

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

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2021] NZERA 212
3133837
3133838

BETWEEN ITL
Applicant in 3133837

AND VZM
Respondent

BETWEEN FMO
Applicant in 3133838

AND VZM
Respondent

Member of Authority: Nicola Craig

Representatives: Mike Harrison, advocate for the applicants
Emma Butcher, counsel for the respondent

Investigation Meeting: On the papers

Submissions (and further 1 and 28 April 2021 for the applicants
information) Received: 25 March and 21 April 2021 for the respondent

Date of Determination: 19 May 2021

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicants claim that they were unjustifiably dismissed on or about the same day from their jobs at a business operated by the respondent company whose name I have anonymised as VZM. I refer to the applicants as ITL and FMO.

[2] VMO's position is that the terminations of employment were due to redundancy on genuine grounds and that the company properly consulted with and considered the applicants' feedback before making the decision to terminate.

[3] VMO seeks orders prohibiting publication of identifying details of the parties on an indefinite basis. The orders sought relates to the pleadings and evidence, including all documentary evidence and the names of those mentioned in the pleadings and evidence. VMO recognises that what is sought is broad. An affidavit from VMO's director JTK was lodged.

[4] ITL and FMO oppose non-publications orders, believing they are not warranted. They say that if VMO has acted properly it does not need to worry about an Authority determination whereas if it has not done so the public interest is in the Authority's decision being part of public record.

[5] The applications have been dealt with together with agreement of the parties. No decision has been made regarding whether the substantive claims should be heard together.

Discussion and orders

[6] The fundamental importance of open justice has been emphasised many times by the courts.¹

[7] However, the Authority does have a discretion to order non-publication.² A balance is needed between the open justice consideration and any interests of justice which are served by exercising the discretion to suppress information in a specific case. There must be specific adverse consequences or other sound reasons to order non-publication.³ It is a high standard.

[8] I have carefully considered the application. It is based on the high public profile of VMO's director JTK, who has been at the forefront of communications with and

¹ See for example, *Erceg v Erceg* [2016] NZSC 135, *Crimson Consulting Ltd v Berry* [2017] NZEmpC 94, [2017] NZEmpC 511.

² Employment Relations Act 2000, Schedule 2, clause 10.

³ *Erceg v Erceg* [2016] NZSC 135, *Crimson Consulting Ltd v Berry* [2017] NZEmpC 94, [2017] NZEmpC 511 and *FVB v XEY* [2020] NZEmpC 182.

decisions about the redundancy of staff. Specific instances of JKT's public involvement have been identified.

[9] I accept that JTK currently has a high media profile connected with the same area of business as that undertaken by VMO. That is likely to draw considerable media attention to this matter if it becomes public.

[10] My impression is that the application is based not on the potential damage to JTK as such but on the impact to VMO's businesses and that of other entities with which JTK is associated. Businesses of the type involved have been particularly affected by the Covid pandemic. VMO is trying to trade its way out of debt. Negative publicity is likely to affect the job security of other employees.

[11] The concerns of the applicants focus on the need for a public record regarding VMO's actions, via an Authority determination of their claims. That is a matter which can be dealt with when any consideration of permanent non-publication orders are made.

[12] There is no evidence that JTK's involvement in these grievances has already been identified in the media.

[13] I conclude that by a fine margin there is sufficient basis for interim non-publication orders. However, I do not accept that the extent of the orders sought is warranted.

[14] Until further order of the Authority, the names of the parties, VMO's business names and locations, JKT's name and those of other businesses he is involved in, the names of other VMO staff and any information leading to VMO and JKT's identification is prohibited from publication.

[15] The parties can anticipate the order being considered as part of the substantive investigation and determination.

Costs

[16] Costs are reserved.

Nicola Craig
Member of the Employment Relations Authority