

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

Determination Number: AA 244/07
File Number: 5047144

BETWEEN ROSALIND EVA BRIDGE
Applicant

AND WAIRAU INTERMEDIATE
SCHOOL
Respondent

Member of Authority: Janet Scott

Representatives: Glenn Finnigan, Counsel for Applicant
Paul Robertson, Counsel for Respondent

Investigation Meeting: 30 April and 5 June 2007 at Auckland

Submissions received: 20 June & 25 July 2007 from Applicant
18 July from Respondent

Determination: 13 August 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant submits she has a personal grievance either for unjustified constructive dismissal or for unjustified disadvantage in terms of s.103 (1) (b) of the Employment Relations Act 2000. To remedy her alleged grievance(s), the applicant seeks lost remuneration and compensation pursuant to s.123 (1) (c) (i) of the Act.

[2] The respondent submits that it took all appropriate steps to resolve issues relating to the applicant's request for 12 months' leave without pay. It denies constructively dismissing the applicant or causing her unjustified disadvantage. The respondent has and continues to consider the applicant to be an employee of the school and on leave without pay.

Background

[3] At the time of the events in question, Mrs Bridge was an ESOL teacher at Wairau Intermediate. She had been employed in the role for approximately 10 years.

[4] In 2003, Mrs Bridge and her husband purchased a rural property intending to operate it as a lifestyle business on a part-time basis, primarily as a venue for weddings. Shortly purchasing the property, Mrs Bridge's husband died. It was Mrs Bridge's evidence that initially she was grief-stricken and unable to decide what to do with the property. In the end, however, she decided that rather than sell the property, she would try and get the business up and running first and, with the help of her children, she did this in her spare time.

[5] At that stage, Mrs Bridge was teaching at Wairau Intermediate School full time. However, in 2004, with the commitments and extra work from the business increasing, she arranged with Mr Murray (the school's Principal) that she would reduce her hours down to three days per week. Mrs Bridge still found it to be extremely challenging, operating the business and teaching, even though she had reduced her hours and towards the end of 2005, she realised that doing both teaching and running the business was too much. She found she was working seven days a week and up to 80 hours a week. She felt overworked and constantly exhausted. She described to the Authority that there were occasions when she fell asleep while driving the car.

[6] With Mr Murray's approval Mrs Bridge started working two days a week. However, even at two days a week, she found she was feeling stressed and exhausted and towards the end of 2005 early 2006 she decided it was time to sell the business. However, it was important to her to keep the business operating well in order for it to be attractive to buyers. She also wanted to retain her job.

[7] Towards the end of Term 1 in 2006, Mrs Bridge went to see Mr Murray and told him how unwell she was feeling. She told him she was trying to sell the business and that she felt so burnt out she really needed leave until the end of the term. Mr Murray supported an application to the Board by Mrs Bridge requesting leave without pay (LWOP). That request was approved and Mrs Bridge took the last few weeks leading to the Term 1 holiday break as LWOP. At this time Mr Murray asked Mrs Bridge to

think about the situation and let him know what she wanted to do before the commencement of the next term.

[8] Over that break, Mrs Bridge decided it would be best to ask the Board for a year's leave of absence to enable her to regain her health and concentrate on selling the business. It was Mrs Bridge's evidence that she was reasonably confident that the Board would grant the leave and it seemed to her that the short period of leave she had been granted prior to the end of the first term in 2006 had not appeared to cause any disruption.

[9] On Friday, 28 April 2006, Mrs Bridge telephoned the school to speak to Mr Murray. She had incorrectly assumed this was the last day of the school holidays. In fact, the school had resumed on Wednesday, 26 April which was her only teaching day for that week. The purpose of Mrs Bridge's call was to let Mr Murray know that she would be returning to school on 1 May but also to let him know that she had decided to ask the Board of Trustees for a year's LWOP in order to reorganise her life and see the business through to a sale.

[10] Mrs Bridge was surprised when she rang the school that day to find out that school had already started. She was advised that Mr Murray was away from school following an accident and she was put through to Marguerite Hegan, the Deputy Principal, who was Acting Principal in Mr Murray's absence.

[11] There are significant disputes between the parties as to the tone and content of the discussions between Ms Hegan and Mrs Bridge that day. However, it is not in dispute that the two women discussed the matter of Mrs Bridge applying for a year's leave without pay. Ms Hegan advised that Mrs Bridge would need to make her application to the Board and that the next Board meeting was on 16 May. The conversation concluded that day on the understanding that Ms Hegan would arrange for a reliever to cover for Mrs Bridge pending the consideration by the Board of Mrs Bridge's application for leave.

[12] Following this conversation, Mrs Bridge 'stewed' (her word) on the fact that she would not be able to meet with students and staff to wish them farewell if she did not come to work in the intervening period and she later rang the school to discuss this concern. As it happened, no reliever had been arranged for Monday, 1 May and it was agreed that Mrs Bridge would come to school that day.

[13] On Monday, 1 May 2006, Mrs Bridge came to school, brought presents for some of her students and put on a morning tea for staff. It does not seem to be in dispute that Mrs Bridge announced to staff at that morning tea that she intended to seek LWOP and neither is it in dispute that Ms Hegan stated that relieving opportunities might arise for Mrs Bridge during that period.

[14] There is, however, significant dispute between Mrs Bridge and Ms Hegan relating to other important matters that arose that day. It is Mrs Bridge's evidence that after she had clearly stated her intention to seek leave without pay, Ms Hegan had come into her class between 1.30pm and 2pm that afternoon and in front of her pupils said to Mrs Bridge "*Ros I need your resignation*". Mrs Bridge was puzzled, concerned and embarrassed by this request and it is her evidence that she reiterated to Ms Hegan what she had said to her before, that she was going to ask the Board for leave of absence.

