

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 73/08
5115268

BETWEEN PAUL BRADFORD
 Applicant

AND TAI POUTINI POLYTECHNIC
 Respondent

Member of Authority: James Crichton

Representatives: Paul Bradford in person
 Paul Wilson for the respondent

Investigation Meeting: On the papers

Submissions received: from Applicant
 from Respondent

Determination: 23 May 2008

INTERIM DETERMINATION OF THE AUTHORITY

Introduction

[1] By statement of problem filed in the Authority on 11 March 2008, the applicant (Mr Bradford) alleged that he had a personal grievance by reason of unjustified dismissal and unjustifiable action causing him disadvantage. The respondent (the Polytechnic) deny those allegations, say that they have been dealt with in the past, and accuse Mr Bradford of being a vexatious litigant.

[2] In pursuit of his claims before the Authority, Mr Bradford advances a series of propositions which he refers to as 'Facts'. They are not 'Facts' at all in a legal sense, but rather propositions which Mr Bradford seeks to demonstrate the truth of in pursuit

of his claim. This interim determination is concerned only with two of Mr Bradford's 'Facts', namely 'Facts' 4 and 5.

[3] These 'Facts' are concerned with an allegation Mr Bradford makes of forgery of his signature in the context of student assessments. Mr Bradford complained to the New Zealand Qualifications Authority who referred the matter back to the Polytechnic and an investigation was then conducted by an independent party who found no wrongdoing and issued a report to that effect. Mr Bradford then complained that the report was paid for by the Polytechnic.

[4] Those matters were the subject of particular discussion at the telephone conference I presided over with the parties. The Polytechnic advances the view that the issues around the forgery allegation had already been properly ventilated and that it would be unhelpful for there to be further progressing of the matter at the investigation meeting when, in truth, the matter had already been disposed of.

[5] I expressed some sympathy for that view on the basis that if the matter had in fact been properly disposed of then it was irrelevant to Mr Bradford's personal grievance claim and as the competent authorities (and in particular the Police Department) were untroubled by the issue the matter should rest there.

[6] Accordingly, I indicated to the parties that I intended to deal with the forgery matter on the papers and that I would issue an interim determination on that matter alone prior to the investigation meeting, but no later than 26 May 2008.

[7] This determination then deals exclusively with the forgery allegations and the associated material brought to the Authority by Mr Bradford.

The nature of the allegation

[8] It is appropriate to set out in full Mr Bradford's allegations as they relate to the issues for decision in this determination:

Fact 4

Forging of my signature on NZQA documents and altering of my marks.

Fact 5

After I complained to NZQA of forgery NZQA requests investigation – Tai Poutini Polytechnic have investigation – who (sic) basically

condone forgery of my signature. I later find out Tai Poutini Polytechnic paid investigator. Not only is this a conflict of interest it is also unethical – leaving me shellshocked.

[9] In the statement in reply the Polytechnic makes the following response:

In respect of Fact 5: he makes claims of “forgery and assessment document tampering”. These claims have been independently investigated and dismissed as is clearly shown in his own documentation. They were the consequence of normal moderation practices which Mr Bradford clearly does not, and is unlikely ever to agree with. To attempt to claim that the fact that Tai Poutini Polytechnic paid for the independent auditor would give rise to a conflict of interest for that person and that it is unethical behaviour is completely unfounded and possibly a defamatory slur on an approved independent auditor’s reputation. This is the normal process for investigation in cases of this type and was accepted by the New Zealand Police as contradictory evidence when Mr Bradford subsequently laid similar claims with them.

Discussion

[10] The factual position is, I find, that Mr Bradford complained to NZQA in July 2007 contending that two years previously students results had been fraudulently altered by the programme coordinator (Mr Bradford’s superior at the Polytechnic) and that his signature had been forged on the assessment records.

[11] NZQA passed that complaint to the Institute for Technology and Polytechnic Quality (ITPQ) which is the body responsible for quality assurance in the polytechnic sector.

[12] ITPQ referred the matter to the Polytechnic and asked the Polytechnic to investigate and report back to ITPQ.

[13] Given the serious nature of the allegations made by Mr Bradford, an outside investigator was appointed to inquire into the allegations and he was assisted by a senior member of the Polytechnic staff. Their report issued on 10 August 2007.

[14] The report, in essence, finds no evidence of wrongdoing. The report does however find that Mr Bradford’s assessment marks were altered and that his initials had been included in the documentation where they were put, not by Mr Bradford but by his programme coordinator.

[15] It follows that Mr Bradford's complaints that his marks were altered and that his initials were included in documentation when they were not put there by him are factually accurate but the investigation report considers that there is nothing wrong with what they found. The reason for this is twofold.

