

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 359/08
5119290

BETWEEN RAYMOND CLENDON
 LEWIS
 Applicant

AND HOWICK COLLEGE BOARD
 OF TRUSTEES
 Respondent

Member of Authority: James Wilson

Representatives: Raymond Lewis in person
 Richard Harrison for the respondent

Investigation Meeting: 2 April, 16, 17 & 18 June and 4 August 2008

Submissions received: 22 August and 11 September 2008 from the applicant
 8 September 2008 from the respondent

Determination: 17 October 2008

DETERMINATION OF THE AUTHORITY

[1] The applicant, Mr Raymond Lewis, was first employed at Howick College in 1987. For a number of years he was the Head of Economics within the Commerce department. Although not directly relevant to the matters before the Authority it is fair to say that during the 1990s Mr Lewis had a strained relationship with the Principal of the College, Mr William Dimery. After taking a year off in 2003 Mr Lewis returned to the school as a teacher in 2004.

[2] During 2004 Mr Lewis raised a number of complaints against the new head of economics, Mr Smith, and another teacher Mrs Desiree Reyneke, the head of Business Studies. In response to these complaints the College commissioned an external human resources specialist, Mrs Robertson, to review the issues raised by Mr Lewis

and make recommendations as to an appropriate course of action. The summary in Mrs Robertson's report included the following comment:

Overall I believe that it is not possible to resolve these matters in a way that will satisfy Ray Lewis other than if the respondents each fully accept Ray's points and offer their total and unequivocal apologies.

It is likely the respondents will be prepared to seek and accept a compromise, but highly unlikely that Ray will accept anything other than absolution.

Mrs Robertson also made a number of recommendations including that all of the parties:

...be prepared to completely put aside the "unresolved" matters and accept that each person has a different version of events, given each persons differing perspective, emotive behaviour, and the changing information that has occurred throughout the investigation process.

[3] On 17 November 2004, Mr Lewis' then representative, Mr France, wrote to the College advising that Mr Lewis had *difficulty accepting the recommendations* of Mrs Robinson's report and:

Mr Lewis is strongly of the view that he has been treated unfairly and Ms Robertson's report goes nowhere in addressing his complaints or concerns.

He is of the view that he still has an employment problem which has not been addressed by his employer. I therefore propose to seek the assistance of the mediation service of the Department of Labour to attempt to resolve this employment problem. Please advise by return if you agree to attend mediation.

And. on 24 November 2004 Mr France again wrote to the Board formally giving notice that Mr Lewis had a personal grievance against Howick College.

[4] As a consequence of Mr Francis letters, the parties, i.e. the College and Mr Lewis, attended mediation but no settlement was reached. Neither Mr Smith nor Mrs Reyneke attended the mediation and subsequently Mr Smith resigned from his position at Howick College. It appears that one proposal suggested at the mediation was that a further “mediation” should be arranged between Mr Lewis and Mrs Reyneke, but this suggestion was never pursued. **The first of Mr Lewis’s grievances is that his personal grievance of 2004 have never been adequately addressed.**

[5] Following Mr Smith’s resignation a new Head of Economics was appointed but that teacher resigned at the end of 2006. Because the student numbers had declined no new Head of Economics was appointed. From the commencement of 2007 Mr Lewis was the sole economics teacher in the Department of Business and Management i.e. the Department headed by Mrs Reyneke.

[6] In Mid 2007 Mr Lewis agreed to accompany a group of 4 students on an exchange trip to Droitwich Spa High School in England. There is some difference of opinion as to how Mr Lewis came to be selected for this trip but, Mr Dimery says, it was made clear to Mr Lewis that, while he would be on full pay, he would have to meet his own air fares and expenses for the trip. Prior to his departure Mr Lewis wrote to Mr Dimery and the Board finance committee requesting that the Board reimburse his air fares for the trip. This request was declined.