[15] Ms Hegan's evidence is that on 1 May she fielded many questions from staff relating to Mrs Bridge's intentions and she decided it was important to get clarification. It is Ms Hegan's evidence that Mrs Bridge popped into her office briefly and she asked her what was happening and what her intentions were. (Mrs Bridge denies going to Ms Hegan's office that day and Mrs Hegan accepted in her oral evidence that this conversation may have taken place elsewhere). However Mrs Hegan is clear she did speak to Mrs Bridge at some time that day hoping to clarify her intentions but Mrs Bridge was unable to give her an answer. Ms Hegan accepts that she regularly tours the school, popping into classes to see how lessons are progressing, and she did pop into Mrs Bridge's classroom that day. It was her evidence that when she went into the classroom, Mrs Bridge was not there but was outside sitting on the grass with children from her class. She had a basket with her. The only teacher in the classroom at that time told Ms Hegan that Mrs Bridge was out saying goodbye to students. Ms Hegan decided she did not want to intrude so she did not go over to where Mrs Bridge was sitting. It is Ms Hegan's evidence that at no time during this visit did she talk to Mrs Bridge and she never requested her resignation.

[16] I accept that on 1 May there was some confusion within the school as to Mrs Bridge's exact intentions and that in all probability Ms Hegan did ask Mrs Bridge to clarify her intentions. That this is the case, would seem to be supported by the fact

that, before she left the school that day, around 4pm, Mrs Bridge dropped a letter into Ms Hegan's pigeonhole which clearly clarified her intentions.

[17] In that letter, Mrs Bridge communicated clearly that she did not wish to tender her resignation from her position as teacher of ESOL at Wairau Intermediate and that she would instead apply for long term LWOP for a period of one year. She advised she would make this application in writing to the Board of Trustees and would commence leave from her position as suggested by Ms Hegan from 2 May 2006.

[18] Later that day Mrs Bridge went to hospital to see the Principal, Mr Murray. During that visit, she informed him of her intention to apply for extended leave to give her a breather while she sold the business. It is Mrs Bridge's evidence that Mr Murray told her that he was sure the Board would look upon her application with favour.

[19] Mr Murray's evidence on this point is that he had had a serious accident and he was extremely unwell and receiving regular doses of morphine for pain relief at the time. He did recall Mrs Bridge visiting. She brought some leftovers from her morning tea and commented that she had shouted morning tea at the school because it was her last day and she would be applying for one year's leave without pay. It is Mr Murray's evidence that he told her the request for leave was a matter for the Board. He had no recollection of saying to Mrs Bridge that the Board would look favourably on her application and he said it was extremely unlikely he would have said anything to her to support her proposal. He elaborated on this.

[20] He said the Board had considered several such applications over the years. Leave without pay for this period of time has only been granted where the teacher has taken a sabbatical for the purpose of completing an educational course that would serve the interests of the school or when a teacher has been granted stress leave. He said at the time he had significant reservations with respect to Mrs Bridge's application and the impact it would have on the ESOL Department at the school. He was concerned about the continuity of teaching and the impact it would have on the implementation and continued success of the programme. The programme was about to embark on some significant changes and they had been discussed with all teachers, including Mrs Bridge. Two of the other teachers had accepted the opportunity to undertake further training and up skill because of the intended changes. Mrs Bridge had, however, elected not to undertake the training. However, he wanted her to be

part of the new programme and considered that her participation during its inaugural year was important.

[21] Mr Murray had discussed these concerns with Ms Hegan when she advised him of Mrs Bridge's intention to seek LWOP (she visited him on 30 April). He asked her to relay his thoughts and concerns to the members of the Board so they could consider them when assessing Mrs Bridge's application.

[22] On 16 May 2006, the Board of Trustees considered Mrs Bridge's application for leave without pay. However, the request was declined. On 18 May, John Lister, the Chairman of the Wairau Intermediate School Board of Trustees, wrote to Mrs Bridge advising her that her request for leave had been declined. He concluded:

"We understand you are currently employed .4 as a teacher in ESOL. Can you please confirm your plans now with regard to this teaching position? On receipt of this letter, please phone Marguerite Hegan (as Acting Principal) urgently to discuss this".

[23] Unfortunately, Mrs Bridge did not contact Ms Hegan following receipt of this letter.

[24] Having heard nothing from Mrs Bridge in response to the Board's letter Ms Hegan telephoned Mrs Bridge herself. This was around the 3rd of June. It was her evidence that she was not looking forward to making this call because she knew Mrs Bridge would be disappointed and she was conscious that there had been a total silence from Mrs Bridge following the Board's letter of 18 May.

[25] Ms Hegan said she took the opportunity to contact Mrs Bridge regarding a need to provide a relief teacher to replace an ESOL teacher who was attending a course. She felt it was a positive way to lead into inquiring of Mrs Bridge what her intentions were following the receipt of the Board's letter. Mrs Bridge was not home when she made that initial contact and she left a message asking Mrs Bridge if she could undertake some relief teaching and asked her if she had received the Board's letter.

[26] It was Ms Hegan's evidence that Mrs Bridge phoned on 6 June in response to the message that had been left for her. Ms Hegan's evidence was she asked Mrs Bridge if she had received the Board's letter and what her response was to it. There was silence from Mrs Bridge. Ms Hegan said she asked Mrs Bridge if she

would be coming back and Mrs Bridge responded that she was happy the way things were.

[27] Mrs Bridge did agree to undertake the relief teaching on 13 June. She came in that day but Ms Hegan did not speak to her about her ongoing intentions. She now realises that she should have confronted Mrs Bridge on the subject.

