

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 231
5422543

BETWEEN CATRIONA MADAY
 Applicant

A N D AVONDALE COLLEGE
 BOARD OF TRUSTEES
 Respondent

Member of Authority: James Crichton

Representatives: Rebecca White, Counsel for Applicant
 Paul Pa'u, Advocate for Respondent

Investigation Meeting: On the papers

Submissions received: 11 June 2018 and 22 June 2018 from the applicant
 27 June 2018 from the respondent

Date of Determination: 24 July 2018

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Employment Relationship Problem

[1] In my substantive determination on this matter issued as [2018] NZERA Auckland 131 I reserved for a further determination the question of lost salary which Mrs Maday incurred as a consequence of the unjustified dismissal which I found proved in my investigation of her employment relationship problem.

[2] Initially, the parties' representatives had productive discussions with a view to identifying the appropriate principles that I might apply to derive the correct figures to represent Mrs Maday's entitlement to lost salary.

[3] However, during the course of those discussions, it became clear that there were two areas of controversy, one relating to an insurance policy which responded to Mrs Maday's unemployment and the second relating to income that Mrs Maday earned as a marker for the New Zealand Qualifications Authority (NZQA).

[4] Because of those disputed matters, it became necessary for me to contemplate the prospect of a further investigation into those issues or, in the alternative the question whether the matter could appropriately be removed to the Employment Court without the Authority conducting an investigation into those outstanding matters.

[5] I should emphasise for the sake of completeness that it was and remains a genuine issue to be worked through and decided upon. On the one hand, Mrs Maday is endeavouring to be completely accurate in disclosing all of the monies that she received during the period after the termination of her employment by Avondale College. On the other hand, for the College, it is concerned that it is only now hearing of the insurance pay out and the marking work for NZQA and it points to evidence previously given for Mrs Maday in the substantive investigation where neither of those aspects were disclosed.

[6] To progress the matter I have had a helpful engagement with the parties' representatives both of whom have now confirmed to my satisfaction that it would be the best use of the parties' time, energy and funding for this inquiry to be removed to the Employment Court for trial and disposition without the Authority investigating this matter further.

[7] Moreover, in an interlocutory judgment of Judge Corkill dealing with the instant matter and dated 17 June 2018, His Honour refers to the issue of lost salary as being an outstanding matter which might necessitate the Court staying its hand relative to interlocutory relief which Avondale College was seeking.

[8] In the result, His Honour was minded to proceed to grant the relief sought, notwithstanding the outstanding lost salary issue.

Determination

[9] This is not a matter which falls within any of the first three categories set out in s.178(2) of the Employment Relations Act 2000 (“the Act”). It falls squarely within the terms of sub-section (d) of s.178(2).

[10] That sub-section gives a broad discretion to the Authority to remove matters to the Court for disposition there, where the Authority is of the view “...*that in all the circumstances the court should determine the matter*” : s.178(2)(d) of the Act.

[11] In the case of *Johnston v Fletcher Construction Limited* [2017] NZ EmpC 270, Chief Judge Inglis opined:

s. 178(2)(d) leaves open the possibility there will be some cases, not clearly falling within (a) – (c), which might otherwise appropriately be removed to the Court where the Authority considers it appropriate to do so. Section 178(2)(d) is to be interpreted in the light of its text and its purpose. The overarching point will be whether a particular case is best suited for resolution by the Authority’s investigative processes or by the more formal adversarial processes of the Court.

[12] In my view, this is a case where the parties, and their respective advisers, would be best served by this outstanding matter being removed to the Court for trial and disposition without the Authority investigating the matter and I so order.

Costs

[13] Costs are reserved.

James Crichton
Chief of the Employment Relations Authority