

Attention is drawn to the order prohibiting publication of certain information (refer paragraph 12)

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 349
3315180
3322080

BETWEEN	BNS GROUP LIMITED First Applicant/Respondent
AND	BNS CO LIMITED Second Applicant/Respondent
AND	FUYU ZHUO First Respondent/Applicant
AND	MOVENPICK OREWA LIMITED Second Respondent

Member of Authority: Eleanor Robinson

Representatives: Michael Meyrick for the applicant.
David Fleming Counsel for the respondent.

Date: 17 June 2025

PRELIMINARY DETERMINATION OF THE AUTHORITY

[1] The Applicants, BNS Group Limited and BNS Group Limited, have brought a claim based upon a breach of fidelity duty against the First Respondent, Fuyu Zhao and the Second Respondent, Movenpick Orewa Limited.

[2] Mr Zhuo has brought a claim in respect of unjustifiable dismissal against the First and Second Respondents.

[3] The Authority has a substantive investigation set down to investigate the claim and the counter-claim in July and August.

[4] Since the statements of problem were lodged in the Authority there have been various allegations and commentary on the matters before the Authority in the local newspapers and on Facebook.

[5] This determination is to consider an interim non-publication order by the Authority. It was hoped that various posts would be taken down from the public arena by consent, but this has not proved capable of agreement.

Non-publication

[6] The Authority can make an interim order under clause 10(1) Schedule 2 of the Employment Relations Act 2000 (the Act).

[7] In the recent case of *MV v Spiga* the Employment Court outlined the approach to take.¹ The starting principle is open justice. The Authority may depart from open justice to the extent necessary to serve the ends of justice or where the administration of justice weighs against full openness.

[8] The Court described a two-step approach to take when considering non-publication. First, there must be reason to believe specific adverse consequences could reasonably be expected to occur from publication. This step focuses on the evidence, with reasonable inferences allowed based on the specific circumstances of the case when considered in context.

[9] Second, the Authority must consider whether those consequences justify departing from open justice in the circumstances of the case. This is a weighing exercise that looks at relevant factors. Relevant factors include the circumstances of the case, the interests of the person or entity applying for the order, the interests of the other party or any third party, the public interest (including the rights of media), any issues of equity and good conscience and tikanga and its principles, values or concepts.

[10] In the circumstances of this case there has already been significant and adverse public comment on the matters before the Authority for determination: the parties involved, and the various allegations which have arisen contingent on the circumstances of the businesses and parties involved.

¹ *MW v Spiga* [2024] NZEmpC 147.

[11] I find that these comments are adverse to the Authority's process and the interests of justice, and may have the undesirable effect of influencing the witnesses who are due to provide evidence at the Authority's investigation meeting. I consider the circumstances justify a departure from the public interest in open justice by the granting of a non-publication order, but only on an interim basis.

[12] I order that at this interim stage, no public commentary should be made by any of the parties on the evidence given, pleadings filed or the names of any party or witness. These are not to be the subject of public commentary or be published. This order is made under Schedule 2 clause 10(1) of the Employment Relations Act 2000.

Eleanor Robinson
Member of the Employment Relations Authority