[28] It was Mrs Bridge's evidence that for her request for leave to have been turned down her position must have been misrepresented at the Board meeting of 16 May and she felt that she wanted to have her application reconsidered in greater depth so she prepared a new letter for the Board (dated 29 May). In that letter, she requested, in good faith, that the Board give a valid reason for declining her request. She also requested that the Board review its decision to decline her application for leave without pay. In support that she set out detailed reasons for the request for extended leave and reminded the Board of her long service and her contribution to ESOL learning at Wairau Intermediate. Her letter is dated 29 May 2006, but the evidence suggests that that letter was not received by the Board until approximately 9 June 2006.

[29] Around this time (the evidence suggests it was the 7th or 8th of June Mrs Hegan had a conversation with a payroll officer at Multiserve – an organisation contracted to provide payroll services to schools. This discussion led Mrs Hegan to conclude that Mrs Bridge had left her employment and she advised this to Multiserve via an authorised email in the name of Grant Murray, the Principal. He was recognised by Multiserve as authorised source of payroll instructions for Wairau Intermediate. This email was sent on the 8th of June. The email resulted in Multiserve preparing and paying Mrs Bridge her final pay and she received notification of this.

[30] Having communicated to Multiserve that Mrs Bridge had left her employment, Mrs Hegan reflected on this advice and decided that she should have clarified Mrs Bridge's intentions with more certainty and she decided to rescind the instruction she had given Multiserve. She also became aware at this time that Mrs Bridge was resubmitting her application for LWOP asking for it to be reconsidered.

[31] Mrs Hegan emailed Multiserve on 9 June to rescind her previous instruction. Unfortunately she did two things wrong in sending this electronic communication. First she sent it in her own name. However, instructions to Multiserve on payroll

matters are required to come from authorised sources. If an email instruction comes from an unauthorised source then a reply email is sent back notifying this. Multiserve simply does not action instructions from unauthorised sources. The second mistake Mrs Hegan made was to send the email to the wrong email address via the easy trap posed by a number of addresses which popped up on the addressee menu as soon as the word 'pay' was entered. Mrs Hegan ended up entering the wrong address for the email communication which rescinded her earlier instruction to Multiserve that Mrs Bridge had left her employment. Because the instruction went to the wrong address there was no email from Multiserve to Mrs Hegan to alert her to the fact that it had been sent to an unauthorised source.

[32] The end result was that Mrs Bridge was paid out her final pay including holiday pay. This was picked up by her representative when discussions were held with him prior to the meeting held on 19 July (see paras 54 to 63).

[33] In the intervening period i.e. from the time that Mrs Bridge received the Board's letter of 18 May and the date when her application was reconsidered Mrs Bridge remained away from work. She said that she did not return to work in the interim period (other than for the relief work she undertook on 13 June) because the Board's letter of 18 May did not advise her that she was to return to work and neither had Ms Hegan told her that when she spoke to her on 6 June. It was Mrs Bridge's evidence that, as a result of this, she assumed the leave that had been granted to her by Ms Hegan during their telephone conversation on 28 May was open ended.

[34] The Board, however, was becoming increasingly concerned about Mrs Bridge's ongoing absence from her employment and on 15 June Jenny Goldsmith (the secretary of the Board of Trustees) wrote to Mrs Bridge. She had taken instructions from the School Trustees' Association (STA) regarding the Board's concerns about Mrs Bridge's absence and Mr Parkinson of STA had advised the Board that it should seek a face-to-face meeting with Mrs Bridge to clarify her intentions regarding her employment.

[35] In the letter to Mrs Bridge dated 15 June 2006, Mrs Goldsmith reiterated to Mrs Bridge that the Board had considered her request for leave without pay for one year but had been unable to approve that leave. She went on to state:

"As we have received no further clarification from you as to your current employment status, we are needing to urgently meet with you to discuss this in

person. We have arranged a meeting for Thursday 22 June at 2pm at Wairau Intermediate. It will be held in the principal's office. Please confirm your attendance by phoning school. This meeting is a priority as there seems to be some confusion as to your current teaching role with the school.

We will have the support of Wayne Parkinson NZSTA adviser. We encourage you to seek advice and remind you of your right to representation at any stage.

[36] It was Mrs Bridge's evidence that there should have been no confusion with regard to the basis on which she was away from school and she considered that had Ms Hegan properly informed the Board that she was on open-ended leave until her request for leave without pay had been reconsidered then there would have been no confusion at all.

[37] In the event, Mrs Bridge rang Ms Hegan on 20 June to advise that she was unable to make the meeting time mentioned in the school's letter. This was because her partner (Mr Lindop) had been scheduled for major heart surgery on 16 June and the meeting day was the day after she was due to pick him up from hospital. She explained that he had had a six-way bypass operation and someone was expected to remain with him at all times on his release from hospital, at least in the initial stages of his recovery. It was also Mrs Bridge's position that she had not had sufficient notice of the meeting to seek advice or obtain representation as the Board had suggested she should consider doing.

[38] Ms Hegan's reported this orally to Ms Goldsmith although it seems the severity of Mr Lindop's operation may have been lost in the telling. She also emailed Mr Lister that day.

"Hi John

I had a bizarre conversation with Ros, in which she said she could not attend the meeting set up for Thursday and that things are fine as they are with relievers working her days until she needs to come back!!!

We need to settle this pronto!! I will contact Jenny G this afternoon when she is home.

Cheers, Marguerite"

[39] Following her conversation with Ms Hegan on 20 June, Mrs Bridge followed that up with a letter to the Board's secretary dated 21 June.