[7] On his return from England Mr Lewis again sought reimbursement of his airfares and expenses. He made this claim on the basis that the death of a Howick College student on a separate trip to the UK had caused him a good deal of added work and stress. He also argued that he was entitled to reimbursement in terms of the Secondary Teachers Collective Employment Agreement (the CEA). Although the College agreed to reimburse Mr Lewis \$745.00, for the most part his claim was declined. **The second of Mr Lewis’s claims is that he is entitled to reimbursement for the balance of his expenses and airfares for this trip.**

[8] Mr Lewis says that during 2007 his workload was *intolerable* and despite drawing this to Mr Dimery' attention, little or nothing was done about it. He says that the way in which he was treated during 2007 (including problems surrounding the trip to Droitwich, refusal to mediate his expenses claims, refusal to provide guidance in the moderation of examination assessments and a number of other alleged incidents) was a continuation of a pattern of bullying by the College, and Mr Dimery and Mrs Reyneke in particular, stretching over 4 years. **The third of Mr Lewis's claims is that during 2007 his workload was intolerable and between 2004 and 2007 he was subjected to sustained workplace bullying. He says he was disadvantaged in his employment by this stress and bullying.**

[9] In November 2007 Mr Lewis made a formal "protected disclosure" complaint to the Ministry of Education regarding a range of concerns that he had about the governance and management of Howick College. In late December 2007 he was advised that the Secretary of Education had ordered an investigation into the issues he had raised. **It is Mr Lewis's belief that subsequent events that led to his dismissal were a direct retaliation by the College at his having lodged this complaint.**

[10] Early in 2007 Mr Dimery received a complaint from Mrs Reyneke regarding Mr Lewis's behaviour. She referred to Mr Lewis as *negative and abusive* and listed several examples of ways in which she said he bullied and intimidated her. The Board also received a letter from Mrs Reyneke's husband, supporting his wife's complaint and saying that:

Her physical health is deteriorating, she does not sleep well, she experiences very high stress levels and is constantly suffering from negative thoughts

Mrs Reyneke's complaint was also supported by a report from a registered clinical psychologist.

[11] At the Howick College Board meeting on 26 February 2008 the Board set up a subcommittee to review Mrs Reyneke's complaint. On 29 February 2008 the Board chairperson, Mrs Georgina Simmons, wrote to Mr Lewis attaching the complaint from Mrs Reyneke and seeking his written response. The letter reminded Mr Lewis of his right to consult a representative and suggested:

It would be helpful if you could provide your responses in writing and forwarding to me by next Friday, 7 March 2008. If this timeframe is not realistic for you or you would prefer to meet with the subcommittee to present your initial responses, then please let me know by return as soon as possible so that we can make alternative arrangements.

This letter was hand-delivered to Mr Lewis on Monday 3 March 2008.

[12] On 6 March 2008 Mr Lewis responded to the individual sub-committee members by e-mail saying that he had only had an opportunity to consider the matter briefly. In what Mr Lewis referred to as his initial response he said:

The claim is vexatious. It does not contain any matter of substance as it does not contain matters that concern workplace bullying..... however on their face, the letter by Mrs Simmons, the attached document and the method of delivery of the letter by Mrs Simmons provide grounds for up to four personal grievance claims by me. This matter has been referred to the Ministry of Education.

[13] In the same letter Mr Lewis said that a number of very serious matters including *failure to comply with NZQA moderation requirements* had also been referred to the Ministry of Education and urged the subcommittee members to contact the Ministry's regional office regarding those matters. This appears to be a reference by Mr Lewis to his protected disclosure complaints. The letter from Mr Lewis also said:

The complaint by Mrs Reyneke is very similar in nature and method to the complaint she made in response to my complaint in 2004. Both in 2004 and 2008 the principal and the Board treated the fact that I have complained as the basis of a complaint against me. In both cases the Board failed to comply with the Howick College Board complaints policy.

