

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2015] NZEmpC 151
EMPC 196/2015**

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

AND IN THE MATTER of an application for a non-publication
 order

BETWEEN ITE
 Plaintiff

AND ALA
 Defendant

Hearing: By memoranda of submissions filed on 21 and 31 August 2015

Appearances: W Nabney, counsel for plaintiff
 M Ward-Johnson, counsel for defendant

Judgment: 1 September 2015

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] This interlocutory judgment deals with the parties' joint application for an (interim) order prohibiting publication of the names of the parties or other information that might lead to their identities. There is an order made by the Employment Relations Authority prohibiting publication and other identifying details of the parties. That was made in a third determination known as *P v Q* issued on 22 June 2015 against which the plaintiff has filed a challenge.¹ I have not continued the Authority's reference to the parties as "P" and "Q" because of the potential proliferation of single letter identifiers. Rather, in this proceeding, the

¹ *P v Q* [2015] NZERA Auckland 181.

parties will be known as “ITE” (plaintiff) and “ALA” (defendant) which acronyms bear no resemblance to their identities.

[2] The plaintiff’s challenge is the subject of a directions conference tomorrow, 2 September 2015, which will timetable it to a hearing. The merits of the challenge have not, therefore, been ascertained. The Court has, nevertheless, considered the Authority’s determination, the plaintiff’s statement of claim, and the defendant’s statement of defence.

[3] On 4 August 2015 the defendant applied by interlocutory application for an order prohibiting publication of the identities of the parties and such an order was consented to by the plaintiff. For reasons set out in a Minute issued on 5 August 2015, I did not consider, even by consent, that the parties had established a sufficient case for the making of such an order, especially as the defendant is a public body as opposed to a private corporation. The Court required further submissions and/or evidence before making the order sought.

[4] I am now satisfied from a consideration of detailed affidavit evidence filed by the defendant and submissions made by counsel for the defendant, that there should be an interim order prohibiting from publication the names or other information identifying the parties. The grounds for this order include the significant deleterious effects on staff of the defendant as a result of communications sent to them and others by the plaintiff. This was where the plaintiff had committed himself to confidentiality about the circumstances that led to the conclusion of his employment relationship with the defendant. That requirement of confidentiality was included within terms of settlement certified under s 149 of the Employment Relations Act 2000, but which settlement the defendant alleges the plaintiff has breached.

[5] The non-publication order which I make pursuant to cl 12 of sch 3 to the Act will be an interim order, rather than a permanent order. It may be affirmed, cancelled, or modified by a subsequent order by the Court, most probably following the hearing of the plaintiff’s challenge. The Court’s formal order is that no person is to publish the name of either party or any information leading to either party’s identification. In pleadings filed with the Court, and exchanged between them, the

parties should continue to use their proper names. As a necessary concomitant, I also make an order that no person is to have access to the court file without the consent of a Judge.

GL Colgan
Chief Judge

Judgment signed at 12.30 pm on Tuesday 1 September 2015