[40] This letter is notable for an emerging sense of grievance on Mrs Bridge's part. Mrs Bridge made a number of points:

- She was happy to attend a meeting if necessary but was unable to attend the meeting proposed for 22 June because by the time she received it she only had two days to seek advice and find a representative and this was an unreasonably short time to accomplish this;
- Her partner had undergone open heart surgery five days ago and was to be discharged on 21 June and she was expected to be available for at least the first week. Mrs Bridge had spoken to Ms Hegan, Acting Principal, on 20 June giving her apologies and Ms Hegan had promised to relay this to the Board;
- If the reason for the meeting was a perceived confusion regarding her employment status, she was mystified as to why this was so and a few words with Ms Hegan would have clarified the situation readily;
- Mrs Bridge advised she had not resigned her position and Ms Hegan had told her at the beginning of the term not to return to her job and that the school would cover any absence with a reliever if necessary. In Mrs Bridge's view she had been suspended from her employment ever since;
- It was Mrs Bridge's view that the two ESOL teachers had been happy to take another day each and there had been no need for a reliever and as far as she was concerned the status quo remained;
- She had provided relief duties at the school in the interim;
- She had been approached by Ms Hegan on 1 May and asked to tender her resignation. She declined this by letter stating she would not be resigning but would be seeking leave of absence from the Board. She noted the request for resignation might be construed as amounting to a constructive dismissal;

- Mrs Bridge wondered whether her letter of 29 May 2006 had been read (that is, the letter asking the Board to reconsider her application for leave without pay);
- Mrs Bridge considered it reasonable for her employer to answer questions asked in good faith. She had asked for a reasonable explanation as to why the Board had a different view from that of the Principal who had given provisional approval regarding her request for a year's leave and as an employee of long standing at the school she expected to be given a fair and legitimate reason for the decision. She noted she could think of no valid professional or administrative reason for her application being declined. She asked the Board to confirm that her request for leave without pay had been reconsidered;
- Mrs Bridge advised that if leave without pay was not granted, in order to protect her job she would have no alternative but to return to work.

[41] Mrs Bridge concluded her letter as follows:

“The Board will be aware that current employment legislation puts a heavy responsibility onto an employer to conduct its affairs with all its employees in good faith. This requires visibility, transparency and objectivity in all matters, especially in a publicly funded organisation such as ours.

I do not believe that my application for leave has received fair consideration in any of these three areas.....

I therefore do not believe that an acceptable standard of good faith has necessarily been achieved in my case.

Because of these concerns I am forwarding a copy of this letter to the Education Review Office for their comment.

I look forward to the full Board of Trustees favourable reconsideration of my application”.

[42] Ms Goldsmith wrote to Mrs Bridge on 22 June. This letter was a response to Ms Hegan's oral communications regarding her discussion with Mrs Bridge on 20 June.

[43] That letter read:

“Dear Rosalind,

“Further to our letter dated 15 June 2006 requesting your attendance at a meeting with us on Thursday, 22 June 2006 to discuss your current employment status. We find your reason for not accepting unacceptable and unreasonable. As per our two previous letters to you and with regard to your request for a year’s leave of absence the Board considered your request and were not able to approve this leave. We therefore urgently need to meet with you to discuss your current teaching role with the school.

In meeting our responsibility as a good employer, we have obligations to all the staff and pupils at Wairau Intermediate. In the current situation we find ourselves in forward planning, certainty of staffing positions, continuity of teaching staff for pupils has been compromised.”

[44] Mrs Goldsmith went on to nominate another meeting time for Thursday, 29 June. Mrs Bridge was advised to consider this request for a meeting a reasonable instruction and advised that *“if you again fail to attend the meeting or not provide sufficient reasons for non-attendance we will be compelled to consider our options in your absence”*. Mrs Bridge was advised of her right to representation and advised that the Board would be assisted by Wayne Parkinson of STA.

[45] It was Mrs Bridge’s evidence that when she received this letter she got very, very upset. Her partner had just undergone a six-way bypass and she found the Board’s statement that the Board found the reasons for not attending the planned meeting on 22 June to be unacceptable and unreasonable and absolutely callous.

[46] I reiterate that the Board’s letter dated 22 June was not written to Ms Bridge in response to her letter of 21 June where she had set out the matter of her partner’s bypass and her need to remain at his side but had been written in response to the information provided by Ms Hegan to Mrs Goldsmith on 20 June where the seriousness of Mr Lindop’s operation was either not explained by Ms Hegan or not noted by Ms Goldsmith.

[47] Following receipt of Ms Goldsmith’s letter Mrs Bridge wrote to the Board to advise that she was unable to attend a meeting on the new date set (29 June) as she had a longstanding dental appointment for this time and she told the Board they were welcome to check this out and gave the name of the dentist with whom she had the appointment. She also advised she was leaving for Wellington on the following

morning and would not be available until the following Friday, 7 July but was prepared to meet with the Board at 2pm that day if it was suitable.

[48] Mrs Bridge advised that the words “*unacceptable and unreasonable*” made regarding her reasons for not attending the last meeting were objectionable and disrespectful and showed a complete lack of understanding as well as being unreasonable. She also advised that she could ill afford to be wasting all this time on this matter as she had asked for leave in order to gain more precious time and what should have been a simple matter could have been concluded easily with a gracious generosity of spirit.

[49] Mrs Bridge reminded the Board that she still awaited the full Board reconsideration of her application for LWOP.

[50] In the event, the date suggested for a meeting by Mrs Bridge (7 July) was not suitable to Board members. On 29 June 2006, Mrs Goldsmith wrote to Mrs Bridge once more.

[51] Among other things, she advised that Mrs Bridge’s request for leave had been reconsidered at the June meeting of the Board of Trustees and their original decision stood - the Board was not able to approve her LWOP

[52] Mrs Goldsmith went on to reiterate that the Board needed to meet with her urgently to discuss her current employment status; the date of 7 June was unsuitable for the Board of Trustees and two further options were suggested for a meeting with the Board being Monday, 17 July at 2pm or Wednesday, 19 July at 10.30am. Mrs Bridge was asked to confirm which of these dates was suitable for her.