[14] On 10 March 2009 the Board, through its solicitor Mr Harrison, wrote to Mr Lewis advising that the committee had reviewed his initial response and advising:

The Board subcommittee will now initiate formal disciplinary procedures in accordance with clause 3.4 .3 of the teachers collective.

The letter invited Mr Lewis to attend a meeting of the subcommittee on 12 March 2008, at which he *could make a statement concerning the matter either personally or through a representative* and advising that, if that time was not suitable he should *let me know straight away so that we can arrange an alternative....* The next day Mr Lewis advised that he was not available to attend a meeting on 12 March. On 13 March Mr Harrison again wrote to Mr Lewis inviting him to a meeting to be held on 19 March or, as an alternative submitting written responses prior to the meeting so that the subcommittee could consider them.

[15] On 17 March 2008 Mr Harrison again wrote to Mr Lewis advising him that the Board was considering suspending him because, since he had been advised of the earlier complaint, a number of incidents had occurred which were causing concern to the Board. These incidents included Mr Lewis leaving his classroom during the course of a class and following Board chairperson, resulting in Mrs Simmons feeling intimidated. Mr Harrison invited Mr Lewis to attend a meeting in the Principal's office later that day, to provide written responses, before the Board decided whether or not he should be suspended or transferred to alternative duties. At that meeting Mr Lewis said that he had not had time to properly read and digest the letter but that he had contacted the Employment Relations Authority and intended commencing proceedings against the Board. The Board subcommittee subsequently suspended Mr Lewis. **It is Mr Lewis' forth claim that his suspension was unjustified.**

[16] Because of Mr Lewis had not had a proper opportunity to instruct a representative the Board agreed that the next subcommittee meeting should be postponed until 27 March 2008. On 25 March Mr Lewis lodged an urgent application with the Authority seeking reinstatement to his position at Howick College. On 26 March Mr Harrison advised Mr Lewis that his application to the Authority would not stay the subcommittee's enquiry and that the meeting arranged for the following day

would proceed. Mr Lewis was again invited to attend the meeting to present his response.

[17] On 20 March 2008 Mrs Symonds received an email from Mr Steven Barrowclough, Barrister, saying:

You will be aware from a letter dated 16 January 2008, written to you by Mr Webb,.. at the Ministry of Education, that I have been asked by the Ministry to undertake a preliminary investigation into various matters comprising a complaint concerning Howick College.

On that same day Mrs Simmons emailed Mr Harrison saying:

I don't recall having received this letter? Have you seen one?.

The letter from Mr Webb was a letter advising the Board of Mr Lewis' *protected disclosure* complaints. This exchange of e-mails is, the Board says, evidence that it was not aware of Mr Lewis' protected disclosure until it received Mr Barrowclough's e-mail and its actions against Mr Lewis could not therefore have been retaliatory as he alleges.

[18] Mr Lewis did not attend the meeting of the subcommittee on 27 March and on 31 March Mr Harrison again wrote to Mr Lewis advising that the committee would be reporting to the full Board at its meeting on 1 April 2008 to the effect that:

Subcommittee members were satisfied based on the information received by them that Mrs Reyneke's complaint of workplace bullying and harassment is valid and is of a serious nature and amounts to a serious breach of discipline.

Mr Lewis was invited to make any further written submissions to the Board in response to the subcommittee's findings by Tuesday 1 April 2008.

[19] Mr Lewis did prepare written submissions but unfortunately these were not received in time to be presented to the full Board. At the meeting on 1 April 2008 the Board accepted the subcommittee's findings, authorised the subcommittee to continue with its investigation and confirmed the subcommittee's decision to suspend Mr Lewis until the completion of the disciplinary procedures.

