

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Anne - Marie Dimmendaal Vallyon (Applicant)
AND Board of Trustees, Raglan Area School (Respondent)

REPRESENTATIVES Dr Peter Heaslip, Advocate for the Applicant
Peter Murphy, Advocate for the Respondent

MEMBER OF AUTHORITY Ken Anderson

INVESTIGATION MEETING 12 April 2005

DATE OF DETERMINATION 1 August 2005

DETERMINATION OF THE AUTHORITY

The Respondent Party

- [1] When the *Statement of Claim* for this matter was filed with the Authority, Mr Clive Hamill, the Principal of Raglan Area School, was cited as the Second Respondent and the Ministry of Education (“MOE”) was cited as the Third Respondent. Following the receipt of appropriate submissions and discussion with all parties, the Authority is satisfied that the Board of Trustees Raglan Area School (“the Board”) was the sole employer of Mrs Vallyon and that all matters pertaining to her employment were the legal responsibility of the Board. The Authority further finds that it is not appropriate that Mr Hamill or the MOE should be parties to this matter and they have been removed as Respondent parties accordingly. This determination and the records of the Authority now reflect that the Board is the only Respondent party to this matter.

The Employment Relationship Problem

- [2] Mrs Vallyon claims that she has not received certain payments that she believes that she was entitled to be paid during her employment at the Raglan Area School (“the School”). The payments claimed relate to several areas. Firstly, Mrs Vallyon claims that the work classification that the School placed her on, as provided by the applicable collective employment agreement, was incorrect, hence she should have been paid at a higher rate of pay. Mrs Vallyon also says that she is entitled to an extra payment based on her qualifications. Mrs Vallyon also claims that she has entitlements to further annual leave and retirement leave.
- [3] The School accepts that Mrs Vallyon had an entitlement to be paid for annual leave that had been incorrectly calculated and she has now been paid the sum of \$2,013 accordingly. The

School says that it has also investigated all of Mrs Vallyon's other claims and has concluded that she does not have any further entitlements due to her.

The School initially presented a counter-claim suggesting that Mrs Vallyon had been paid for more hours than she had worked, but at the investigation meeting, the School conveyed that it no longer wished to pursue that claim.

Background

- [4] Mrs Vallyon commenced her employment at the School in January 1986 as an Office Assistant. The evidence of Mrs Vallyon is that she had been working as an office worker for approximately two years, when the Principal of the School at that time, Mr Sincock,¹ offered, and she accepted, the position of Library Assistant. The letter of appointment dated 6 December 1990, written by Mr Sincock, confirms that the appointment of Mrs Vallyon was permanent from the beginning of the 1991 school year and that she would be required to work 25 hours per week.
- [5] A job description for the position of Library Assistant dated May 1990 set out the requirements of the position. A more detailed job description was introduced in February 2004 and the title of the position became Assistant Librarian.
- [6] Mrs Vallyon remained in the position of Assistant Librarian until her resignation on 9 April 2004.

The Correct Classification and Remuneration for the Position of Assistant Librarian

- [7] The terms and conditions of Mrs Vallyon's employment, including all payments, were provided by the *Support Staff in Schools Collective Agreement* ("the Agreement"). The rates of remuneration are provided at Part 3 of the Agreement. It is accepted by the School that Mrs Vallyon should be paid under the Associate Class pay scale. Mrs Vallyon says that she should have been paid the appropriate pay rate as provided by Associate Scale – Grade C of the Agreement. However, the School says that they paid Mrs Vallyon the correct rate of pay as provided by Associate Scale - Grade B.
- [8] The Agreement, at clauses 3.6.2 and 3.6.3, sets out the criteria to meet the requirements to be paid under the respective grades. Grade B provides that:
- “(a) The position involves a range of duties for which advanced knowledge, skills and experience are required. The position is likely to involve periods without supervision or may be sole charge.
- (b) Some examples of the duties or level of duties required within this grade are:
- support and contribution to teaching programmes and curriculum delivery, including work with students either individually or in groups which assists their learning;
 - contributing to and maintaining healthcare programmes for students;
 - management of equipment and resources.”
- [9] The criteria to meet Grade C are somewhat higher:
- “(a) The position involves a high level of responsibility and specialist knowledge. It will include management and/or administrative and/or financial responsibilities. Where the position does not involve supervision of staff it will involve management of specialist equipment and resources which make a significant contribution to the delivery of the curriculum.

¹ Mr Hamill was appointed to the position of Principal in 1995.

- (b) Some examples of duties or levels of duties required for this grade are:
- management of systems and/or specialist equipment and resources;
 - management of healthcare programmes.”