[53] Mrs Bridge confirmed through her adviser, James Down, that she would be available for a meeting on 19 July. In her oral evidence, Mrs Bridge said she had been very clear about setting out her problems to the Board but she had been subject to escalating threats and had been told that her reasons for not attending one meeting set were unacceptable and unreasonable. She asked what more sufficient reason could there be. She said she was very, very upset and she felt she could not show her face at the school again. She had built up a very big department and should have been treated with more loyalty and respect. It was her evidence that by the time she went to the meeting on 19 July; she knew she could not return to the workplace.

[54] The parties met on 19 July as planned. Present for the Board were Mrs Goldsmith, Mr Lister and Wayne Parkinson from STA. Also present was Ms Hegan. Mrs Bridge was accompanied by her partner, Bob Lindop, and James Down, her representative.

[55] It was Mr Lister's evidence that the intended purpose of the meeting was to discuss with Mrs Bridge her intentions, given her application for leave had been declined. He and the other Board members were seeking clarification on whether Mrs Bridge intended returning to teaching or intended to pursue her career in wedding planning. The meeting had not been convened to revisit the Board's refusal to allow Mrs Bridge to take LWOP.

[56] Mr Parkinson spoke on behalf of the Board and opened the meeting by outlining the issues from the Board's perspective, that is, the Board needed to know Mrs Bridge's intention regarding her current employment.

[57] Before responding to this, Mrs Bridge's advocate, Mr James Down, sought some clarification. He advised that Mrs Bridge had received a pay slip that suggested her employment had been terminated. This was the first time the Board had been made aware of this problem. Ms Hegan advised there had been a mistake but that at that time neither she nor any of the Board members were able to explain this mistake. Mr Parkinson advised Mrs Bridge and her advisers that a mistake had been made and that as far as the Board was concerned Mrs Bridge was still employed in her position as a teacher at the school. It was the Board's evidence that Mr Parkinson apologised for the error and that Mr Down accepted the apology. The meeting continued with Mr Parkinson asking Mr Down what outcome Mrs Bridge wanted from the meeting.

[58] At this point, the meeting was adjourned while Mrs Bridge and her advocate and support person discussed the matter. Following the adjournment, Mr Down confirmed to the Board's representatives that Mrs Bridge did not want to return to the school and was seeking a sum of \$4,500 in compensation. This sum included payment of wages for the period 28 April to 24 June 2006 when Mrs Bridge had not been at work.

[59] It was in the Board's evidence that, in the interests of settling the matter, it made an offer of \$2,200 being an approximate payment for wages not received during the period Mrs Bridge had not worked. This offer was rejected by Mrs Bridge. However,

following discussions, the Board increased the offer to \$3,400. Mrs Bridge did not accept this offer.

[60] Following this, there was discussion between the parties and agreement that the matter would be sent to mediation. The Board submits it was agreed that Mrs Bridge would remain on leave without pay until the matter had been concluded.

[61] It was Mrs Bridge's evidence that when the matter of her final pay was raised by Mr Down, that Mr Parkinson had advised for the Board that this was not a matter of which the Board was aware and if such a letter had been sent out, it was a result of a clerical error. It was Mrs Bridge's evidence that Mr Down asked for that error to be explained but that Mr Parkinson had refused to do so. Mrs Bridge said she found it incredible that the Board, through its representative, could not explain how she had received a document that was consistent with her job being terminated. They could not explain what kind of mistake had been made or how it could be made. Mrs Bridge and, Mr Downs and Mr Lindop all deny in their evidence that an apology was received from the Board regarding this "mistake".

[62] Mrs Bridge explained that during her adjournment with Mr Downs, she felt she had been treated with callous disregard, particularly by Ms Hegan who she believed had been attempting to engineer her departure from the school. She also considered that, despite Mr Parkinson saying that her job was still available, it was obvious to her that steps had been taken that were consistent only with terminating her employment and the Board had refused to explain how that mistake had come to be made and this further undermined her trust and confidence in the Board as her employer. She was extremely unhappy and she agreed, after discussions with Mr Downs, that the employment relationship had broken down and she could not return to work. To resolve the situation, she was happy for him to discuss a settlement.

[63] When the meeting resumed, Mr Downs reported that because the employment relationship had broken down, Mrs Bridge would be prepared to negotiate a settlement. Without discussing the matter or deferring to the Principal, Mr Parkinson seized on the opportunity to discuss this. There was a brief adjournment and the Board responded to her claim with the offer of \$2,500 and a reference. Mrs Bridge rejected this offer and after a counteroffer she made was rejected by the Board, all parties agreed to attend to mediation to try and resolve the matter.

[64] The matter was not resolved in mediation and hence Mrs Bridge has filed these proceedings.

Issues to Be Determined

[65] The issues to be decided here are:

- Was Mrs Bridge constructively dismissed from her employment?
- In the alternative did Mrs Bridge suffer disadvantage in her employment?
- If the answer to either of the above questions is 'yes' what remedies should be awarded to Mrs Bridge?

Case law

[66] The case law on constructive dismissal is well known. For the sake of certainty I set out that law as summarised by his honour Travis J in *Jeffries v Adis International Ltd* AC 69/06.

“There was no real issue between the parties as to the legal principles to be applied. Counsel referred to Auckland etc Shop etc Employees IUOW v Woolworths [1985] ACJ 963; ERNZ Sel Cas 136 where the Court of Appeal held that constructive dismissal includes, but is not limited to, cases where:

a) an employer gives an employee a choice between resigning or being dismissed;

b) an employer has followed a course of conduct with the deliberate and dominant purpose of coercing an employee to resign;

c) there has been a breach of duty by the employer which causes the employee to resign.

