

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 135/07  
5050649

BETWEEN                      MIRIAM CLARK  
Applicant

AND                              NELSON    MARLBOROUGH  
INSTITUTE                      OF  
TECHNOLOGY  
Respondent

Member of Authority:      Paul Montgomery

Representatives:            Stephen Thomas, Counsel for Applicant  
Maree Kirk, Counsel for Respondent

Investigation Meeting:    17 May 2007 at Nelson

Submissions received:    21 and 28 May for both Applicant and Respondent

Determination:              12 November 2007

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant began employment with the respondent on 22 January 2001 when she accepted a limited tenure part-time position which was to end on 14 December 2001. Following this, Ms Clark undertook other part time positions and was covered by various collective agreements until electing in April 2005 to be covered by an individual employment agreement. The applicant and the respondent signed an Academic Staff Individual Employment Agreement on 26 May 2005.

[2]     During her first staff appraisal meeting on 26 May 2005, the applicant was advised that she was not receiving salary increments and would not receive them until she exited probation. This would be achieved when Ms Clark had completed the Certificate in Adult Teaching or an equivalent qualification.

[3] Following this meeting, on 22 July 2005, the applicant wrote to Mr Gary Cox, the respondent's Human Resources Manager, setting out her concerns. Prior to forwarding her letter to Mr Cox, Ms Clark emailed it to Mr Shane Graham, Head of the School of Maori Studies. This, she says, was both as a courtesy to her Head of Department and to confirm that her understanding of what was discussed at the 26 May meeting was correct. He replied the following day and Ms Clark's letter was sent to Mr Cox on 25 July 2005.

[4] As the letter is relatively lengthy and its contents well known to the parties, I set out only those sections relevant to the preliminary issue currently before the Authority.

*To remedy this mismanagement of my employment and the unequal and unfair treatment I have received I would like the following to happen:*

- *That I am immediately taken off probation*
- *That my pay is increased to grade ASM8*
- *That I receive backpaid [sic] at this rate to January 2003*
- *That current study is acknowledged and that I am placed at grade ASM9.*

*I am happy to discuss any of these points. I look forward to a speedy resolution. My preference is that this is resolved informally and promptly. However, if not, I believe I have very strong grounds for a personal grievance. I look forward to hearing from you and your response.*

*Yours sincerely,  
Miriam Clark (signed)*

[5] For a range of reasons which need not delay us here, Ms Clark's solicitors wrote to the respondent's Chief Executive on 7 June 2006. In that letter, the solicitor says:

*Upon perusing the information Ms Clark has provided, I am of the opinion Ms Clark has grounds for a personal grievance claim against NMIT.*

## **Issues**

[6] At this point, the Authority needs to determine whether the applicant's letter of 22 July constitutes the raising of a personal grievance with her employer.

### **The investigation meeting**

[7] At the investigation meeting, the Authority was assisted by hearing evidence from the applicant in person and also from Mr Cox on behalf of the respondent. I also wish to acknowledge the assistance of both representatives who, in addition to their contribution on the day, have provided the Authority with detailed, on point submissions.

### **Discussion and analysis**

[8] The closing paragraph of the applicant's letter to Mr Cox follows her outlining the concerns she has regarding probationary status and incorrect grading with consequent restriction on her salary range. The letter makes it clear Ms Clark believed the respondent had not followed proper processes in relation to her employment and as a result of this she was underpaid for some 2½ years. There is no doubt Ms Clark is raising a problem with her employer and is asking that it be addressed.

[9] The difficulty which arises is that the applicant states her *preference* for an informal and prompt resolution. Ms Clark then makes it clear that if her preference is not fulfilled, she believes she has strong grounds for a personal grievance.

[10] It is clear that at the time of writing, the applicant had in her possession Part 11 of her individual employment agreement which contained the plain language explanation of the services available for the resolution of employment relationship problems, including a reference to the 90 day period within which a personal grievance must be raised. As an intelligent and thorough person, Ms Clark had prepared her letter with care and accuracy. It is highly probable that, aware of the formal process of raising a personal grievance, the applicant opted for a more informal, in house method of having her problem solved, while clearly indicating that if this was unsuccessful, she had an alternative process she could invoke.

[11] I note that when the applicant's solicitor wrote to the respondent on 7 June 2006 he expresses an opinion that grounds for a personal grievance existed. What is surprising, given this view, is that he did not refer to the 22 July 2005 letter, on which the applicant now seeks to rely as raising a formal personal grievance.

[12] Finally, there is the matter of the applicant's resignation letter and the exit interview.

[13] Ms Clark tendered her written resignation on 29 November 2005. The tone of the letter is gracious, expressing the writer's thanks for the support her Head of Department had provided. It makes no reference to any employment problems and gives the reason for the resignation as the importance of spending time with her growing family.

[14] The notes taken by Mr Cox at the applicant's exit interview make no mention of a personal grievance. Ms Clark did comment, among other things, that in some aspects the respondent had not managed her employment properly and that she saw this as *not fair*, but does not detail any other specific grievances.

### **Determination**

[15] I find Ms Clark raised an employment relationship problem relating to her grading and remuneration with the respondent but elected, at that time, not to raise a formal personal grievance.

[16] The first definitive indication that a personal grievance was being formally raised with the employer came in the solicitor's letter of 7 June 2006. This is clearly well outside the required 90 day period.

[17] Should Ms Clark wish to pursue a personal grievance, an application for leave under s114(3) will be required.

### **Costs**

[18] Costs are reserved.

Paul Montgomery  
Member of the Employment Relations Authority