- [10] Mr Shane Tong was the teacher in charge of the School library during some of the time that Mrs Vallyon was employed. His evidence is that he had the overall responsibility for the operation of the library and was required to make budgetary and administrative decisions. There was also an Information Centre Committee responsible for a variety of administrative decisions pertaining to the operation of the library. Mrs Vallyon accepts that Mr Tong had responsibility for budget matters and financial decisions but she also related to other matters that she had responsibility for.
- [11] I feel bound to say that the criteria set out for the respective grades is quite broad and an analysis of what specifically occurred regarding the operation of the Raglan School library has been required. In addition to the evidence given by Mr Tong, Mr Hamill and Mrs Vallyon, I have also given consideration to the comprehensive School *Policy No. 40* and the information contained within that policy as it pertains to the respective roles of the Principal, the School Library Committee, the Teacher with Library Responsibility and the Library Assistant. I have also taken into account the content of Mrs Vallyon’s job description.
- [12] Mrs Vallyon also says that the School failed to take into account that she has some university papers – Stage One Music. I have been referred to Annex B from: “*A report on qualifications and training pursuant to the settlement of the Support Staff in Schools Collective Employment Contract and the Kaiarhi i te Reo, Assistants to Teachers of Students with Severe Disabilities and Special Education Assistants Collective Employment Contract 1998-2000*. This report was issued in July 2000.
- [13] Annex B is simply a list of qualifications held by support staff, as revealed by a survey of such staff, which may be recognised for salary setting purposes. The qualifications include degrees, diplomas, certificates and other qualifications. The latter category includes university and polytechnic papers. My understanding of all of this is that the list of qualifications in Annex B was simply compiled for the sole purpose of the report and has no mandatory application in regard to setting the appropriate salary level for individual employees such as Mrs Vallyon. At most, it would appear that the university papers passed by Mrs Vallyon may be taken into account by the School when deciding the appropriate pay grade, but that would only be one factor of several that may be taken into account.
- [14] I do not know if the School were aware of and/or considered the music papers passed by Mrs Vallyon, but I conclude that given the totality of the criteria that is required to be met in order to be paid the rate of remuneration applying to Grade C of the employment agreement, even if she had been given some “credit” for the music papers, Mrs Vallyon would still not have met the Grade C criteria.

Conclusion

- [15] While I accept that Mrs Vallyon had the responsibility for the day to day operation of the library, it is my conclusion that her role fell within the criteria set down by Grade B of the Associate Class rates of remuneration and her responsibilities were not of a sufficient level to meet the criteria set out within Grade C as she claims. I find that Mrs Vallyon was correctly paid under Grade B of the Associate Scale of remuneration set out in the Agreement. Therefore it follows that she does not qualify for the entitlement that she is claiming and hence I must decline her claims for payment of further remuneration.

[16] I also find that Mrs Vallyon does not have any qualifications that would entitle her to be paid an extra allowance pursuant to clause 3.8 of the collective employment agreement

Payment for Annual Leave

[17] It is my understanding that the School has acknowledged that Mrs Vallyon had a valid claim in that she had not received her appropriate entitlement to annual leave. In recognition of this claim the School paid Mrs Vallyon the sum of \$2013.00. This payment was included in a total payment of \$2,490 made to Mrs Vallyon in December 2004, the remainder being back pay that was due to Mrs Vallyon, associated with an increase in pay rates effective from 1 February 2004. Therefore, I conclude that it is more probable than not that Mrs Vallyon has received all payments due to her in regard to the annual leave claim. However, if I am mistaken about that, leave is given to the parties to return to the Authority for further assistance, if proven to be necessary.

Payment of Retirement Leave

[18] Mrs Vallyon claims that she is entitled to be paid retirement leave as provided by clause 5.13 of the employment agreement. However, according to the provisions of the agreement, Mrs Vallyon fails to qualify for such leave on two counts. Firstly, her position did not fall within any of the: “**executive clerical, typing, museum art technician and occupational therapists**” occupational classes. Secondly, and more obviously, Mrs Vallyon was not a full-time employee as defined by the agreement, being an employee whom is employed for at least 37.5 hours per week. Mrs Vallyon was only required to work 25 hours per week.

Therefore, I must decline Mrs Vallyon’s claim as she does not qualify for a retirement leave entitlement under the provisions of the employment agreement.

Costs

[19] Given that the School was represented by the School Trustees Association, it is appropriate that costs should lie where they fall.

Ken Anderson
Member
Employment Relations Authority