Where the last category is relied on as it was in the present case, the Court of Appeal in Auckland Electric Power Board v Auckland Provincial District Local Authorities Offices IUOW Inc [1994] 1 ERNZ 168, said at 172:

In such a case as this we consider that the first relevant question is whether the resignation has been caused by a breach of duty on the part of the employer. To determine that question all the circumstances of the resignation have to be examined, not merely of course the terms of the notice or other communication whereby the employee has tendered the resignation. If that question of causation is answered in the affirmative, the next question is whether the breach of duty by the employer was of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing: in other words, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach.

*Mr Ryan referred to the comment by Chief Judge Goddard in *Taranaki Healthcare Ltd v Lloyd* [2001] 1 ERNZ 546, on the difficulty of applying a reasonable foreseeability test and the experience in the employment jurisdiction showed that it was unsafe to reach decisions on a construction of the language used by the departing upset employee when resigning, because the language may not express all the reasons for the departure and may express none of them. It is also clear that it is not necessary that the employer intended any repudiation of the contract. Constructive dismissal cases often involve a series of events over a period of time and no single event may be sufficiently serious as to enable the employee to treat the contract as repudiated but the cumulative effect may reach that point, see *Commerer v Red Eagle Corporation Ltd* unreported, Goddard CJ, 18 May 2000, WC 29/00.*

The resolution of the issues in this case against the background of the accepted legal principles will turn on the factual findings”.

[67] On the matter of Mrs Bridge’s claim in the alternative that she suffered an unjustified disadvantage in her employment the test for assessing the respondent’s actions is that set out in S.103 A of the Act.

103A Test of justification

For the purposes of section 103(1) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.

[68] In determining this matter I must make an objective assessment of the employer's actions and weigh those actions against those of *a fair and reasonable employer ...in all the circumstances ...at the time....*

Discussion & Findings**Credibility**

[69] Mrs Bridge sincerely believes her evidence. However, the perceptions which underpin her sense of grievance are founded on very shaky soil. Nowhere is this more clear than in Mrs Bridge's conviction that she was *entitled* to LWOP because she was finding it impossible to both run her wedding business and to teach and that given her excellent track record with the school that it must follow that she would be granted leave without pay for an extended period. Mrs Bridge did not take steps to acquaint herself with the school's policy regarding the granting of LWOP and when that leave was declined she decided her position must have been misrepresented to the Board of Trustees because she could not think of any administrative or other reason for the leave to be declined particularly given that the other ESOL teachers were providing the cover without the need to hire a relief teacher. Mrs Bridge's perception was a shallow one and had no regard for the wider issues involved in a Board deciding whether such a request could be accommodated.

[70] Mrs Bridge's developed a sense of grievance from the time her request for leave was declined. That is reflected in the letter she wrote to the Board on 21 June (prior to the receipt by her of the Ms Goldsmith's letter of 22 June which served to upset her further). I find that Mrs Bridge's entrenched sense of grievance has coloured her evidence and generally speaking I am sceptical of her evidence where it contradicts the evidence given by the Board's witnesses whom I found to be transparent and ready to admit to a number of mistakes made on their part.

[71] In particular I do not accept that:

- Mr Murray told Mrs Bridge on 1 May that he was sure the Board would look favourably on her request for 12 LWOP. Mr Murray was in hospital at the time he was alleged to have said this and on regular doses of morphine. Nevertheless he had been advised by Mrs Hegan that Mrs Bridge was applying for a lengthy period of LWOP and he had expressed his concerns to her regarding this request. It is my assessment of Mr Murray that he is not a person who would relay concerns about a request like this on the one hand and on the other give comfort to Mrs Bridge that her request would surely be viewed favourably. I find that at best he told Mrs Bridge it was a matter for the Board to decide.
- I do not accept that Mrs Hegan asked for Mrs Bridge's resignation on 1 May. I accept there was a conversation between the two women that day amidst swirling gossip around the staff room regarding Mrs Bridge's intentions. Mrs Bridge might have been clear regarding her intention to seek LWOP and I accept she stated that intention at morning tea but I find the gossip machine was presenting a confusing picture among staff which was relayed to Mrs Hegan. I find that at some stage during the day Mrs Hegan asked Mrs Bridge if she was applying for LWOP or resigning her employment. Mrs Bridge decided to clarify the situation in a note to Mrs Hegan left in Mrs Hegan's pigeonhole prior to her departure from the school at the end of the day (May 1).

Findings

[72] I find that Mrs Hegan was thrown into the role of Principal without warning or preparation when Mr Murry suffered a serious accident. At the same time she continued to undertake the role of two Deputy Principals. She was very, very busy and faced difficulties in managing electronic communications working on one computer in both her own name as Deputy Principal and in Mr Murray's name as Acting Principal. This problem was compounded by the fact that she had little or no experience in managing payroll issues. The pressures on Mrs Hegan at this time are relevant to setting the context against which events unfolded.

[73] I find that Mrs Bridge was a competent professional but that she was genuinely exhausted by the burden of running her business and teaching at Wairau Intermediate. From 2004 she gradually reduced her teaching hours from fulltime to 3 days per week to 2 days per week in an attempt to deal with the situation. Even 2 days per week became too much and she sought LWOP towards the end of Term 1 to assist her to cope. Mr Murray advised her it would be a matter for the Board to decide. He also asked her to give serious thought to her future and to decide whether she wanted to run a business or teach. He asked her to contact him well before the commencement of Term 2 so that he had time to arrange cover if Mrs Bridge decided to give up the teaching role.

[74] Mrs Bridge's application for leave was approved. However, she did not contact Mr Murray as requested well before the commencement of Term 2 and in fact she overlooked the date for the start of that term and did not turn up for the first day back at school on 26 April. I accept this was a mistake on Mrs Bridge's part. I have no doubt the earlier than expected commencement date for the term was fully discussed and communicated to staff but given Mrs Bridge's state of exhaustion I accept she simply forgot and that she was genuinely sorry when her mistake was made known to her.

