

**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 294  
3037572

BETWEEN	KERSTIN MIESSNER AND DAVID LAWRENCE AND NINE OTHERS Applicants
AND	TAUPO LANGUAGE AND OUTDOOR EDUCATION CENTRE LIMITED First Respondent
AND	KYOUNG YONG (KNOWN AS ANDY) LEE Second Respondent

Member of Authority: Nicola Craig

Representatives: Kerstin Miessner for the Applicants  
Somee Chung, Counsel for Respondents

Investigation Meeting: On the papers

Submissions or other information received: 5 April 2019 for the Applicants  
No submissions for the Respondents

Date of Determination: 20 May 2019

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**SECOND DETERMINATION OF THE AUTHORITY**

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## **Employment relationship problem**

[1] The Authority issued a consent determination on 31 January 2019<sup>1</sup>. Non-publication orders were made regarding the names of the parties and the terms of the settlement between them.

[2] Two of the Applicants have subsequently sought to have the non-publication order varied so that they are no longer covered by that order, as the Respondents have not complied with the terms of the settlement. Under the consent determination the terms of the settlement became consent orders of the Authority and thus final, binding and enforceable.<sup>2</sup>

[3] The remaining Applicants have not sought to have the non-publication order lifted regarding them.

[4] The Respondents' representative was given the opportunity to provide a response on the application but no submissions or other information was received.

[5] I am satisfied that I have the ability to vary or rescind the non-publication order.<sup>3</sup> It would not be appropriate to rescind the order all-together as this would lead to the publication of the names and settlement details of the remaining Applicants. The order in the consent determination affecting those remaining nine Applicants remains in place.

[6] However, as regards the two Applicants who have made this application I am satisfied that the publication of their names, terms of their agreement with the Respondents, and the names of the Respondents should be published in order for them to pursue enforcement of the Respondents' obligations.

[7] I vary the non-publication order, allowing publication of the names of Applicants Kerstin Miessner and David Lawrence, the First Respondent Taupo Language and Outdoor Education Centre Limited and the Second Respondent Kyoung Yong (known as Andy) Lee. I also allow publication of the following orders of the Authority pursuant to the consent determination:

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<sup>1</sup> *QVL & Ors v MKO and RIN* [2019] NZERA 14

<sup>2</sup> *Ibid* at [5]

<sup>3</sup> *ITE v ALA* [2018] NZEmpC 140

- (i) Kyoung Yong (known as Andy) Lee will pay the following sums of outstanding holiday pay to the Applicants:
  - (a) David Lawrence the sum of \$985.04; and
  - (b) Kerstin Miessner the sum of \$1198.98.
- (ii) Half of each of those sums was ordered to be paid by 31 January 2019 and the remaining half of those sums will be paid by 29 March 2019.

[8] The time for payment of the total sums has now passed.

[9] The Authority will issue a certificate of determination for enforcement purposes.

**Nicola Craig**  
**Member of the Employment Relations Authority**