



AN INVESTIGATION GOES WRONG

A recent decision involving a South Island school principal reinforces why it's crucial to get the process 'right', especially when considering the statements of witnesses. Paul Robertson explains.

INVESTIGATIONS INTO THE actions of a school principal have been found to be inappropriate by the Employment Relations Authority. This decision reinforces just how difficult it is to get the process 'right', and how carefully the Authority/Employment Court scrutinise the decisions of boards of trustees/commissioners.

THE STORY SO FAR

The relationship between the principal of Rangiora High School and the board of trustees had become dysfunctional. Two specialist advisers were appointed to assist in relation to employment, communication and finance.

After the board was dissolved, one of the advisers was appointed as a commissioner to the school. News of the appointment was 'embargoed', but the principal still sent out an email to local principals with news of the decision. Confidential board documents were also leaked to the press.

The commissioner initiated investigations into allegations of bullying by the principal, whether board minutes had been inappropriately altered, the handling of

complaints received by parents, whether the principal had leaked the documents to the press and other concerns. Three consultants were engaged to undertake the investigations.

Ultimately, the principal was dismissed because the commissioner decided there was sufficient evidence that the principal had leaked the papers, and because the principal inappropriately changed minutes of the board and accessed a laptop.

The principal raised several personal grievances. She was concerned, in particular, that her dismissal was unjustified because the investigations were not thorough enough and the commissioner was biased against her.

THE INVESTIGATIONS

Referring to the collective employment agreement, the Authority was critical of the failure of the commissioner to try to resolve the disciplinary matters informally before commencing the formal process.

Focusing on the investigations, the consultant looking into the leaking of documents provided a

summary of his conclusions, not the interview notes. The Authority concluded that the commissioner was required to properly assess the accuracy of the consultant's report and his conclusions. Without the interview notes, she could not do this. It also accepted that not all relevant witnesses were interviewed. It was concerned that some findings of the commissioner contradicted the findings of the consultant.

The Authority upheld the complaint that the commissioner was biased. This was because in her role as an adviser to the board she investigated and provided advice on governance matters. As an adviser, she met with previous board members including those who the principal described as being "hostile" to her, and prepared a report that was highly critical of the principal's management and her relationship with the board.

In the Authority's view, the commissioner's prior investigation as an adviser, and the conversations she had with board members at the time, "contributed to [the commissioner] reaching an

opinion adverse to [the principal] and that opinion has tainted the commissioner's views throughout the disciplinary process."

The principal was awarded lost salary over eight months and \$20,000 for hurt, humiliation and distress. Her application to be reinstated failed, mainly because of opposition from the senior management team and the difficulties they had in working with her.

AND THE LESSON IS ...

This decision reinforces the difficulties of running an investigation. While an employer is entitled to use consultants, it is still the employer's responsibility to ensure the evidence relied upon is reliable, especially when considering the statements of witnesses. The fraught position of a commissioner is highlighted. Their personal involvement may open their disciplinary decisions to challenge.

Burrows v The Commissioner of Rangiora High School [2017] NZERA Christchurch 8

PAUL ROBERTSON is a partner at Heaney & Partners in Auckland. Visit: www.heaneypartners.com

HEANEY & PARTNERS
BARRISTERS & SOLICITORS

QUALITY OUTCOMES
to School Trustee Liability & Employment Disputes

PAUL ROBERTSON | Partner: direct dial: (09) 367 7004 email: paul.robertson@heaneypartners.com www.heaneypartners.com
Phone: (09) 3030 100 Fax: (09) 3677 009 Level 13, PwC Tower, 188 Quay Street, Auckland PO BOX 105391, Auckland. 1043. DXCP18503