[75] However, I do find that when she spoke to Mrs Hegan on 28 April Mrs Bridge was still daunted by the prospect of both teaching and running her business. Her communications to Mrs Hegan that day were infused with the dilemma she faced. However, she had come to a decision of sorts – to apply for a lengthy period of leave to enable her to deal with the proposed sale of her business while leaving the option open of returning to the school in the future if she decided that was what she wanted to do. It may well have been the case that Mrs Bridge was prepared to continue with her teaching until the Board decided her application for LWOP. However, Mrs Hegan in trying to ascertain Mrs Bridge's immediate and medium term wishes asked her "what she really wanted to do". Mrs Bridge replied that time off till the Board made its decision would be helpful. Mrs Hegan responded to this suggestion positively saying that she would arrange cover for Mrs Bridge's classes and advised that the next Board meeting was set for 16 May and Mrs Bridge should get her application to the Board in order for it to be considered at that meeting. Mrs Hegan was nothing but considerate and helpful towards Mrs Bridge during their conversation on 28 April.

[76] However, having accepted Mrs Hegan's offer to arrange cover Mrs Bridge dwelt on the fact that not returning to the school would mean she could not say goodbye to students and staff. She rang the school to explain this to Mrs Hegan who saw her point of view and communicated that Mrs Bridge was welcome to come to work on the Monday.

[77] I find, as noted, Mrs Hegan did not ask for Mrs Bridge's resignation on Monday 1 May. Mrs Bridge's evidence relies on a distorted view derived from Mrs Hegan's quite proper request – given the confusing picture generated through the gossip machine at the school - for clarification from her as to whether she was applying for LWOP or resigning.

[78] The Board did not approve Mrs Bridge's request for 12 months LWOP when it met on 16 May. I am satisfied that Mrs Hegan - given she believed she was sitting in Mr Murray's seat for a limited time only - restricted her comments on the request to relaying Mr Murray's concerns to the Board. I also find the Board considered the request having regard to both Mrs Bridge's needs and the interests of the school and in accordance with its own leave policies. While the reason for the leave sought is a relevant criterion the majority of the criteria relate to the school's interests. The Board was entitled to arrive at the decision it did.

[79] The Board wrote to Mrs Hegan on 18 May declining her request for LWOP and asking her to contact Mrs Hegan to clarify her plans. Mrs Bridge did not return to work. Neither did she contact Mrs Hegan to clarify her intentions. She decided that her position must have been misrepresented to the Board and decided to reapply for the leave setting out the reasons for her request and reminding the Board of her long and valuable service to the school. I find without a shadow doubt Mrs Bridge had a duty from time of the receipt of the Board's letter to her dated 18 May to either return to school or to clarify her intentions to Mrs Hegan in line with the Board's request to her. She did neither. Her failure to return to work at that time or to least to comply with the Board's request that she clarify her position amounted to a breach of her contractual duties and her obligation to act in good faith in her dealings with her employer.

[80] After approximately two weeks with no word from Mrs Bridge, Mrs Hegan rang her and left a message. Mrs Hegan was reluctant to press Mrs Bridge regarding her intentions because she knew Mrs Bridge would be disappointed with the outcome of her request. She decided to approach the matter cautiously by first raising with Mrs Bridge the possibility of her doing relieving work on 13th June. This was a mistake on Mrs Hegan's part because it sent a mixed message to Mrs Bridge who "assumed" that the status quo remained and that she was "on open ended leave". This conclusion was inconsistent with the Board's decision to decline Mrs Bridge's application for leave. Nevertheless the issue of relieving gave substance to the belief Mrs Bridge formed i.e. that she was entitled to remain on "open ended leave".

[81] I accept that Mrs Hegan did ask Mrs Bridge what her intentions were given the Board had declined her request. I find that Mrs Bridge did advise she was "happy with the way things were". This thinking is clearly repeated in Mrs Bridge's letter to the Board dated 21 June.

*"As it happens the two other part time ESOL teachers have been happy to take on another day each, and there has been no need for a reliever. **So as far as I am concerned the status quo remains**". (Emphasis mine).*

[82] I find that if Mrs Bridge had any basis to believe that she was entitled to remain on "open ended leave" until after her second request for leave had been considered that belief should have been dispelled by the letter she received from Jenny Goldsmith dated 15 June where she said:

"As we have received no further clarification from you as to your current employment status, we are needing to urgently meet with you to discuss this in person."

[83] It was Mrs Bridge's evidence that this letter introduced a more serious tone to the exchanges that had thus far taken place. I find that Mrs Bridge could have clarified the situation by returning to work immediately or calling to notify her intentions. Mrs Bridge said at the investigation meeting that she did not return to work on receipt of this letter "*because now she was waiting for a meeting*". I find that Mrs Bridge did

not return to work because she was convinced the Board would approve her request for LWOP when it was reconsidered.

[84] I find there followed a series of exchanges between the parties as meeting dates were suggested and rejected as unsuitable for one party or the other. I find too that when Mrs Bridge communicated with Mrs Hegan on 20 June she advised she could not attend the meeting because insufficient notice had been given to allow her to obtain representation and because her partner was due home from hospital following a major operation and she was required to be at hand. I also find that Mrs Bridge again communicated the view that as far as she was concerned things were fine as the other teachers were covering her work. However this view was giving rise to some frustration on the part of Mrs Hegan and the Board. Given that by this time Mrs Bridge had been absent from the workplace effectively from 20 March ¹ this frustration was justified.