[20] Following the Board meeting on 1 April Mr Harrison wrote to Mr Lewis advising of the Board's resolutions and advising that a further subcommittee meeting would be held on Wednesday 9 April to give Mr Lewis a further opportunity to address the subcommittee members. Mr Lewis did not attend the meeting on 9 April. On 10 April Mr Harrison wrote to him again, listing all the correspondence the committee had considered (including Mr Lewis' written submissions to the Board) and advising that the subcommittee had decided to recommend to the Board that his employment at Howick College be terminated. This letter went on to state:

You are now invited to respond to the subcommittee's finding and above recommendation, any response will be considered by the Board at a meeting arranged next Tuesday, 15 April 2008 at 6 p.m.. Once again, you are encouraged to take advice or involve your support person/representative in this process. The subcommittee's recommendation to terminate your employment at Howick College is not a final decision and if there are other options that you wish to put forward as an alternative outcome, then these will be considered.

[21] On 11 April 2008 Mr Lewis advised Mr Harrison that he would not be making any further submissions and advising that he would be in Australia on Tuesday 15 April, the date on which the Board would meet. It should be noted that, other than this e-mail to Mr Harrison, Mr Lewis did not advise the College of his intentions, or seek the Principals approval for his overseas travel.

[22] The Board met, as advised, on 15 April 2008 and accepted the subcommittee's recommendation that Mr Lewis' employment be terminated immediately as a matter of serious misconduct. This decision was conveyed to Mr Lewis in a letter from Mr Harrison dated 17 April 2008. **It is Mr Lewis' final claim that his dismissal was unjustified and he seeks reinstatement to his position at Howick College.**

The issues for determination

[23] The outline above is a very brief summary of the events set out in the evidence presented. I have not attempted to set out all the details of the numerous complaints and allegations that Mr Lewis has made regarding the behaviour of the Board and Principal of Howick College and its representative. I have endeavoured however to incorporate the major issues raised by Mr Lewis. By way of summary of Mr Lewis's claims, the issues that I now have to determine are:

- (i) Does Mr Lewis have a personal grievance against his employer based on the grievance he raised in 2004 that he had been bullied in the workplace and that the College, according to Mr Lewis, has never properly addressed.
- (ii) If Mr Lewis does have a personal grievance based on his 2004 complaints what if any remedies as he entitled to?
- (iii) What if any expenses is Mr Lewis entitled to receive in relation to his trip to England in 2007?
- (iv) Does Mr Lewis have a personal grievance for the disadvantage caused to him by the alleged *intolerable workload* and *sustained workplace bullying* and if he does have a grievance in this regard, what, if any remedies is he entitled to?
- (v) Was Mr Lewis' suspension justified and, if it was not, what if any remedies is he entitled to in this regard?
- (vi) Was Mr Lewis' dismissal justified and, if it was not, did he contribute to the situation that gave rise to the dismissal, should he be reinstated to his position, and what other remedies if any is he entitled to?

Does Mr Lewis have a personal grievance regarding his allegations of workplace bullying in 2004?

[24] Mr Lewis' compliant, and by implication his personal grievance, was raised in his letter to Mr Dimery on 4 July 2004. This complaint was investigated by Mrs Robertson and her report was issued in or about October 2004. Subsequently Mr Lewis' representative, Mr France, wrote to Mr Dimery on 17 and 24 November 2004 complaining about Mrs Robertson's investigation and report, suggesting that the parties arrange mediation with a Department of Labour mediator and raising a

personal grievance. Later that same year the parties attended mediation but no settlement was reached. Although Mr Lewis says that it had been agreed that he and Mrs Reyneke would attend further mediation, no such mediation was arranged and there is no evidence that Mr Lewis pursued this option. Mr Lewis has now included this grievance as one of his claims with his statement of problem lodged with the Authority in March 2008.

[25] The Employment Relations Act (the Act) at section 114 says that an employee who wishes to raise a personal grievance must raise that grievance with his or her employer within 90 days from the date will be alleged grievance occurred or came to the employee's notice. There is no dispute that Mr Lewis fulfilled this requirement. However s.114 goes on to say:

(6) No action may be commenced in the Authority or the Court in relation to a personal grievance more than 3 years after the date on which the personal grievance was raised in accordance with this section.

