

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 50
5340796

BETWEEN JOHN DAVID KENNELLY
 Applicant

AND WAITEMATA DISTRICT
 HEALTH BOARD
 Respondent

Member of Authority: Dzintra King

Representatives: Applicant In Person
 Anthony Russell, Counsel for Respondent

Investigation Meeting: 22 November 2011

Submission received: 7 December 2011 from DHB Shared Services

Determination: 10 February 2012

DETERMINATION OF THE AUTHORITY

EMPLOYMENT RELATIONSHIP PROBLEM

[1] This matter concerns the interpretation of clause 21 of the New Zealand District Health Boards Senior Medical and Dental Officers' Collective Agreement ("the CEA").

[2] Clause 21 deals with work-related expenses. Dr Kennelly believes that the subscription fees for the Royal NZ College of General Practitioners ("RNZCGP") are work related expenses. Dr Kennelly is employed on a part time basis as a medical officer in the Emergency Department of the respondent, Waitemata District Health Board ("WDHB").

[3] The respondent says the fees are not a work related expense but has agreed to pay the fees as part of Continuing Medical Education ("CME").

[4] Clause 21.1 provides:

The employer shall meet the cost or reimburse employees for work-related expenses, including those listed in clause 21.2 in accordance with the provisions of Clause 21.3.

[5] The relevant provisions of clause 21.2 are:

3.2.1 (d) Vocational registration fees relevant to duties and responsibilities with the employing DHB;

3.2.2 (e) College membership fees, where membership of the particular college(s) is necessary for the employee's employment;

3.2.3 (f) Membership of other approved professional associations relevant to the employee's duties and responsibilities;

3.2.4 (g) Fees for a accredited maintenance of professional standards (MOPS) or similar programmes.

[6] The respondent says that (e) is not applicable because Dr Kennelley's membership of RNZCGP is not necessary for his employment as he is employed as a medical officer in an emergency department as opposed to being a GP providing GP services to the public.

[7] RNZCGP is not a vocational registration fee.

[8] The respondent accepts that pursuant to (f) membership of other professional associations may be paid. It says, however, that the association has to be approved and relevant. It says that RNZCGP is not relevant to Dr Kennelley's work in the emergency department and that is why it has not been approved.

[9] Dr Kennelley produced a number of documents which support his contention that there is a close interrelationship between general practice and emergency medicine. I have read the documents and they support the common sense view that there is an overlap.

[10] I understand Dr Kennelly's contention that his vocational registration as a GP is relevant to his work in the emergency department.

[11] However, what I am required to do is to look at the wording of the CEA.

[12] The parties are agreed that clause (e) does not apply as there is no necessity for Dr Kennelly to be vocationally registered as a GP in order to practice as a non specialist Senior Medical Officer in the Emergency Department.

[13] The issue is whether it falls within the ambit of (f).

[14] The work-related expenses listed in 21.2 are not an exhaustive list. Expenses that are not referred to in 21.2 may, therefore, nonetheless be work-related expenses that should be reimbursed.

[15] College membership fees are expressly referred to in 21.2 (e). They will be paid when they are necessary for the person's employment.

[16] Can such fees be paid when they are not necessary? Given that 21.1 (e) covers the matter of college membership fees it cannot be that they can then fall within the ambit of 21.2 (f). The words "*other approved professional associations*" can only refer to associations other than the colleges.

[17] Dr Kennelly's college membership fees are not work-related expenses in terms of the provisions of the CEA.

COSTS

[18] If the parties are unable to resolve the issue of costs the respondent is to file a memorandum within 28 days of the date of this determination. The applicant is to file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King

Member of the Employment Relations Authority