

NOTE: This determination contains an order prohibiting publication of certain information at [10].

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 201
3239459

BETWEEN

BLAIR KING
Applicant

AND

FAR NORTH DISTRICT
COUNCIL
Respondent

Member of Authority: Alex Leulu

Representatives: Penny Swarbrick and Tim Oldfield, counsel for the
Applicant
Charles McGuinness, counsel for the Respondent

Submissions and further information received: 2, 15 and 18 October 2024, and 24 March and 3 April
2025 from the Applicant
15 and 18 October 2024, and 24 March and 3 April
2025 from the Respondent

Determination: 10 April 2025

DETERMINATION OF THE AUTHORITY

[1] On 27 September 2024 the Authority issued a determination (the substantive determination) in respect of Blair King's claims against the Far North District Council (the Council).¹

[2] Prior to the determination being issued the parties agreed for a number of matters to be determined at a later date. This included an application by Mr King for

¹ *King v Far North District Council* [2024] NZ ERA 571.

non-publication of evidence concerning his personal medical circumstances (Mr King's non-publication application).

[3] Upon issuing its determination the Authority referred to evidence identifying details of Mr King's medical information. Accordingly, Mr King sought an imminent determination on Mr King's non-publication application to omit the specific reference to Mr King's medical information from the substantive determination.

[4] This determination is in respect of the non-publication application and the possible impact of this determination on the Authority's substantive determination. It should be noted the substantive determination has been removed from the Authority's website subject to the outcome of this determination.

Non-publication order application

The parties' views

[5] Since issuing the substantive determination, the Authority received detailed submissions and views from the parties in respect of Mr King's non-publication application which included views on the merits of the application itself. In the event the application was granted, the Authority also received views from the parties as to whether the Authority should reopen its investigation to address the inadvertent reference to Mr King's medical information.

[6] Mr King said the Authority's reference to Mr King's medical information was unnecessary because the information did not affect the Authority's determination and was a significant and unnecessary intrusion into his privacy. For this reason, Mr King has requested an 'amendment' to the Authority's determination.

[7] In response, the Council provided several reasons opposing the application and submitted:

- (a) Mr King failed to show that the disclosure of the details of his medical information would result in adverse consequences justifying the fundamental rule of open justice; and
- (b) the information must be disclosed because it was critical to the substantive outcome of the claims before the Authority.

Outcome of Mr King's non-publication application

[8] Mr King had a reasonable expectation of privacy in respect of his personal medical information. The Authority must weigh Mr King's privacy interests against the interests of open justice.²

[9] After considering the views of both parties Mr King's reasons for protection of his privacy is sufficient to displace the principle of open justice. The reference in the determination to Mr King's medical information represented a significant and unnecessary intrusion into his privacy.

[10] I also accept the reference to the detail of his medical circumstances provided little assistance to how the Authority had reached the outcome as expressed in the substantive determination. Accordingly, I order non-publication of the details of the information relating to Mr King's personal medical information within the Authority's substantive determination.

Reopening of the Authority's investigation

The parties' views on reopening

[11] Under the Act the Authority may reopen an investigation upon application by a party or on its own volition.³ The Authority may order the reopening of an investigation on "such terms as it thinks reasonable".

[12] Mr King argued there was no need for the Authority to re-open its investigation. Mr King also referred to an Employment Court judgement where the Court ruled it was not necessary to reopen an investigation nor recall the determination in order to grant a non-publication order.⁴ Mr King also said, once the once the non-publication issue was addressed, it was open to the Authority to decide the most appropriate way to deal with the substantive determination.

[13] The Council opposed reopening of the Authority's investigation on the basis it would be deprived a fair and proper opportunity to address issues the Authority would consider in determining the non-publication application. The Council also made a

² *Erceg v Erceg* [2017] NZSC 28.

³ Employment Relations Act 2000, Schedule 2 clause 4.

⁴ *JKL v Stirling Anderson Ltd* [2022] NZEmpC 107 at [20] to [23].

number of arguments which included reference to the inadvertent public release of the Mr King's medical information before it was removed from the Authority's website.

Should the Authority reopen its investigation?

[14] After considering the views of the parties and taking into account the order for non-publication of Mr King's medical information, the appropriate approach to addressing the inadvertent release of Mr King's medical information is to reopen the Authority's investigation. I reach this conclusion for two reasons.

[15] Firstly, reopening the Authority's investigation is the appropriate avenue to implement the outcome of the non-publication order to the substantive determination. This will allow for the public release of the substantive determination in a less intrusive way to avoid any further unwarranted disclosure of Mr King's privacy interests.

[16] Secondly, I disagree with the Council's submission that it would be deprived a fair and proper opportunity to respond to the determining of the non-publication application. The Council was given ample opportunity to provide its views on the application and as stated earlier in this determination, these were considered before the order was made.

Orders for reopening the investigation

[17] Taking into account the non-publication order for Mr King's medical information, I have reopened the investigation in accordance with the Employment Relations Act 2000 and reissue the substantive determination implementing the following amendments to the current version of the substantive determination:

- (a) The entirety of paragraph 92 of the substantive determination is to be replaced with the following:

In support of its allegations the Council said Mr King:

- [a] adopted a confrontational and unreasonably negative attitude to Mr Tepania and those who supported him;*
- [b] breached his contractual obligations of good faith by disclosing to his senior leadership team his recollection of the Kaikohe meeting; and*
- [c] failed to communicate his decision to take part in USAR volunteer work while on sick leave.*

(b) The entirety of paragraph 93 of the substantive determination is to be replaced with the following:

During the investigation meeting, it was confirmed Mr King had a medical condition prior to commencing his employment with the Council. In line with the disclosure requirements of his employment agreement, the Council argued Mr King should have disclosed this prior to the start of his employment.

(c) The entirety of paragraph 95 of the substantive determination is to be replaced with the following:

Mr King opposed the Council's claims and said the claims were spurious and retaliatory to his personal grievance claims. He said none of the issues raised by the Council were ever raised with him during his employment. It should be noted also, the allegations around Mr King's confrontational approach and his non-disclosure of his medical condition were not referenced as part of the Council's statement in reply.

[18] For the sake of clarity and considering the above orders for changes to the substantive determination, the original date on the Authority's substantive determination of "27 September 2024" will remain as the date on the re-issued substantive determination.

Costs

[19] Costs are reserved subject to the outcome of the remaining matters before the Authority.

Alex Leulu
Member of the Employment Relations Authority