

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2016] NZERA Wellington 154
5607387

BETWEEN DAMON THOMAS
 Applicant

AND CENTRAL HAWKE'S BAY
 COLLEGE BOARD OF
 TRUSTEES
 Respondent

Member of Authority: Trish MacKinnon

Representatives: Applicant in person
 Alastair Hall and Joelle Avery, Counsel for Respondent

Investigation Meeting: 14 September 2016 at Hastings

Submissions Received: On the day, from Applicant
 4 September 2016 and on the day, from Respondent

Determination: 14 December 2016

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Damon Thomas is a Technology Teacher at Central Hawke's Bay College in Waipukurau. He claims he is being disadvantaged in his employment by being required to perform duties which a technology technician is employed to undertake. Mr Thomas says these duties are outside his job description. He says the problem has been going on for the four years of his employment with the College. He seeks payment of \$8,000 per year for each of those four years.

[2] The Board of Trustees of Central Hawke's Bay College (CHBC) denies Mr Thomas is being required to do any more than the duties of his position. The

Board does not accept he has been disadvantaged and rejects his claims in their entirety.

[3] The parties have attended mediation but were unable to resolve the matter.

Issues

[4] The issues for determination are:

- (a) Whether Mr Thomas is being asked to perform work outside his job description; and, if so
- (b) Whether that constitutes an unjustifiable action by his employer; and if so,
- (c) Whether that disadvantages him in his employment.

The job description

[5] CHBC has a generic job description for a teacher which consists of a number of key tasks and corresponding expected outcomes. Each key task and its expected outcomes is grouped under a key performance description. These are *curriculum delivery, teaching strategies, student motivation, classroom management, contribution to subject faculty, and contribution to the corporate life of the school*.

[6] Under *teaching strategies*, one of the six key tasks is “*the classroom environment is well planned and organised*” and its expected outcome is described as “*effective and independent learning is encouraged*”.

[7] Under *student motivation*, one of the key tasks is “*a stimulating and attractive classroom environment is maintained*” and its expected outcome is “*the classroom is well presented and maintained*”.

[8] Under *classroom management*, one of the five key tasks is “*the classroom is well managed*” and has an expected outcome of:

A positive and safe learning environment. The physical environment in the classroom is conducive to learning. Teaching and learning is valued.

[9] Under *contribution to subject faculty*, one of the four key tasks is “*to carry out the required school and faculty administrative procedures and tasks assigned*”. The expected outcome is described as:

School procedures are followed and tasks carried out. Administrative tasks and procedures assigned by the HOD/TIC¹ are carried out as required. Upkeep and maintenance of equipment used within the faculty as required.

Is Mr Thomas being asked to perform work outside his job description?

[10] Mr Thomas claims the teacher job description CHBB has provided to him applies to a classroom teacher rather than a technical metalwork teacher. In evidence he said he was a teacher not a labourer and should not have to deal with setting up equipment, maintaining equipment, changing gas bottles, filling up oil pots and cleaning safety glasses or welding helmets.

[11] Under cross examination Mr Thomas agreed he had responsibility for many of the key tasks of the job description but said they applied to the classroom not the workshop. He also rejected responsibility for some expected outcomes from certain key tasks, including that of a “*positive and safe learning environment*”. He said the key outcome of “*Upkeep and maintenance of equipment used within the faculty as required*” did not apply to him.

[12] Mr Thomas said that for approximately the first 18 months of his employment at CHBC he had been happy to undertake the workshop tasks. This changed when he became aware he had been “*misled, lied to and deceived*” by his employer. The alleged deception was over the role of the technology technician. Mr Thomas believed that person should be undertaking the work he had been undertaking previously.

[13] In his view, he had been performing the work of the technician which the technician was being paid for and he felt “*tricked, cajoled and bullied*” into doing that work. He believed he should be compensated for performing the work over four years and placed a value of \$30,000 over the last four years which he justifies in his statement of problem as “*8,000 per year – 4 years \$30,000*”.

¹ Head of Department/Teacher in Charge

[14] In oral evidence Mr Thomas referred to the two degrees he held, and said it was not his job to ensure that equipment was acceptable for students to use: in his view that was the job of the technician. He said the technician spent most of his time in the woodwork workshop and when he did work in the metalwork workshop he carried out the tasks he was given poorly.

