

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Maria Riwa Ihaia (Applicant)
AND Te Wananga O Aotearoa (Respondent)
REPRESENTATIVES Maria Riwa Ihaia, In Person
Mark Hammond and Christie McGregor, Counsel for the Respondent
MEMBER OF AUTHORITY Ken Anderson
INVESTIGATION MEETING 23 March 2005
FURTHER EVIDENCE 5 May 2005
DATE OF DETERMINATION 15 July 2005

DETERMINATION OF THE AUTHORITY

The Employment Relationship Problem

- [1] Mrs Ihaia was a tutor employed by Te Wananga O Aotearoa. She claims that she was unjustifiably dismissed on 29 July 2004. Mrs Ihaia seeks that the Authority finds that she has a personal grievance and award her various remedies. Mrs Ihaia also says that Te Wananga have not paid her monies owed for various expenses incurred during the performance of her duties.

Te Wananga O Aotearoa (“TWOA”) says that the dismissal of Mrs Ihaia was justified as she acted outside her authority by passing students that had not met the necessary criteria to pass the course that Mrs Ihaia taught.

Background Facts and Evidence

- [2] Mrs Ihaia worked as a Raranga (weaving) tutor. She initially worked from the Manakau Campus and then from the Akapura Campus – Te Awamutu, from February 2002. The physical location for the teaching of the Raranga programme was Paeroa, effectively an outpost of the Akapura Campus. The fundamental teaching requirements of the programme involved teaching students in tutorials at the Paeroa Outpost. In addition, students had to attend eight of ten monthly Noho Marae weekends at selected Marae in the area. The Noho Marae weekends are from Friday evening to Sunday afternoon and students are taught the practical aspects and protocols pertaining to Raranga in a traditional Marae setting.
- [3] Mrs Ihaia was required to teach students in accordance with the requirements of TWOA. The minimum requirements for completion of the respective courses, and the methods of assessment, are set out in the *Te Kura Toi Tutor Manual*.

Letter of Complaint

- [4] By way of a letter dated 20 April 2004, the Chief Executive Officer of TWOA, Dr Rongo Wetere, and the Apakura Campus Director, Ms Lorraine Anderson, received a complaint from Ms Ruth Kauhou. Ms Kauhou, a student with TWOA in 2001 and 2003, had attended a graduation ceremony in Te Kuiti. The essence of the complaint received from Ms Kauhou was that she believed that several students recorded as graduates in the TWOA 2004 Yearbook, had not met their course requirements.
- Ms Kauhou expressed her belief that there were 10 out of 34 students that she knew of, that were shown as graduates but had not completed their course requirements.
- [5] Ms Kauhou provided letters from two people that had graduated, June Oka and Carla Hirawani. Ms Oka conveyed that she had “given up” on her course in August 2003 because of work commitments. Ms Hirawani wrote, that she had to “finish up” her course in May 2003. Ms Hirawani also conveyed that she had been told that she was to receive a certificate and thought that “was strange” because she had not completed the course. Ms Hirawani also felt that it would be wrong to accept the certificate because she had not earned it.
- [6] The Authority has viewed the certificates of Ms Oka and Ms Hirawani showing; [“achievement in the prescribed programme – *Kawai Raupapa Raranga Level 4.*” The certificates are dated 14 November 2003.
- [7] Ms Kauhou also expressed her concern about her experience in 2001. She had enrolled in the Raranga programme that year but withdrew one month later. However, in 2002, she received her record of learning from the New Zealand Qualifications Authority (NZQA) and that showed that she had passed 24 units. The reality was that Ms Kauhou had only passed one unit. Ms Kauhou also provided the NZQA record for another student, Veronica Singh, along with a letter from Ms Singh. In this letter, Ms Singh conveyed that had only been involved in the Raranga programme for two months in 2001 and then had to withdraw having only completed 6 units, but the NZQA record shows that Ms Singh had completed 19 units for that year.

Investigation into the allegations

- [8] The evidence of Ms Anderson is that she met with Ms Kauhou and also commenced an investigation into the allegations. Apart from Mrs Ihaia, there were two other tutors involved in teaching the Raranga programme. All three tutors were requested to respond to the allegations made by Ms Kauhou. The further evidence of Ms Anderson is that as the investigation progressed, it was discovered that there were irregularities in the attendance records for some students. The irregularities included:
- The attendance records for some months were missing.
 - Students were found to be signed off as attending in some months when they were not present to attend.
 - Some students had been signed off for graduation without sufficient attendance records.
- [9] The irregularities were associated with students taught by Ms Ihaia. It was also revealed that Mrs Ihaia had not provided attendance records to the Apakura Campus for four months, albeit she was required to provide them every month. The further evidence of Ms Anderson is that the investigation conducted by TWOA, revealed evidence that some students had been confirmed as graduates without having met the required learning outcomes.

