chief Judge commented on the potential for perverse results in terms of access to justice and reputational ruin in terms of future job prospects.

[14] Taking all factors into account I am satisfied it is in the interests of justice to grant the orders sought and have extended the non-publication orders to include the names and identities of all parties.

### **Orders**

[15] Until further order of the Authority the following information is subject to interim non publication orders:

- a) The names of all parties in the proceedings lodged under matter numbers 3082176 and 3082693;
- b) Details of FVB's current position or previously held positions;
- c) Any other details that would identify FVB;
- d) Details of the historic sexual harassment allegations;
- e) Information about FVB contained in the investigation report.

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<sup>1</sup> *Crimson Consulting Limited v Berry* [2017] NZEmpC 94.

<sup>2</sup> *Elisara v Allianz New Zealand Limited* [2019] NZEmpC 123 at [63].

**Costs**

[16] Costs are reserved. The parties can expect costs relating to this application will be dealt with after the substantive issues have been investigated and determined by the Authority.

Vicki Campbell  
Member of the Employment Relations Authority