[16] The first relates to the standard academic practice of moderation which the Polytechnic accuses Mr Bradford of not understanding or perhaps more accurately of wilfully misunderstanding. Moderation is that process wherein academic grades are reviewed so as to ensure propriety and in particular to remove extremes of marking. This process is absolutely standard in all academic disciplines (which includes the discipline that Mr Bradford used to teach) and there is nothing sinister or underhand about it.

[17] In the particular circumstances of this case, after the class tutor had assessed student's work, that work was subject to both external and internal moderation which, as I say, is an absolutely standard academic process. This process would have applied to other academic disciplines within the Polytechnic, to other polytechnics and of course to universities and other colleges of higher education.

[18] In relation to the particular dispute we are concerned with here, the policy of the Polytechnic is to require the programme coordinator (Mr Bradford's superior) to ratify assessment results made by tutors such as Mr Bradford. This ratification process took place after internal and external moderation and typically resulted in amendments to the assessment grades originally allocated by the tutor. Of course, not all work would be re-graded but it would be an unusual collection of class work which, after being subjected to moderation, would not result in some amendments to some gradings.

[19] As the report makes clear, typically, in most institutions, the results of this process are discussed between the tutor and the more senior academic staff member responsible for amending the assessments. However, in this particular case, Mr Bradford's relationship with his immediate superior was so *'fraught'* that no such discussion ever took place. In all the circumstances, I do not find that surprising.

[20] In relation to the inscribing by the programme coordinator of Mr Bradford's initials on the relevant documentation, again the report finds nothing improper. The programme coordinator freely acknowledged that she had added Mr Bradford's

initials but she indicated to the report writers that she had done that on the footing that those initials were simply to identify which tutor conducted the original assessment, rather than to confirm that the final mark is in fact the mark of that tutor.

[21] Mr Bradford needs to be clear that the process by which he assessed the work of his students is simply part of the assessment process and by no means all of it. The process involves him making an initial assessment, that initial assessment being moderated and then the final assessment results being ratified by the programme coordinator which may result in some changes to the original marks identified by Mr Bradford. Indeed it would be surprising if that were not the case from time to time.

[22] That is an absolutely typical academic process and it is difficult to understand why Mr Bradford should think that the rules that apply to any academic activity ought not to apply to him.

[23] The authors of the report were satisfied that there was nothing improper or sinister about what happened and that all of the outcomes were absolutely standard in a normal academic process and consistent with the usual rules that applied.

[24] That being the position, it is understandable that the Polytechnic would be frustrated that Mr Bradford raises this issue again. It has been dealt with. I am satisfied that the report commissioned as a consequence of Mr Bradford's complaint has properly dealt with the matter and that Mr Bradford has no reason to be dissatisfied with the outcome of that report nor has he any reason to perpetuate a claim that there is something wrong or sinister about what has happened.

[25] The only other matter that I need to deal with is Mr Bradford's complaint that the report writers are somehow biased because their work was paid for by the Polytechnic. Mr Bradford describes this as 'a conflict of interest' and also 'unethical'. It is neither. The Polytechnic is every bit as interested in getting to the truth of an allegation such as the one Mr Bradford made as Mr Bradford was, but like Mr Bradford, it is incumbent on the Polytechnic to accept the results of a properly constituted inquiry and move on.

[26] If that inquiry had discovered that there had, in truth, been wrongdoing then the Polytechnic would immediately have dealt with the matter and I am absolutely satisfied that it had as much interest in the outcome of the report as Mr Bradford had. Had Mr Bradford's complaints been well founded, it would have been a gross

derelection of duty for the Polytechnic not to act and there is no evidence that it would not have acted were that the situation.

[27] There is nothing improper about the Polytechnic paying for the report on the investigator. Someone has to pay for the investigator to conduct the report; the investigator is entitled to be paid and presumably Mr Bradford was in no position to contemplate paying for the report or even contributing to the payment. In my view, the Polytechnic is the logical and appropriate body to pay for this work and I do not accept for a moment that the fact that the Polytechnic has paid for the report somehow invalidates its conclusion.

Determination

[28] I am absolutely satisfied that the issue raised under the broad heading of forgery by Mr Bradford is not a matter which I wish to hear anything more about at the investigation meeting scheduled for Greymouth on 12 June 2008.

[29] I am completely satisfied that the report issued on 10 August 2007 (almost a year ago now) deals with Mr Bradford's allegation completely and that there is nothing improper either in the adjustment of marks by way of the moderation process or by the appending of his initials to the assessment material. I am also satisfied that it was perfectly appropriate for the Polytechnic to pay the report writer for his work.

[30] I direct then that the personal grievance hearing on the 12th of June 2008 is to exclude all reference to the matters referred to in Mr Bradford's 'Fact 4' and 'Fact 5' of his statement of problem. I will hear no evidence on those matters. They are concluded.

Costs

[31] Costs will be dealt with by the Authority with the issue of the substantive determination.

James Crichton
Member of the Employment Relations Authority