

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** Penelope Jane Darwin (Applicant)  
**AND** New Zealand Post Primary Teachers  
Association (Respondent)  
**REPRESENTATIVES** Penelope Darwin on her own behalf  
Nicole Carter for Respondent  
**MEMBER OF AUTHORITY** G J Wood  
**INVESTIGATION** By way of submissions received  
**MEETING** by 7 February 2007  
**DATE OF** 8 March 2007  
**DETERMINATION**

DETERMINATION OF THE AUTHORITY

**Employment Relationship Problem**

1. The applicant, Ms Penelope Darwin, is claiming \$2250 from the respondent, her union the PPTA, for legal expenses incurred in resolving an employment relationship problem with a former employer, after being dissatisfied with the services provided by the PPTA. Although not specified as such I have taken this to be a claim pursuant to s.4(2)(c) of the Act, which provides that relationships between a union and one of its members are employment relationships and thus any ensuing problems can be investigated by the Authority.

**The Facts**

2. Ms Darwin was employed as a teacher by Wellington Girls College, from 2002 at least, under a series of fixed term agreements to cover her part time position. In 2006, however, the College decided that it would not offer her work for that year. Ms Darwin was understandably upset about that and approached the PPTA to assist. Ms Darwin had been a member of the PPTA for 15 years. Ms Darwin believed that she was entitled to ongoing employment but received advice from the PPTA to the

contrary, with the result that Ms Darwin felt it necessary to seek outside assistance from a legal firm.

3. Probably as a result of that firm's intervention the parties agreed that Ms Darwin was employed on an ongoing employment basis. The College considered, however, that it had restructured her position and hence her job was not available to her anyway. Ms Darwin went back to the PPTA through Mr Kevin Bunker, the PPTA's general secretary, to ask what the PPTA would do about the situation. Mr Bunker advised her that the PPTA would represent her and that it would fight against the restructuring claim. Ms Darwin was specifically told that if a PPTA member chooses to be represented by a lawyer then the costs are met by the member.
4. Ms Darwin, however, chose to continue to be represented by her lawyer. In the event the parties reached a financial settlement, but she did not get her job back.
5. Ms Darwin then approached the PPTA to reimburse her for her legal expenses of \$2,250. Mr Bunker noted that legal assistance was not normally provided to members. Mr Bunker did not accept that the end result would necessary have been any different had the PPTA continued to represent Ms Darwin. He considered Ms Darwin's length of membership of the PPTA, the timing of the "unfortunate events", the stresses and pressures on her at the time and the degree of urgency attaching to her situation. He also took into account that after the lawyer's first intervention Ms Darwin did not take up the PPTA's offer to continue to represent her. As a result he decided to offer her a contribution towards her costs of \$1,125.
6. Ms Darwin contested this decision with the Executive of the PPTA, who confirmed Mr Bunker's decision. The Executive relied on Rule 5 of the Third Schedule to the Constitution, which provides that:

*"Except as provided, the Executive will not accept responsibility for payment of legal expenses if such expenses have been incurred without the consent or direction of the Executive."*

7. The PPTA declined to review the matter again on further request by Ms Darwin. Ms Darwin therefore took the matter to the Authority as she took the view that the PPTA was "*glaringly deficient*" in its advice.

8. From Ms Darwin's perspective the real issue is whether her contract was fixed term or permanent and that the PPTA's omission was serious and that it acted carelessly. She is concerned that the PPTA, as one of the biggest and wealthiest unions in New Zealand does not apparently look after its weakest members. Ms Darwin claims that the PPTA has therefore failed to act towards her in good faith and has cost her the sum of \$2,250.00.
9. While the PPTA has not conceded that it gave incorrect advice to Ms Darwin, it has throughout been prepared to pay her half of the legal costs she incurred. Ms Darwin has refused those offers choosing to pursue the matter as a point of principle, as is her right. It therefore falls upon the Authority to make a determination.

### **Determination**

10. Ms Darwin's application demonstrates a fundamental misunderstanding of the role of trade unions in society and to their members. Trade unions are not insurers, whose sole responsibility is to make sure that those paying fees receive appropriate cover should they suffer injury. A key function of unions is to promote its members' collective interests through negotiating collective employment agreements and thus improving the remuneration of its members. Unions such as the PPTA, however, have many other functions, as well as representing individuals, such as protecting the skill base of its members, advancing the interests of its members as consumers and citizens and arguing for fairer and more equitable employment relationships. Inevitably in pursuing such a wide number of objectives priorities have to be set. The PPTA provides for its own in-house professionals to assist members who need representation. This method of providing representation to members with employment relationship problems can not be criticised and, as noted above, the resources that can be devoted to this area are not infinite. Members are of course always free to get their own "second opinion" as it were, but the PPTA's constitution provides that legal assistance will only be reimbursed to members if they have the prior approval of the executive. Again there are sound practical resourcing reasons for such a system.

11. Ms Darwin continued to use outside representation even after having been informed of the constitutional requirement in writing. She did, however, I accept, do so because she had lost confidence in the advice from her union.
12. I accept that Ms Darwin had lost confidence in the PPTA. That does not exempt Ms Darwin, however, from the union's constitution, as she was a member and thus bound by its rules. As she hired the services of a lawyer without her union's approval and has since pursued all internal mechanisms for seeking redress without success, it would appear that she has exhausted all her options.
13. Ms Darwin claims that the union has not treated her in good faith, which I accept is a broader concept than that of trust and confidence. I also accept that the union did not initially consider that Ms Darwin had a right to ongoing employment with Wellington Girls College. Furthermore, I also accept that the union's initial view may well have been mistaken because of the provisions of s.66 of the Act. What I do not accept is that the union's advice was given in other than good faith. There is no evidence whatsoever to that effect. It may possibly have been negligent, but even if this were the case the PPTA continued to offer Ms Darwin assistance in pursuing her employment relationship problem with Wellington Girls College. It did not ignore her employment relationship problem with the College, nor her claim for legal fees, but rather offered her a contribution that could be seen as covering the initial advice about the nature of her employment. No duty to Ms Darwin as a PPTA member has been proven to have been breached.
14. I therefore see no grounds for Ms Darwin claiming legal costs which were incurred in breach of the union's constitution and I dismiss her claim.

### **Costs**

15. Costs are reserved.