

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 718
3337780

BETWEEN

ODETTE WHITTER
Applicant

AND

JANE WINSTONE
RETIREMENT VILLAGE
LIMITED
Respondent

Member of Authority: Rowan Anderson

Representatives: Applicant in person
Morgan Powell, counsel for the Respondent

Investigation Meeting: On the papers

Submissions: Up to and including 17 October 2025

Determination: 10 November 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Authority issued a determination dealing with the substantive issues associated with this matter on 26 August 2025.¹ Non-publication orders were made in the determination which included:

- (a) a prohibition on the publication of the determination for a period of 28 days;
and
- (b) an interim non-publication order over the names of the parties and witnesses for a period of 28 days.

¹ *Odette Whitter v Jane Winstone Retirement Village Limited* [2025] NZERA 523.

[2] On 18 September 2025, following the issue of the substantive determination, Jane Winstone Retirement Village Limited (JWRV) lodged a memorandum seeking that certain permanent non-publication orders be made. It sought to admit a medical certificate in support of that application relating to a witness in the proceedings.

[3] Ms Whitter opposes the application for non-publication orders.

[4] A case management conference was held on 2 October 2025. An order was made extending the timeframe of the non-publication orders made at paragraph [96] of the substantive determination pending resolution of the issues raised. I advised the parties of my preliminary view that there may be grounds for the Authority's investigation to be reopened and that that question could be dealt with at the same time as the issue of non-publication orders, as a matter of efficiency and without predetermining the reopening issue. There was no objection to that approach and timetable directions were issued for the issues to be dealt with on the papers.

[5] I have considered all of the material provided in relation to the two issues, including submissions and email correspondence.²

Reopening

[6] JWRV lodged an application for reopening of the Authority's investigation in line with the timetable directions issued. I had previously indicated that I would consider the issue of reopening and intended to do so of my own volition. Notwithstanding that, I have considered the application and relevant submissions made.

[7] The application made by JWRV seeks reopening for the narrow purpose of providing evidence relevant to the issue of non-publication. It was submitted that the evidence was not available at the time of the investigation meeting and otherwise that the proposed evidence is, in effect, of significance as to that issue. The evidence in question comprises an affidavit from Ms Puklowski and a medical certificate from a general practitioner.

[8] Ms Whitter questions why new evidence that came about following the issue of the substantive determination should now be considered.

² Including emails sent by Ms Whitter to the Authority on 18 August, 22 September and 17 October 2025.

[9] Having regard to the limited scope of the issue sought to be ventilated, and what on the face of it appeared to be further relevant information in the form of a medical certificate, my preliminary view was that it may be appropriate for the investigation to be reopened. However, having received and carefully considered all of the relevant submissions, I am not satisfied that is the case.

[10] The application by JWRV proceeds on the basis that the evidence sought to be adduced was not available “at the time of the investigation hearing”. I am not satisfied that is correct. While the medical certificate provided was obtained on 10 September 2025, approximately two weeks after the substantive determination was issued, it is apparent that any such evidence could have been provided much earlier. Indeed, the affidavit material lodged goes clearly to the relevant issues being live, and evidence being available, at an earlier stage.

[11] It is also the case that feedback was sought by the relevant Member as to the issue of non-publication prior to the issue of the substantive determination. While that request was premised on a preliminary view being inclined towards non-publication orders being issued, it was not necessarily the case they would be and the issue was clearly a live one.

[12] I consider Ms Whitter is entitled to the benefit of the substantive determination and finality of the proceedings. There was ample opportunity for the proposed evidence to be provided during the investigation, and I decline to reopen the investigation.

Non-publication orders

[13] I record that, having regard to the proposed evidence, I would have declined to make the non-publication orders sought had the investigation be reopened. I do not consider the proposed evidence goes to specific adverse consequences that would likely result from publication such as would outweigh the public interest in open justice. Ms Whitter’s position on that matter would also need to be considered.

[14] Having regard to the preservation of any residual challenge rights, I consider it appropriate to extend the interim non-publication orders previously made at paragraph [96] of the substantive determination.³ Those interim orders will now lapse at the expiry of 28 days from the date of this determination.

³ *Odette Whitter v Jane Winstone Retirement Village Limited* [2025] NZERA 523 at [96].

[15] The substantive determination, and this determination, are also not to be published until the expiry of a 28 day period from the date of this determination.

Costs

[16] There is no order as to costs.

Rowan Anderson
Member of the Employment Relations Authority