PUBLIC **SECTOR**

EASING AN EMPLOYEE OUT—THE TRAPS

A dispute involving a disgruntled secondary teacher emphasises the importance of comprehensively resolving a claim at the earliest opportunity, says Paul Robertson.

AN ATTEMPT TO ENCOURAGE a teacher to resign and not to bring a personal grievance has gone awry. As reported in a recent decision of the Employment Court, the negotiated exit did not work, and instead the disgruntled teacher was able to continue with his personal grievance.

In 2013 we reported on an attempt by a board of trustees to prevent a teacher, Mr Roy, from challenging a settlement (Deal or no deal, *Employment Today* 180).

Mr Roy argued that the religious character of the state school meant that he was being forced to attend Christian ceremonies against his will, in particular, powhiri, karakia and songs at school assemblies.

The dispute focused on Mr Roy's concerns that his rights under the Human Rights Act were being infringed, leading to a mediation hosted by the Human Rights Commission in June 2010.

While the mediator and the board believed that the dispute had been resolved, Mr Roy remained belligerent about what he viewed as the inappropriate emphasis on religion in a state school. Staff complained about his behaviour.

Mr Roy was given a written warning. He continued to cause problems, leading to a meeting with the board in September 2010 where he agreed to resign. A settlement agreement was drawn up and was signed recording that, in return for a lump sum payment, all his claims against the board were resolved.

Mr Roy then challenged the settlement saying that he had been coerced into signing. That challenge was unsuccessful and the Employment Relations Authority held that the grievance was not able to proceed ([2013] NZERA Auckland 514).

Mr Roy challenged that decision to the Employment Court ([2014] NZEmpC 153). The Court did not view the settlement agreement as a complete answer to the claim, and also accepted that the claim could proceed even though no grievance was brought within 90 days.

This finding was, in part, because the principal had taken three months to provide the Teachers' Council (now known as the Education Council) with a mandatory report following the resignation.

A full hearing in the Court was held over six days in July and September 2015 leading to a decision in March of this year. The court decided that Mr Roy's version of events was unreliable. There was supporting evidence from Mr Roy himself of this.

After the July hearing, he wrote to members of staff recording what he said had happened at the hearing. The Court accepted that his account of the hearing was wrong, which cast doubt on the rest of his evidence.

In the end, the Court did not focus on Mr Roy's allegation of constructive dismissal, but instead found that the settlement agreement resolved any grievance that he may have had.

This dispute emphasises the importance of comprehensively resolving a claim at the earliest opportunity and ensuring the agreement is set out in an enforceable way, if possible by getting it turned into a record of settlement witnessed by a mediator.

Here the agreement was not signed off by a mediator as a record of settlement, leaving it open to challenge. While the Authority found the agreement to be binding, the Court was mindful that parties cannot contract out of the Employment Relations Act, including the ability of an employee to raise a personal grievance.

If the agreement had been signed off, then this would probably have prevented the several hearings that followed.

When assessing whether the personal grievance could continue in spite of no grievance being raised within 90 days, the Court focused on the 'late' delivery of a mandatory report to the Education Council.

Arguably, if the report had been made promptly, this would also have prevented the claim from going further.

Roy v BOT of Tamaki College [2016] NZEmpC 20

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