- [10] The Authority has viewed the report prepared by Ms Kahutoi Te Kanawa, the Programme Manager/Advisor for Raranga, and Ms Jan Marie Cook, the Academic Project Manager for TWOA. The evidence of Ms Te Kanawa as to the requirements of the Raranga programme is revealing in regard to the deficiencies pertaining to Mrs Ihaia's performance and her failure to ensure that the necessary criteria was fulfilled.
- [11] Meetings took place on 20 July and 28 July 2004. The concerns of TWOA were put to Mrs Ihaia for her response. It seems that Mrs Ihaia's position was that while acknowledging that some students had not met the attendance requirements for the course, she was adamant that these students deserved to graduate in that they had completed a satisfactory level of learning. In regard to the failure of some students to meet the required Noho Marae attendance, Mrs Ihaia was of the view that she had provided adequate private tutoring at her home that was sufficient for the requirements of the course,

The dismissal and reasons given

- [12] Following the consideration of Mrs Ihaia's explanations for her actions, she was dismissed on 29 July 2004. The reasons for the dismissal are summarised in a letter from Ms Anderson to Mrs Ihaia dated 9 August 2004:

"I refer to our meeting held Thursday 29 July 2004 at 1.30pm where Alan Down and Members of Tuia Union were present. I advised you that your employment was to be terminated on the grounds of serious misconduct. These key points were highlighted:

1. Student's level of attendance at Noho Marae, which was the principle Hui for the programme, was at an unreasonably **low** level. The Noho Marae is the core of the programme. The programme is not delivered at private homes or at tutorials. All staff and student resources are geared towards the Noho Marae. Tutorials are used for "catch up" to complement the Noho Marae, not to replace it.
2. Students were not withdrawn when required. For example, if they left the country, the expectation was to withdraw them. At every monthly staff meeting, staff members were reminded to remove students from the system if they were not attending class. You ignored this Te Wananga O Aotearoa (TWOA) directive.
3. As Campus Manager, I represent TWOA. However, you did not seek my endorsement of the decision to graduate so many students with such unsteady attendance records. Such decision making without consultation is inexcusable. Therefore vital information was kept from TWOA and me, and you Maria made key decisions on your own, with neither Te Wananga O Aotearoa support nor approval.
4. I concluded that TWOA was intentionally mis-led [sic] by you Maria. An unacceptable number of students graduated whose graduation status was questionable. You defended your decisions with disregard for TOWA systems and processes. I could no longer work with this loss of confidence in you as a staff member."

Events subsequent to the dismissal

- [13] Following her dismissal, Mrs Ihaia met with the Chief Executive Officer of TWOA, Dr Wetere, on 2 September 2004. In a letter to Mrs Ihaia dated 25 August 2004, Dr Wetere conveyed that the meeting "should be a mediation meeting."
The outcome of the meeting was that Dr Wetere offered, and Mrs Ihaia accepted, that while she would remain dismissed, she would be paid her salary until the Raranga course finished for that year, approximately the end of November or early December 2004.

- [14] The evidence of Dr Wetere is that this offer was made by him, and accepted by Mrs Ihaia, as full and final settlement of “the matter.” The matter being, the dismissal of Mrs Ihaia.
- [15] However, on or about 6 September 2004, Mrs Ihaia initiated a personal grievance action with the Mediation Service of the Department of Labour. Mediation took place in Thames on 19 October 2004 without success and Mrs Ihaia went on to pursue matters with the Authority. While Dr Wetere believed, apparently with good reason, that he had reached a full and final agreement with Mrs Ihaia on 2 September 2004, he was not prepared to pay her salary following the notification of the personal grievance. Understandably, Dr Wetere came to the conclusion that Mrs Ihaia was clearly not prepared to uphold her part of the agreement that had been reached.
- [16] While the evidence is somewhat unclear, it is the understanding of the Authority that Mrs Ihaia never had her salary reinstated following her dismissal.
- [17] Note: Counsel for the Respondent has submitted to the Authority that all matters that transpired pertaining to the meeting, involving Dr Wetere on 2 September 2004, were and are, confidential and/or without prejudice and privileged. Therefore, the Authority is not able to give any consideration or weight to what transpired at this meeting. Apart from the fact that there has not been any prejudice to either party, given the overall findings of the Authority, I am of the view that the meeting in question was simply just that, a meeting. While Dr Wetere may have considered mediation occurred, I conclude that this was not so. The meeting was not in any shape or form a mediation of the kind contemplated by the Employment Relations Act 2000 (“the Act”), nor was it a mediation as defined by section 5 of the Act. There was no independent mediator involved and there was no criteria agreed to between the parties as to the conduct of the meeting or any record of its outcome, that was binding upon them. While I find that an oral agreement was arrived at, and Mrs Ihaia subsequently chose to breach that agreement, thus relieving TWOA of any further obligation regarding any payment to Mrs Ihaia, it was not a mediated agreement as contemplated by sections 147,148 and 149 of the Act.

