



GETTING IT RIGHT— A LUCKY ESCAPE

The importance of being an employer who continuously engages with employees is illustrated in the case of a relieving teacher who alleged he had been constructively dismissed. Paul Robertson reports that the school was able to show that despite changing its position, its open dialogue was sufficient for the case to fail.

EMPLOYMENT DISPUTES ARE

often factually messy, which makes predicting the outcome of any Employment Relations Authority hearing uncertain.

A recent dispute ended well for the board of trustees because the principal proactively engaged with the teacher involved in a genuine effort to resolve a competence issue.

BACKGROUND

The dispute involved a mathematics teacher at a North Island college teaching Year 10 and Year 11 students on a relieving basis. By term three of 2013, complaints had been made by parents about the teaching of mathematics focusing on the adequacy of the lessons.

The principal met with the teacher and encouraged him to stand aside from teaching mathematics.

The teacher initially agreed, but then insisted that a proper process be followed and asked

whether the matter would be treated as a disciplinary or a performance issue. He then went off on sick leave.

The principal initially said that a formal disciplinary procedure would be instigated focusing on the issues identified by parents.

The teacher was given a period of time to address the concerns and a proposal was made for the teacher to be supported in a team teaching situation with another mathematics teacher in the class.

By that point, the process had become one addressing competency. A union advocate became involved and twelve conditions in relation to the return of the teacher to school were negotiated.

THE GRIEVANCE

The teacher then decided that having someone in his class was unacceptable. Rather than returning to school, he raised a

personal grievance alleging that he had been disadvantaged and hence constructively dismissed.

His main concern was that the principal had initially said that there were no issues to resolve as long as the teacher moved into other relieving duties, but later commenced a disciplinary process before finally settling on a programme to address competency.

In spite of this change of tack, the Authority found that the principal met regularly with the teacher and, as necessary, his union advocate.

The final programme to offer support had been agreed with input from the advocate. For these reasons, the allegation by the teacher that he had been constructively dismissed was not upheld.

COVERT RECORDING

As an aside, the teacher had secretly recorded a meeting with the principal and the board

brought a claim against the teacher for breach of good faith for this reason.

The Authority concluded that the discussion between the principal and teacher was not intended to be confidential, or off the record, and that "... the recording was not so different from the agreed note taking as to warrant a conclusion that it was unfairly obtained".

The Authority also doubted that the recording of the conversation was sufficiently deliberate, serious and sustained as to justify the awarding of a penalty.

Sawyer v BOT Taupo-Nui-A-Tia College [2015] NZERA Auckland 81 5460369

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