Mr Lewis raised his grievance with the College on 24 November 2004 by way of Mr France's letter. Clearly more than 3 years has elapsed since that date and **Mr Lewis is debarred by section 114(6) from commencing an action in the Authority in relation to this grievance.**

Is Mr Lewis entitled to reimbursement of the balance of his expenses and airfares for his trip to England in 2007?

[26] It is unfortunate that when Mr Lewis was first in discussions regarding the possibility of travelling to England there was not an exchange of correspondence setting out the conditions relating to that trip. Mr Dimery says, and I accept, that it was commonly accepted that the staff member accompanying the group would continue to receive their full salary while they were away but would not be entitled to reimbursement of expenses. However there is absolutely no doubt that prior to his departure it was made explicitly clear to Mr Lewis that he would not be entitled to reimbursement of expenses. Despite that explicit condition Mr Lewis, on his return from England continued to pursue his claim. He says that despite being advised before he left that he would not be entitled to reimbursement he had run out of time to

pursue the matter before he left. In addition he says that events which occurred during the trip required him to spend a great deal more time on "official" activity than he had anticipated and he believed this reinforced his claim.

[27] Mr Lewis embarked on this trip knowing the conditions. While I accept that the events conspired to create a good deal more work and stress for him while he was away, it was for exactly this type of eventuality that a teacher travelled with the group. If no untoward incidents had occurred Mr Lewis would have been in the happy position of having a relatively relaxed trip on full salary. The trip was not an "official" trip as defined by the Collective Agreement and Mr Lewis had no entitlement to expenses in terms of that Agreement. As it happens the Board relented somewhat and reimbursed him a total of over \$700.00. **The Board have no legal obligation to reimburse Mr Lewis any further monies in respect to his trip to England.**

Was Mr Lewis' workload during 2007 intolerable and was he subjected to sustained workplace bullying?

[28] Mr Lewis says that during 2007 his workload was intolerable and despite drawing this to Mr Dimery's attention little or nothing was done about it. Mr Dimery says that in fact student numbers in economics had fallen such that it was by no means a heavy workload, Mr Lewis' classes were quite light in number and the only addition was year 9 enterprise studies class. Mr Dimery accepts that there were issues raised during 2007 and in fact at one point he chaired a meeting in order to assist in resolving the tensions in the Department over a particular problem. He says that Mr Lewis's behaviour during 2007 was very similar to his criticism and attitudes towards Mr Smith (which had been the subject of Mrs Robertson's earlier report) but this time Mr Lewis' criticisms were directed at Mrs Reyneke. Mr Dimery says he met with Mr Lewis to discuss various issues and, while he did not consider Mr Lewis' workload to be *out of sync* with other teachers, he nevertheless agreed to arrange additional administrative support, provided him with an additional management unit and organised that he had an additional one day off a month.

[29] **I do not accept Mr Lewis' assertion that his workload during 2007 was intolerable or that Mr Dimery failed to do anything to assist him.** I do accept that Mr Lewis was a conscientious teacher who spent a good deal of time and energy attempting to give his students the best possible education. However there is no evidence that his workload was any greater than any other teacher and I accept Mr Dimery's statement that Mr Lewis' workload was in line with other teachers and that the College provided the appropriate level of support.

[30] In his evidence Mr Lewis outlines a lengthy list of incidents of alleged bullying stretching back over a number of years. Between 2004 and 2007 this included some 50 plus incidents. These include 25 occasions on which Mr Smith had allegedly bullied him including *refusal to assist with class notes; mistakes in the year 13 plan; and the fact that he (Mr Lewis) was 15 textbooks short.* The tenor of these incidents is clearly illustrated by the following example from Mr Lewis' statement which Mr Lewis says includes three incidents of bullying:

While I was away during 2003, Mr Smith lost the only copy of the year 11 economics glossary that I wrote during 2002 and (I) asked him to pick up from an ex-student who was translating it into Korean. Mr Smith refused to try to get another copy from the student. Mrs Hutchinson (then Associate Principal) ordered me to get it. I had to ring the translator and apologise and ask her to translate it again. ... I was disciplined at the departmental meeting by Mrs Reyneke for refusing to go back to the language support department and get it back again.

