

**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 MAKAURAU ROHE**

[2022] NZERA 215  
3151961

BETWEEN VXO  
Applicant

AND NORTHLAND DISTRICT  
HEALTH BOARD  
Respondent

Member of Authority: Eleanor Robinson

Investigation Meeting: On the papers

Submissions: 11 April 2022 from the Applicant and the Respondent

Determination: 26 May 2022

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, VXO, was employed by the Respondent, Northland District Health Board (NDHB) as the Senior Medical Officer on Paediatric clinics and wards. BUW was a junior employee who worked under his control and supervision.

[2] BUW made a complaint that VXO had made inappropriate written and verbal communications to her which were investigated by NDHB. After a formal investigation NDHB dismissed VXO who claims he was unjustifiably dismissed and unjustifiably disadvantaged in his employment. VXO is claiming reinstatement.

[3] NDHB denies that VXO was unjustifiably dismissed or unjustifiably disadvantaged, and opposes his reinstatement.

[4] NDHB seeks a non-publication order in respect of BUW.

[5] VXO also seeks a non-publication order.

[6] This determination addresses only the interim non-publication applications.

## **Discussion and orders**

[7] The principle of open justice and the importance of that concept has been emphasised by the courts on many occasions, noting the judgments in *H v A Limited*, *XYZ v ABC*, *Crimson Consulting Ltd v Berry* and the Supreme Court decision in *Erceg v Erceg*.<sup>1</sup>

[8] In the latter case, the Supreme Court noted that a high standard must be met before departing from the principle of open justice.<sup>2</sup> As a consequence there must be specific adverse consequences or other sound reasons to order non-publication.

[9] NDHB in its submission notes that BUW who was a junior employee at the relevant time and will not be a witness in the Authority's investigation, is likely to suffer extreme hardship if her identity is made known.

[10] It is further submitted that identifying BUW is likely to prejudice the maintenance of the law, including the prevention, and detection of offences. It is not in the public interest and not necessary in the interests of justice.

[11] VXO seeks non-publication of his identity on the basis that he has already suffered hardship in his career, and publication of his name is likely to cause more serious and significant hardship to him in seeking to continue his medical profession.

[12] BUW is at the beginning of her medical career, she is not involved as a witness in the proceedings before the Authority and I accept the submissions made on her behalf.

[13] VXO is also a medical professional and is seeking reinstatement. If successful in his claim, I accept that given the nature of the evidence, he may suffer hardship in resuming his career. If unsuccessful, publication of his identity may be a barrier to obtaining alternative employment in his chosen profession given the strong views which exist in the community in cases of this nature.

[14] I consider that the high standard required to depart from the principle of open justice is met in this case, noting in this case the adverse consequences which might flow to BUW and VXO in their chosen professional areas of employment if not granted.

[15] The Authority therefore orders that the name of the Applicant and the junior employee witness are identified only by initials which have no correlation to their names pursuant to Schedule 2 clause 10(1) of the Employment Relations Act 2000.

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<sup>1</sup> *H v A Ltd* [2014] ERNZ 38 at [78]; *XYZ v ABC* [2017]NZ EmpC 40; *Erceg v Erceg* [2016]NZSC 135

<sup>2</sup> *Erceg n1 above at [63] and [69]*

**Costs**

[16] Costs are reserved pending determination of the substantive matter.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**