

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2024] NZERA 482
3248319

BETWEEN	A LABOUR INSPECTOR OF THE MINISTRY OF BUSINESS INNOVATION AND EMPLOYMENT Applicant
AND	FWP First Respondent
	LEM Second Respondent

Member of Authority: Peter van Keulen

Representatives: Greg La Hood and Claudia Milesi-Humm, counsel for the Applicant
Ginrick Credo counsel for the Respondents

Investigation Meeting: On the papers

Submissions Received: 14 and 15 August 2024 from all parties

Date of Determination: 15 August 2024

SECOND DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] I issued a determination in this matter on 12 August 2024 (the First Determination).¹

[2] On 14 August 2024, counsel for FWP and LEM advised that he was instructed to apply for orders of non-publication in respect of the identities of FWP and LEM.

¹ *A Labour Inspector of the Ministry of Business Innovation and Employment v FWP and LEM* [2024] NZERA 480.

Analysis

[3] The First Determination was based on a consent memorandum from all three parties. The memorandum did not address the issue of non-publication, so I did not make any orders in that respect and the First Determination was issued to the parties without any anonymisation or redactions.

[4] Notwithstanding that the First Determination has been issued without non-publication orders I have the power to order non-publication.²

[5] The grounds for non-publication will need to be established. In this case the principles as set out in *MW v Spiga Limited* will need to be applied.³ And two additional factors will need to be addressed; the implications of the agreement reached by the parties which formed the basis of the consent memorandum and the impact of the First Determination already having been issued without non-publication.

[6] In order to fully consider these principles and factors I will require evidence to be provided and submissions made. This will take some time and directions have been set for this.

[7] In the interim, in order to not render the application for non-publication orders moot, I will make interim orders for non-publication.

Orders

[8] Pursuant to clause 10 of the Second Schedule of the Employment Relations Act 2000 I prohibit from publication the names and identities of the first and second respondents:

- a. The First Respondent will be referred to as FWP.
- b. The Second Respondent will be referred to as LEM.
- c. The names of employees subject to the breaches of employment standards will be redacted.

² *JKL v Stirling Andersen Limited* [2022] NZEmpC 107.

³ See *MW v Spiga Limited* [2024] NZEmpC 147.

[9] The First Determination will be reissued to the parties with changes made to reflect the non-publication orders. The First Determination will also be published on the Authority's database with these anonymisations and redactions.

Peter van Keulen
Member of the Employment Relations Authority