

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 160/07
5096376

BETWEEN

GLENN STEWART
Applicant

AND

VICE CHANCELLOR OF
LINCOLN UNIVERSITY
Respondent

Member of Authority: Paul Montgomery

Representatives: Peter Cranney, Counsel for Applicant
Glenn Jones and Amy Shakespeare, Counsel for Respondent

Investigation Meeting: 13 December 2007 at Christchurch

Determination: 21 December 2007

DETERMINATION OF THE AUTHORITY

The background

[1] Initially, this matter was lodged with the Authority on 24 September 2007 as an application for interim reinstatement of Professor Stewart pending the hearing of the substantive claim of unjustified dismissal.

[2] A teleconference was scheduled for 3.30pm the following day and the parties, represented by Mr Braithwaite for the applicant and Ms Shakespeare for the respondent, consented to the total matter being investigated by the Authority on 4 and 5 December 2007. A timetable was set down for the exchange of statements of evidence and the assembling of a bundle of documents.

[3] Subsequently, an issue arose between the parties in respect of the late lodging of the Statement in Reply. As a result, the applicant, now represented by Mr Cranney and Mr Braithwaite, raised their submission that the respondent was required to seek

the Authority's leave to lodge a Statement in Reply. I leave that issue to one side at present.

[4] The exchange of evidence was duly completed according to the timetable established in the teleconference and the matter appeared to be proceeding to investigation on 4 and 5 December 2007.

[5] On 25 November 2007, the Authority office received by fax a letter from Mr Cranney advising that *on perusing the [respondent's] evidence ... the appropriate course is for this matter to be removed to the Employment Court. We will file an application to that effect on 28 November 2007 or at the latest 29 November 2007.* As I was in Dunedin at the time, the support officer faxed Mr Cranney's letter, together with a reply from Mr Jones, to me. I instructed the support officer to set up a teleconference with counsel for the afternoon of 28 November 2007. This was not able to proceed and was rescheduled for Tuesday, 4 December 2007, the fixture date having now been abandoned in the light of the Application for Removal.

[6] On 29 November 2007, the Authority received an Application for Removal and an amended Statement of Problem from counsel for the applicant. The amended statement of problem, in addition to the claim of unjustified dismissal, raised a further five causes of action. In light of the amended Statement of Problem, counsel were instructed to have their submissions lodged and served simultaneously by 4pm on Monday, 3 December 2007. Regrettably, the applicant's submissions were not received on time, being faxed to the Authority at 0052 hours on 4 December 2007 from counsel's facsimile machine.

[7] On arrival at the office the following morning, both counsel for the respondent and I first sighted the applicant's submissions. In the course of the scheduled teleconference, Mr Jones raised the issue of prejudice to his client in that much of Mr Cranney's submissions were in response to those lodged by Mr Jones on behalf of his client.

[8] A brief discussion ensued and in order to avoid undue prejudice to the respondent, I directed that I would hear from counsel in person at 2pm on Thursday, 13 December 2007.

Analysis and discussion

[9] In essence, the applicant submits, as a result of evidence lodged by the respondent's witnesses, a further five causes of action arise, and under each cause, the applicant seeks a range of remedies. The additional claims, it is submitted, will give rise to important questions of law other than incidentally.

[10] The additional claims relate to:

- The Bill of Rights Act 1990;
- Contractual breach of the collective agreement;
- Breaches of s.4(b), s.4(1A)(b), and s.4(1A)(c) of the Employment Relations Act 2000 and its amendments;
- The dismissal was ultra vires the respondent's power as it was in breach of the duties incumbent on the respondent;
- Seeking eight recommendations under s.123(1)(ca) of the Employment Relations Act 2000 and its amendments.

The initial amoeba has now evolved, or been engineered, into a hydra.

[11] Counsel for the applicant has also opined that two days will now be insufficient for the Authority's investigation and that it is likely that five days will be required.

[12] Without going into detail, the Authority was particularly impressed with the arguments mounted by Mr Jones and Ms Shakespeare in opposition to the application for removal. Notwithstanding those arguments, the Authority has some concern around the standard of proof applying to serious allegations made against an employee, in this case, the decision-maker's finding of fraud. The cases cited to the Authority included *Wanganui College Board of Trustees v. Lewis* [2000] 1 ERNZ 397 (at para.[21]) may well give rise to an issue of law that may have a substantial bearing on this case.

[13] The other matter that I have considered in this application is the high profile enjoyed by both the applicant and the respondent. There has already been some

preliminary publicity on this matter in the local media and I am of the view that the public interest in the matter is high.

The determination

[14] In consideration of the now extended pleadings of the applicant and in particular the legal issue of the standard of proof where serious fraud allegations are involved, the expanded time scale and the public interest in this case, I order the whole matter removed to the Employment Court.

Costs

[15] Costs are reserved.

Paul Montgomery
Member of the Employment Relations Authority