

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2010] NZEMPC 29
ARC 7/10**

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

AND IN THE MATTER OF an application for non-publication
orders in respect of other party

BETWEEN C
Plaintiff

AND AIR NELSON LIMITED
Defendant

Appearances: Richard McCabe, Counsel for Plaintiff
Kevin Thompson, Counsel for Defendant

Judgment: 26 March 2010

INTERLOCUTORY JUDGMENT NO 2 OF CHIEF JUDGE GL COLGAN

[1] The first officer of the flight crew headed by the plaintiff, the activities of which are at the heart of this case, has now applied for an order that his name or other identifying particulars not be published pursuant to cl 12 of Schedule 3 to the Employment Relations Act 2000 (the Act).

[2] The first officer was referred to in the Employment Relations Authority's determination as "FO".

[3] The defendant does not oppose his application.

[4] I am satisfied that the balance of justice on this application falls in favour of a non-publication order for the following reasons.

[5] Although the flight attendant complainant initially appears to have alleged that the first officer harassed her, it is common ground that this was not so. Indeed, the complainant flight attendant so admitted to the Employment Relations Authority during the investigation of the plaintiff's personal grievance.

[6] This is not the first officer's case and, as I understand the position, he does not have proceedings certainly before this Court or perhaps even before the Employment Relations Authority about the consequences for him of the events that saw the plaintiff dismissed.

[7] The first officer's wife is involved commercially in the travel industry and her business is conducted under the same surname as the first officer. That business is, in turn, involved in fund raising for the kindergarten in which the first officer and his wife are involved.

[8] The foregoing are very different considerations from those applicable to the plaintiff. I do not consider that there is a countervailing public interest in knowing of the first officer's identity that outweighs the prejudicial consequences to him of publication of his identity. The first officer is therefore entitled to an order under cl 12 of Schedule 3.

[9] I propose, however, to make this an interim order to apply only until the hearing and decision of the plaintiff's personal grievance. That is because, although not referred to in his affidavit as I would have expected, paragraph [85] of the Authority's determination notes: "Some disciplinary action was taken against FO, although not to the extent of dismissal. (He has raised a grievance about that action.)" It is not only unclear what the defendant concluded about the first officer's conduct but also what the consequence was and what may have happened to his grievance. I would have expected this to have been covered by the first officer's affidavit filed in support of this application.

[10] Accordingly, I make the following orders:

- Until hearing and decision of the plaintiff's personal grievance or other order of the Court, there is to be no publication of the name or other information identifying the first officer involved in this case.
- Although the original of this judgment and the copies that go to the parties will contain the name of the plaintiff, any further copies must continue to refer to him by the letter "C" in terms of the interim orders for non-publication made in the first interlocutory judgment given on 9 March 2010 [2010] NZEMPC 18.¹

GL Colgan
Chief Judge

Judgment signed at 4.30 pm on Friday 26 March 2010

¹ [2010] NZEMPC 18.