[15] In answer to questions Mr Thomas acknowledged he had told the technician he was a teacher and the technician was a "*lackey*" but denied there was anything derogatory about that. He said ten hours a week of the technician's time should be dedicated to him and the metalwork classroom and workshop.

[16] Mr Thomas is a member of the Post Primary Teachers' Association (PPTA) and his terms and conditions are those of the current collective agreement between the PPTA and the Secretary for Education. Mr Thomas said the PPTA had been involved in the matter but did not agree with him that he had grounds for a personal grievance. He has not alleged any breach of the collective agreement.

[17] The principal of CHBC, Mr Christiansen, said technical teachers are generally responsible for maintaining classroom equipment and keeping the class in a good state of readiness for teaching. He noted that, in his 32 years of experience, he had always found teachers understood that on occasions that means undertaking servicing, maintenance, repair and cleaning of equipment. The teacher is responsible for keeping the class running and making sure the environment is suitable for the subject they are teaching. When additional assistance was required, Mr Christiansen said the school was happy to provide it. For example, if a machine needed complex maintenance or repair, then external service providers would undertake that work.

[18] He said CHBC employed support staff, including cleaners who worked across the school, including Mr Thomas' classroom. Additionally it had employed a technician who provided support across the technology department, helping with financial management, stock and classroom material preparation and whatever else may be required. From January 2014 the technician role had been disestablished and the incumbent, Noel McKay, was appointed to the role of caretaker. Mr Christiansen said the caretaker, together with the College's groundsman and gardener, multi-tasked to provide operational assistance across the school.

[19] The caretaker's job description listed the jobs he was to perform with other grounds staff and included the following additional daily duties which were shared with other grounds staff:

Workshop Assistants Technology Faculty:-

Where practicable the current caretaker will be required to assist with various areas within the technology faculty. At all times caretaker duties will take priority and the Deputy Principal will assist in directing this work. Tasks could include, ordering materials, processing invoices, credits and payments, assisting outside staff with preparation for maintenance materials, assistance of the teacher within the classroom during lessons as requested, assisting the teacher with maintaining specialist room eg workshops, food areas.

[20] Amongst the weekly duties of the caretaker which were also to be shared with other grounds staff was:

Assist with minor maintenance within the Technology Faculty as required by the Deputy Principal or HOF Technology.

[21] Mr Christiansen said he was unaware of any concerns Mr Thomas had until September 2013 when Mr Thomas asked for an assistant to undertake some tasks in his classroom. He was seeking two hours assistance each day. Mr Christiansen met with Mr Thomas and said he explained to him that the majority of daily and weekly tasks for which Mr Thomas was seeking assistance were his responsibility as the classroom teacher. He advised Mr Thomas he needed to show his students how to assist him as part of the teaching process, including the cleaning of the workshop and maintenance of equipment. He recalled Mr Thomas did not agree with this and had raised reservations over the students' ability to do this properly.

[22] Mr Christiansen said he had explained that showing students how to clean up dirty equipment such as earmuffs and safety glasses was part of the metalwork teacher's responsibility in preparing students for life in a real workshop. He had also explained it was Mr Thomas' responsibility to monitor and maintain his classroom in preparation for his lessons and that working in the workshop after school and during term breaks was a normal part of his job.

[23] Additionally Mr Christiansen said he explained to Mr Thomas his work as a technology teacher was different from that of other teachers in that he had a lesser marking load and therefore took less work home. Because of the nature of his role, workshop maintenance and the preparation of his classroom was a key part of his role.

[24] Mr Christiansen said he had a number of further communications from Mr Thomas in 2014 and 2015 continuing to express dissatisfaction with the lack of work performed in his workshop and requesting further assistance. He also received complaints from Mr McKay on two occasions over the way he had been spoken to by Mr Thomas. Mr Christiansen arranged meetings on both those occasions and said Mr Thomas had apologised for the way he had spoken. Despite meetings and discussions, Mr Thomas continued to voice his dissatisfaction with the support he was receiving.

[25] In an effort to assist Mr Thomas and alleviate his concerns a senior student was paid to provide support to him for the second half of 2015. Mr Thomas rejected the offer of further support from the student for 2016.

