

Knowing your accuser

An employer receives a 'confidential' complaint about an employee. The person complained about wants to know the name of their accuser. What is the employer to do? **Paul Robertson** examines the issue.



IN A RECENT DECISION, THE board of trustees of an Auckland high school faced a claim by a teacher. The teacher had been dismissed for incompetency based largely on complaints by students. The board decided it was important to withhold the identity of the students because of fears of retaliation by the teacher against the students.

The board provided other information emphasising the deficiencies in the teacher's work, including a survey of her students to see if the concerns were specific to the students who had made the complaints, or whether their concerns were symptomatic of more widespread failings in her teaching.

The Authority concluded that an employer can only withhold the identity of a complainant in exceptional circumstances. Then it was incumbent on the employer to ensure the process was fair in all other respects.

WERE THERE EXCEPTIONAL CIRCUMSTANCES?

The Authority did not believe this was a case where excep-

tional circumstances justified the withholding of the identity of the students.

"[62] [It] is a basic right in [employment disputes] that one may confront one's accuser, know that person's name, hear them openly make their allegation, and have a proper opportunity to respond to it."

The teacher said if she had known who the complainants were, she would have met with those individual students and she would have worked through how their complaint about her might best be resolved.

LACK OF SPECIFICITY

The Authority was also concerned about the lack of specificity in the complaints. The students focused on the teacher being grumpy and unapproachable, being late for class, sitting at the back of the class, and generally not assisting the students to learn properly.

The board's concern was that she was not fulfilling her professional obligations as a classroom teacher. However, the teacher found it very difficult to respond

without such things as dates and times and details. When she tried to respond by giving some context to the allegations, or seeking more information, she was criticised as being defensive.

DELAY

Finally, the Authority focused on the delay in making the teacher aware of the complaints. She was told initially of one complaint, but the board then received other complaints that were investigated.

It was some time before the teacher knew of these complaints. She understood that a single complaint had been made by a student. She argued that if she had known of the widespread discontent, she would have responded differently.

The Authority recorded: "[103] The College properly collected a number of complaints about Mrs Maday and rather than make them available to her as they came in [a senior manager] interviewed all of the student complainants but did not provide the complaints to Mrs Maday until there were a

number ... This led to a formal letter requiring her to attend a meeting containing the implication that she knew about the growing number of complaints in spite of the whole process being cloaked in secrecy leaving her unaware of the complaints."

The teacher succeeded with her personal grievance.

AND THE LESSONS ARE ...

Serious complaints carry the risk that an employee will end up being dismissed. The Authority rightly expects that the process adopted is fair; specifically that those making complaints are identified and able to be questioned by the employee, that the complaints are promptly notified to the employee, and that the complaints made are refined down to specific allegations that can be responded to.



Maday v Avondale College BOT [2018] NZERA Auckland 131

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