Analysis and Conclusions

- [18] Mrs Ihaia claims that her dismissal was substantively and procedurally unjustified.
- [19] In examining whether Mrs Ihaia was justifiably dismissed, the Authority is required to determine whether the decision to dismiss was one which a fair and reasonable employer would have taken in the particular circumstances.¹ I am also cognisant of the findings of the Court of Appeal in *Airline Stewards and Hostesses of NZ IUOW v Air NZ Ltd* [1990] 3 NZLIR 584 at 591 and the application of these to this particular case:

“Good working relations depend on loyalty and trust, both ways as between employer and employee. Once the employee destroys that relationship to the extent that the employer has reasonable grounds to believe there has been misconduct by the employee then, depending on the gravity of the situation, dismissal may be justifiable.”

- [20] The Court further held that:

“What are reasonable grounds for a belief of misconduct must depend on the facts of each case. But at the time when the employer dismissed the employee the employer must have either clear evidence upon which any reasonable employer could safely rely on or have carried out reasonable

¹ *Northern Distribution Union v BP Oil New Zealand Ltd* [1992] 3 ERNZ 483 at 487.

inquiries which left him on the balance of probabilities with grounds for believing that the employee was at fault.”

- [21] Mrs Ihaia was in a position of trust in her role as a tutor. She had considerable responsibility for ensuring that students met the required criteria for their course of study in order to graduate with a recognised qualification. I am satisfied that Mrs Ihaia knew or should have known, what was required of students to meet the criteria set down by TWOA in its various manuals. All of that information is well documented and readily available and Mrs Ihaia had received the appropriate training and had some experience in what was required going back to 2002.
- [22] While it would appear that Mrs Ihaia has some valuable skills in regard to imparting her traditional weaving knowledge, unfortunately, she failed to meet her responsibilities in regard to ensuring that all students met the necessary criteria to qualify for graduation in their course.
- [23] I am satisfied that following a fair and reasonable investigation, TWOA had clear evidence that could safely be relied on, that the misconduct of Mrs Ihaia was such that she was at fault to a degree that dismissal was an option that was fairly and reasonably available. This is particularly so given that Mrs Ihaia was unwilling to acknowledge any fault whatsoever on her part.
- [24] Furthermore, I can find no fault in regard to the procedural aspects of the dismissal. I find that I am unable to uphold the claims of Mrs Ihaia. I conclude that the dismissal of Mrs Ihaia was justified on all grounds.

The Claims for Expenses

- [25] Mrs Ihaia has presented claims for expenses that she says were incurred in the course of carrying out her duties on behalf of TWOA. Depending on which set of figures are considered, the expenses claimed are for the sum of \$73,764.86 or \$58,304.86. The claims are for the use of personal computers, use of personal vehicles and a trailer, storage, accommodation, staff catering, telephone expenses and other sundry items.
- [26] It is established that TWOA has a practice whereby legitimate expenses incurred are reimbursed and Mrs Ihaia has been suitably reimbursed for approved expenses on past occasions. But, it is also established that a particular process must be followed. The process involves firstly, obtaining prior approval before incurring the expense, and then, presenting an appropriately documented claim, including receipts and invoices. Mrs Ihaia has not been able to produce any evidence that these steps have been followed. Furthermore, she has been unable to produce any evidence of presenting the claims she is now making in an appropriate manner, and she is unable to produce receipts or invoices for any of the goods that she claims to have purchased.
- [27] Mrs Ihaia is well aware of what is required to obtain reimbursement of legitimate expenses as evidenced by the documents that have been produced pertaining to past expense claims that have been authorised and paid for by TWOA.
- [28] The evidence of Ms Anderson is that TWOA are prepared to pay Mrs Ihaia for any legitimate expenses that she may have incurred if she is able to show appropriate authorisation and evidence of such expenses. Mrs Ihaia was unable to support her claims with appropriate evidence of her entitlement to TWOA.

[29] Equally, she has been unable to provide the Authority with appropriate evidence that she has an entitlement to the claims for expenses that she has presented and therefore I must decline those claims in total.

Determination

1. The Authority finds that the dismissal of Mrs Ihaia was justified. She does not have a personal grievance and the remedies that she seeks are not available to her.
2. Mrs Ihaia is unable to provide the Authority with appropriate evidence that she has an entitlement to reimbursement of the expenses that she has claimed and therefore the claims are declined in total.
3. Costs are reserved. The parties are invited to reach a resolution of this matter. In the event that a resolution is not achieved, submissions may be made to the Authority for an order, within 28 days of the date of this determination.

Ken Anderson
Member
Employment Relations Authority