



GO SICK AND DELAY

When a teacher involved in a disciplinary investigation provided medical certificates saying she was unfit because of stress, the board had concerns about the genuineness of the certificates. They considered her alleged poor health was part of a go-sick-and-delay tactic, says Paul Robertson.

WHAT CAN YOU DO WHEN attempts to complete a competency or disciplinary investigation are frustrated because the employee says that she is unwell, and takes sick leave supported by a vaguely worded medical certificate? This question was the focus of a recent decision of the Employment Relations Authority.

Ms Ward is employed by a large private school. In August 2014, the management of the school learned of comments she wrote for student testimonials, including such things as:

"[Student name] has always treated me with respect as a person, which is more than I can say for the many of her peers and the staff I have to work with. A simple hello from [the student] on many days have [sic] been the difference between me going home feeling like I am a worthless piece of crap to be beaten down or going home feeling at least one person as [sic] acknowledged me that day."

Attempts to meet with Ms Ward were frustrated, initially by her apparent reluctance to meet and then because she provided medical certificates saying that

she was unfit because of stress. Eventually, the principal dismissed Ms Ward for serious misconduct. Ms Ward raised a personal grievance and, in December 2014, the Authority considered her application for interim reinstatement.

The Authority considered the effect of Ms Ward's illness on the disciplinary process. It decided that her health was relevant because of the requirement that an employee has a reasonable opportunity to respond to the employer's concerns. It is difficult for the employee to engage if they are unwell.

The board argued it had concerns about the genuineness of Ms Ward's illness and the information from her medical practitioners. The complaints of stress were first made after the investigation started and this followed months of leave. In spite of her being unwell, she travelled to Wellington twice.

The board argued that the alleged poor health should not be taken seriously, and should instead be seen as part of a "go-sick-and-delay" tactic. The

Authority shared some of the board's concerns. For instance, the first report from her doctor said:

"Ms Carol Ward was seen (sic) me ... She was expressing her current health problems including her stress, related to her work place ... My feeling here is that, over the years, she was inappropriately treated in her workplace ..."


The doctor's reference to feelings rather than a medical diagnosis was plainly based on Ms Ward's opinion that she was mistreated. There was no explanation of the cause of the stress, let alone any link to her employment. Ms Ward was, at the time, part way through a sabbatical. A later certificate said that she was "unfit" but did not say what she was unfit for.

The Authority concluded that if the board had concerns about the genuineness of the medical certificates, then it ought to have challenged the certificates. Had the challenge been made, then the board would have been on stronger ground to proceed to dismiss the claimant.

The Authority reinstated Ms Ward pending a final hearing of

her claim in early 2015. This was in spite of the board employing another teacher for her position in the meantime.

The Medical Council of New Zealand has issued a guideline on medical certificates. It provides that a doctor should outline those activities that are unsafe for the patient to undertake and appropriate restrictions. Where there are workplace factors which have contributed, they should be identified.

The medical certificates stated Ms Ward was medically unfit, but did not say whether this prevented her from attending a meeting with her employer. Further enquiries of her doctor may have led to this information being available. In some circumstances, an employer can request an opinion from a second doctor. 

Ward v St Peter's School Trust Board [2014] NZERA 520 Auckland

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