[26] The Deputy Principal, Garth Sherwood, and Mr Christiansen met with Mr Thomas in November 2015 to discuss his request for additional support in the workshop. At that time Mr Thomas was seeking five hours per week of dedicated technical support but they said he was unable to identify the purpose for which the support was sought. A further meeting that included the Head of Technology, Micheal Fleming, was held in December 2015. Mr Christiansen said the three of them made positive suggestions to Mr Thomas for managing workshop space and improving relationships amongst the team.

[27] In his evidence Mr Sherwood talked of the expectations a school had of its technology teacher. He said he had been at the College for 31 years and had never previously come across a technology teacher who required the level of workshop assistance that Mr Thomas demanded. Mr Fleming's evidence reiterated that view: he said that during his years of teaching, no other technology teacher had raised an issue over requiring additional technical and support resource. He had always found teachers in the technology area understood that workshop maintenance and machinery cleaning was a core part of the role. In his view, Mr Thomas' expectations around levels of support were both unreasonable and unwarranted.

[28] Mr Fleming also said that when Mr Thomas raised his requirement for additional support, he (Mr Fleming) had approached a number of heads, and former heads, of faculty in Hawkes Bay to discuss their expectations of technology teachers. He said he did this to make sure CHBC's expectations of Mr Thomas were reasonable

and in line with other schools. His informal research confirmed CHBC's expectations were very similar to the expectations other schools had of their technology teachers.

[29] Mr McKay spoke of his original employment as a "*technician*" at the College. He said a key part of his role had been to communicate and cooperate with the classroom teachers, to see what needed to be done during the course of the school term. Mr McKay spoke of the excellent working relationship he had enjoyed with Mr Thomas' predecessor in the metalwork teaching role and said he also worked closely with other technology teachers. There were no problems in the workshop and everything operated smoothly and collegially.

[30] Mr McKay said for as long as he could remember he had worked to a list of maintenance tasks he needed to do for the metalwork class. When Mr Thomas joined the College staff in May 2012, Mr McKay said he continued to carry out his usual responsibilities in the metalwork classroom and made sure all the maintenance tasks were completed. He did not recall any particular issues arising with Mr Thomas in the early days on the latter's employment.

[31] However, Mr McKay said that as time went on Mr Thomas became more and more demanding, insisting that Mr McKay was responsible for cleaning up after the students and for completing routine small jobs on the equipment. He also demanded Mr McKay be on call for him. Mr McKay said he tried to support Mr Thomas but found he was being asked to undertake tasks that were outside his skill set and he was unable to provide the time Mr Thomas required as he had responsibilities throughout the school.

[32] He said he was aware throughout 2014 that Mr Thomas had complained about the insufficient support he was receiving from him but said his complaints were unwarranted as he spent a lot of time working in the metalwork classroom.

[33] Having considered all the evidence from Mr Thomas and CHBC, I do not consider Mr Thomas is being asked to undertake any duties that are outside his job description. As I have already noted, the job description is a generic one rather than one specifically drafted for a technology teacher. Nonetheless, it clearly states the responsibility of the teacher to ensure the classroom is well presented and maintained. It also clearly provides that the upkeep and maintenance of equipment used within the Faculty is the responsibility of the teacher as required.

[34] Mr Thomas has not persuaded me that he is being required to do any more than could reasonably be expected of him under his job description. He provided me with no evidence that he should not be responsible for the upkeep and maintenance of equipment within the workshop, with support when necessary as provided by the College.

[35] The only evidence he provided was his views and assertions which appeared to be based on unrealistic expectations. He raised issues over the level of support he was receiving before the technician role was disestablished and incorporated into that of the caretaker role. His concerns therefore were not linked to that restructuring but appear to have been based on a mistaken belief that he was being deprived of what he deemed to be an appropriate portion of Mr McKay's time.

[36] Having found he was not being expected to work outside his job description, it follows that I find no merit to Mr Thomas' claim that CHBC has acted unjustifiably towards him resulting in his being disadvantaged in his employment. Accordingly it is unnecessary for me to consider those issues.

Determination

[37] Mr Thomas does not have a personal grievance and I dismiss his application.

Costs

[38] The issue of costs is reserved.

Trish MacKinnon
Member of the Employment Relations Authority