[85] Mrs Hegan communicated all this to the Board including the fact that Mrs Bridge's partner was due to be released from hospital. It is unfortunate that the seriousness of Mr Lindop's operation and position in recovery was lost in the relaying of the message. In the circumstances it upset Mrs Bridge to have her reasons for not attending the meeting set for 22 June described by Ms Goldsmith as "*unacceptable and unreasonable*" but against the totality of the evidence in this matter I find it did not stray over the line from inconsiderate conduct which causes unhappiness to the worker to being conduct which was repudiatory of the relationship. (*Wellington etc Clerical Workers IUOW v Greenwich* [1983] ACJ, 965).

[86] Eventually the parties agreed to meet on 19 July. Mrs Bridge's oral evidence supports a finding that by the time she met with the Board on that day she had decided she would not return to school.

[87] Mr Down raised the question of the final pay made to Mrs Bridge very early in the meeting between the parties. This was the first the Board as an entity knew of this and while Mrs Hegan quickly concluded that something had gone wrong with her communications to Multiserve to rescind the instruction that Mrs Bridge had ended her employment with Wairau Intermediate she was not the spokesperson at the

meeting albeit she advised there had been a “mistake”. Mr Parkinson immediately advised Mrs Bridge that if she had received her final pay then it was an administrative error and that from the Board’s perspective she remained an employee. To this day the Board holds the position that Mrs Bridge remains an employee on LWOP (an ironical outcome in all the circumstances). To all intents and purposes this explanation was accepted by Mrs Bridge and her advisers and I find that Mr Down moved to the question as to why her application for leave without pay had been declined. Mr Lindop’s notes record that the leave was declined for administrative reasons. Mrs Bridge was advised she could return to work.

[88] I find that Mr Down requested an adjournment at that time. During that adjournment Mrs Bridge communicated to him she could not return to work because she felt the relationship had been damaged and she authorised Mr Down to negotiate a settlement to end her employment. Those negotiations were not successful. On the face of it, it was agreed that Mrs Bridge would remain on LWOP pending mediation. The Board has held to that position ever since. However, regardless of this apparent agreement I find on the evidence before me that Mrs Bridge abandoned her employment with the Board on 19 July 2006 effective that day.

[89] Lastly on the Multiserve issue I note that Mrs Bridge spent weeks following the meeting on the 19th investigating the trail of communications associated with Mrs Hegan’s communications and attempted communications with Multiserve. All the information revealed as a result of her inquiries support a finding that Mrs Hegan made a mistake in communicating that Mrs Bridge had left her employment and that she made further mistakes in attempting to rescind that advice to Multiserve. It was a mistake and I reject Mrs Bridge’s position that it is supportive of the claim that Mrs Hegan wanted Mrs Bridge gone from her employment.

Conclusion

[90] Drawing on the evidence in total and my findings above I conclude there is no basis for a finding that Mrs Hegan followed a course of conduct with the deliberate and dominant purpose of coercing Mrs Bridge to resign and I note to give certainty in the matter that I reject Mrs Bridge’s evidence to that effect that Mrs Hegan wanted rid

¹ Admittedly 3 or 4 weeks of this time involved approved LWOP.

of her including all the unsubstantiated hearsay evidence submitted by Mrs Bridge to support her claims on this point. On the contrary Mrs Hegan was an extremely busy person trying to cover the role of Acting Principal and Deputy Principals combined. Her lack of experience in managing what became a difficult staffing situation led her to bungle some matters but I find that her actions were not attended by malice towards Mrs Bridge or any desire to see her leave her employment.

[91] Mrs Hegan and the Board did make a number of errors in managing the matter.

- It would have been more appropriate for Mrs Hegan to have focussed solely on having Mrs Bridge clarify her intentions regarding a return to work when she spoke to her on 6 June rather than allowing the issue of relief work to cloud the water.
- Then when Mrs Bridge advised (as she did) that she was happy with the way things were Mrs Hegan should have reported to the Board. The Board would have been well advised to direct Mrs Bridge to return to work immediately.
- It would have been better had the seriousness of Mr Lindop's operation and the imperative of Mrs Bridge being present at home on his return from hospital not been lost in the oral communications between Mrs Hegan and Ms Goldsmith regarding Mrs Bridge's reasons for being unable to attend the meeting set for 22 June. However, there was nothing sinister in this I find.
- And it would have been better if Multiserve had not been advised that Mrs Bridge had left her job and if Mrs Hegan had not bungled the attempts to rescind that advice. I accept however that these were mistakes on Mrs Hegan's part as an extremely busy manager inexperienced in payroll matters and processes required to communicate with Multiserve.
- The Board did not spell out clearly in writing to Mrs Bridge the reasons why her request for leave without pay had been declined. However, had Mrs Bridge been open to a more balanced view of her application for leave she would have noted the effect that her continued absence was having on the school as described by Jenny Goldsmith in her letter of 22 June where she said:

“In meeting our responsibilities as a good employer, we have obligations to all staff and pupils at Wairau Intermediate. In the current position we find ourselves in, forward planning, certainty of staffing positions, continuity of teaching staff for pupils is being compromised”.

[92] Taking these issues against the evidence in its entirety and considering Mrs Bridge’s breaches of duty and good faith in her dealings with the Board I cannot find that the Board’s mistakes amount individually or collectively to breaches of duty which left Mrs Bridge with no option but to resign.

[93] Neither do they warrant a finding that Mrs Bridge was unjustifiably disadvantaged in her employment. If I am wrong in respect of this finding I would, in any event, have found that Mrs Bridge’s contribution in the matter would have disentitled her to any or any meaningful remedy.

Determination

[94] Relying on my reasoning above I decline Mrs Bridge’s claims and can be of no further assistance to her.

Costs

[95] Costs are reserved. The parties are to attempt to agree on the matter of costs. If they are unable to do so they are to file and serve submissions to allow costs to be determined

Janet Scott

Member of the Employment Relations Authority