

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2013] NZERA Auckland 162  
5374323**

BETWEEN                      RONALD CRONIN-LAMPE  
Applicant

A N D                              BOARD OF TRUSTEES  
MELVILLE HIGH SCHOOL  
Respondent

Member of Authority:        James Crichton

Representatives:             Mary Wilson, Counsel for Applicant  
Paul White, Counsel for Respondent

Investigation Meeting:      10 and 11 December 2012, 13 December 2012 and 19  
December 2012 all at Hamilton

Date of Determination:      2 May 2013

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**FIRST DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The Authority agreed to hear similar fact claims against the respondent (Melville High School) brought by Ms Kathleen Cronin-Lampe (Ms Cronin-Lampe) and her husband Mr Ronald Cronin-Lampe (Mr Cronin-Lampe) together, and the subject matter from the four hearing days will be considered in two determinations of the Authority.

[2]     The first of these determinations, the present determination, is concerned only with a single aspect of Mr Cronin-Lampe's claim against Melville High School. It is Mr Cronin-Lampe's application for medical retirement from Melville High School. By consent, a supplementary statement of problem was filed in the Authority of 18 January 2013. The essence of that statement of problem was a claim that Melville High School or the Ministry of Education should pay to Mr Cronin-Lampe a medical

retirement benefit of 13 weeks salary. It is that claim and the response to it which is the only subject of this first determination of the Authority.

### **The claim**

[3] Submissions filed for Mr Cronin-Lampe on his claim for medical retirement rely on clause 3.12 of his individual employment agreement (the agreement). In fact this is the relevant provision in the collective employment agreement which Mr Cronin-Lampe says both parties accept as applying to him.

[4] It follows that, so the argument goes, if the collective employment agreement applies to Mr Cronin-Lampe then he is entitled to the benefit of clause 3.12 which relates to medical retirement.

### **The response**

[5] But Melville High School does not accept that Mr Cronin-Lampe is covered by the collective employment agreement. Melville High School refers to the coverage clause in the collective agreement which stipulates that in order for coverage to be available, the individual concerned must be a teacher. It is common ground that Mr Cronin-Lampe is not a teacher.

[6] Melville High School then go on to contend, puzzlingly in the Authority's view, that there is somehow agreement between Mr Cronin-Lampe and the school that he is not covered by the collective agreement. The reliance in making that submission is on paragraph 1.1 of the statement of problem but the Authority does not read paragraph 1.1 of the statement of problem to say anything of the sort.

### **Discussion**

[7] Fundamentally, Mr Cronin-Lampe maintains that he derives all of his terms and conditions of employment from the collective employment agreement and is therefore entitled to the benefit of the medical retirement provision in the collective employment agreement whereas Melville High School maintain that Mr Cronin-Lampe has his employment terms derived from a variety of individual documents and a handful of provisions in the collective employment agreement but that he does not have coverage under that agreement, in the usual sense of that term.

[8] The Authority must say that it has the greatest sympathy for Mr Cronin-Lampe and the predicament he faces but notwithstanding that human consideration, the Authority's obligation is to apply the law. In the Authority's judgment, Mr Cronin-Lampe cannot be covered by the collective employment agreement because he is not a teacher.

[9] As counsel for Melville High School point out, Mr Cronin-Lampe's position is analogous to that of teachers who are not members of the Post Primary Teachers Association (PPTA). Such teachers are commonly employed on terms and conditions that are similar to the terms in the collective agreement but if they are not members of PPTA they do not have access to the medical retirement provision.

[10] Mr Cronin-Lampe's position is on all fours with that; he derives some provisions from the collective employment agreement but he cannot be covered by the document in a legal sense because like the teachers who are not members of PPTA, he lacks a fundamental prerequisite for coverage, in his case the fact that he is not a teacher.

[11] In the Authority's judgment, this is an insurmountable hurdle for Mr Cronin-Lampe and he is precluded, as a consequence, from deriving the benefits of the medical retirement clause.

[12] Mr Cronin-Lampe acknowledges that he is not a registered teacher and therefore cannot be a party to the collective employment agreement but he relies on a letter from Melville High School dated 15 March 2012 which confirms that he is covered by the conditions of the collective employment agreement. His submission to the Authority is that it follows that he has his employment terms as an individual employment agreement "with terms which mirror" the collective agreement. Even if that argument is accepted at face value, in the Authority's judgment it still does not give Mr Cronin-Lampe access to the medical retirement provision because without coverage he cannot be a party and if he is not a party he is not entitled to that benefit because the custom and practice around the application of that provision is that it is only available to parties.

