



New Zealand Employment Relations Authority Decisions

You are here: [NZLII](#) >> [Databases](#) >> [New Zealand Employment Relations Authority Decisions](#) >> [2018](#) >> [2018] NZERA 230

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

Avondale College Board of Trustees v Manday (Auckland) [2018] NZERA 230; [2018] NZERA Auckland 230 (24 July 2018)

Last Updated: 17 August 2018

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 230
3009871

BETWEEN AVONDALE COLLEGE BOARD OF TRUSTEES Applicant

A N D CHRISTOPHER MADAY First Respondent

A N D CATRIONA MADAY Second Respondent

Member of Authority: James Crichton

Representatives: Paul Pa'u, Advocate for Applicant

Rebecca White, Counsel for Respondents

Investigation Meeting: Submissions received:

On the papers

14 June 2018 from applicant

20 June 2018 from respondent

Date of Determination: 24 July 2018

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

Employment Relationship Problem

[1]

This matter is a claim by the applicant college against the respondents, a

husband and wife, the husband being a former member of the College's Board of Trustees and the wife being a former member of the College's teaching staff. There are allegations of impropriety by the College against both Mr and Mrs Maday. These allegations arise out of but are separate from a claim in personal grievance

made by Mrs Maday against the College which was substantively determined by me

in the Authority decision [\[2018\] NZERA 131](#) Auckland.

[2]

That determination I have just referred to is now subject to a de novo challenge in the Employment Court.

[3]

The present matter has been rather overshadowed by the claim by Mrs

Maday against the College but now that the substantive determination has issued

after the Authority's lengthy investigation, the present matter is now firmly on foot.

[4]

There are some procedural challenges with the current matter, one of which is the question whether a sitting Member of Parliament, and in fact a member of the Executive Council, can be summonsed to give evidence.

[5]

To progress the matter, I convened a telephone conference on 27 June 2018 and in anticipation of that telephone conference the parties' representatives helpfully filed brief submissions.

[6]

The thrust of those submissions in each case was that the matter could usefully be removed to the Employment Court without the Authority having investigated the matter, in order that the Court could deal with the matter by its formal trial process.

[7]

While the College's representative has tried to interest me in the proposition that there are important questions of law that arise in this matter other than incidentally [\(s.178\(2\)\(a\)\)](#) of the [Employment Relations Act 2000](#), I have not been attracted by that argument. However, I am persuaded that this is a case which falls within the terms of [s.178\(2\)\(d\)](#) of the Act. That subsection gives the Authority power to remove to the Court matters where it considers "*...that in all the circumstances the court should determine the matter.*"

[8]

In that regard, I have been referred to helpful dicta of Her Honour Chief

Judge Inglis in the case of *Johnston v Fletcher Construction Limited* [\[2017\] NZEmpC 270:](#)

[s.178\(2\)\(d\)](#) leaves open the possibility there will be some cases, not clearly falling within (a) – (c), which might otherwise appropriately be removed to the Court where the Authority considers it appropriate to do so. [Section 178\(2\)\(d\)](#) is to be interpreted in light of its text and its purpose. The overarching point will be whether a particular case is

best suited for resolution by the Authority's investigative processes or by the more formal adversarial processes of the Court.

[9]

This is, I fancy, just such a case where the more formal adversarial processes

of the Court will better suit the nature of the case.

Determination

[10]

Accordingly, I have decided that in the particular circumstances of this case,

the matter should be removed to the Employment Court for trial and ultimate disposition without the matter being subject to an investigation in the Employment Relations Authority.

Costs

[11]

Costs are reserved.

James Crichton

Member of the Employment Relations Authority