[13] What is more, applying the law relating to the interpretation of collective employment agreements as that law is set out in the Supreme Court judgment in *Vector Gas Limited v Bay of Plenty Energy Limited* [2010] NZSC 5 supports the

Authority's conclusion that gleaning the meaning "the parties intended their words to bear" requires that the word "teacher" be given its ordinary natural meaning and that it cannot have been in the contemplation of the parties at the time agreement was executed that persons other than teachers would have been treated as if they were teachers.

[14] Furthermore, the Authority is satisfied that because Mr Cronin-Lampe's remuneration is paid for from the school's operations rather than from the Ministry of Education's payroll system, that gives further support to the contention that Mr Cronin-Lampe is in a different class of employment from employees who are covered by the collective employment agreement.

[15] Submissions for Mr Cronin-Lampe contend that when Melville High School said that Mr Cronin-Lampe would have an individual employment agreement which mirrored the collective agreement, that commitment somehow gave him access to the whole document. But in the Authority's judgment, that submission reads too much into the school's observation which was contained in a discursive and lengthy piece of correspondence from the Principal of Melville High School seeking to deal with a wide range of matters.

[16] As a matter of fact, Mr Cronin-Lampe's employment is subsumed within a number of individual documents which have been reduced to writing at various times and the provisions he draws from the collective agreement are few in number. Indeed, counsel for Melville High School has gone to the trouble in his submissions of listing the large number of provisions in the collective agreement which on any proper legal construction, could not apply to Mr Cronin-Lampe. The short point is that the basis provision on which Mr Cronin-Lampe can rely from the collective agreement is the salary scale but even in terms of the wider issues of remuneration and hours of work issue, Mr Cronin-Lampe's position is materially different from the ordinary run of the mill teacher covered by the collective agreement. Amongst other things, Mr Cronin-Lampe was given time by Melville High School to run a professional counselling practice off-site. Clearly that is a term of Mr Cronin-Lampe's employment and yet it is nowhere found in the collective agreement and would be antithetical to the structure and content of the collective agreement.

[17] Almost as if to demonstrate the difficulties with Mr Cronin-Lampe's position, his own submissions suggest as a primary remedy that the Authority direct that

Melville High School pay to Mr Cronin-Lampe the 13 weeks salary that he would be entitled to if he were able to access the provision in the collective employment agreement. In the alternative, the Authority is asked to direct Melville High School to complete the certification required by the Ministry of Education in order for it to pay out Mr Cronin-Lampe's alleged entitlement of 13 weeks salary by way of medical retirement.

[18] Dealing with the second point first, clearly Melville High School ought not to certify Mr Cronin-Lampe is entitled to medical retirement on the Ministry of Education's form given the Authority's conclusion about the legal position. Were Melville High School to do that, in the Authority's view, that would be a fraud on the Ministry.

[19] But, Mr Cronin-Lampe argues that first he is covered by the provision so has an entitlement to medical retirement but second presumably because his salary is not paid by the Ministry of Education and comes from the school's operations grant, if the Authority is persuaded that he has access to the medical retirement provision in the agreement, not withstanding that he is not covered by it, then the school should pay his medical retirement.

[20] But that argument seems circular to the Authority. Either Mr Cronin-Lampe is covered by the collective agreement or he is not. If he is covered then he is entitled to the payment in the usual way, that is through the Ministry of Education's certification process. But the Authority has already concluded that that is not possible because Mr Cronin-Lampe is not covered by the agreement and because of that conclusion, the alternative structure suggested by counsel for Mr Cronin-Lampe must fail also.

[21] There is nothing before the Authority that suggests that a term of Mr Cronin-Lampe's employment at Melville High School was that he would be entitled to the equivalent of medical retirement if he were entitled to access that particular provision in the collective agreement. Nowhere is it suggested to the Authority that there was any understanding or implication that such an arrangement would apply. In the absence of that evidence, the Authority simply cannot impose such a conclusion.

## **Determination**

[22] For the reasons already advanced, the Authority finds that Mr Cronin-Lampe has no entitlement to medical retirement and accordingly this particular part of his application before the Authority must fail.

[23] The Authority again expresses its concern about Mr Cronin-Lampe's wellbeing and notwithstanding that human concern, the Authority is satisfied that its obligation is to apply the law.

## **Costs**

[24] Costs are reserved.

James Crichton  
Member of the Employment Relations Authority