Mr Lewis' list of alleged bullying also includes:

- The failure of Mrs Reyneke to attend mediation in 2004.
- That Mrs Reyneke spoke to him in ways which were *aggressive and abrupt.*
- That Mrs Reyneke on one occasion responded by *repeatedly shouting and telling me that I could not be feeling intimidated because I was very rude.*
- The failure of the Board to reimburse his expenses for his trip to England.

- The College's *total failure to consider (or) provide for the safety and welfare of staff and students who are overseas on a school trip.*

[31] In addition to the multiplicity of alleged incidents raised against the Board and senior staff Mr Lewis also insists that he was bullied throughout the disciplinary process by the Board and its representative, Mr Harrison. For example in his evidence Mr Lewis says:

The actions of the Board and Mr Harrison amount to the severest type of bullying. In my submission they amount to a crude form of mental torture. This is clearly evident from the gross breaches of employment rights. It amounts to either a planned and intentional scheme to force me to leave by driving me insane or gross negligence with the same effect.

[32] Regrettably Mr Lewis appears to have little insight into the effects of his behaviour on those with whom he interrelates. I accept that he has a very strong sense of what is right and wrong and is extremely committed to pursuing what is in the best interests of his students. However I have no doubt his often obsessive insistence on the *rightness* of his position is incredibly frustrating for those with whom he is dealing. Most of the incidents he outlines are clearly the direct consequence of this frustration. Mrs Robertson in her initial report in 2004 suggested:

Every new meeting and conversation with (Mr Lewis) is "start again". Whatever ground you feel you may have covered or achieved previously, can be lost almost in entirety, and rather than moving forward you are continually re-establishing ground.

...

On the face of it some of his accusations appear to have some substance, however these matters have grown in context and significance in (Mr Lewis') mind. Some items are now quite considerably exaggerated in content and context, whilst others are being seen now as deliberate persecutions.

And in her final report:

(Mr Lewis) decides and discards information based on his view of its relevance.

Although Mr Lewis subsequently rejected Mrs Robertson's report because of *the poor process, predetermined views and inadequate investigation* I believe her comments were insightful. I have observed the interaction between Mr Lewis and Mrs Reyneke and Mr Dimery during my investigation meeting and had the opportunity to question all of the main participants. I have reached the very clear conclusion that **Mr Lewis was not bullied but rather those around him reacted in entirely predictable way to the way in which he behaved towards them.**

Were the actions of the Board in suspending and dismissing Mr Lewis retaliation for his protected disclosure?

[33] Despite Mr Lewis' strongly held belief that the Board's actions were in retaliation for his protected disclosure, I accept the Board's assertion that they were not. The Board Chairperson says, and I accept, that the email from Mr Barrowclough on 20 March 2008 was the first time she was aware that a complaint had been made (and the email did not in fact mention Mr Lewis by name.) Mrs Symonds' email of the same day to Mr Harrison supports her assertion that she was not aware of the earlier letter. Another member of the sub committee, Mr Wayne Johnston gave evidence that he had not been made aware of the protected disclosure until after the subcommittee had made its recommendation, to the Board, that Mr Lewis should be dismissed. Mrs Reyneke's complaint was received in February 2008 and the subcommittee was well into its investigations before Mrs Symonds became aware of the complaint. It is simply not credible to believe that the Board had solicited the complaint from Mrs Reyneke in order to manufacture a reason to retaliate against Mr Lewis before they were aware of the protected disclosure. **I find that Mr Lewis' dismissal was not in retaliation for his making a protected disclosure complaint.**

Was Mr Lewis' suspension justified.

[34] The teachers collective agreement explicitly provides for the suspension of a teacher *if the welfare and interests of any student or employee at the school may require such intervention*. It is well established law that there is an obligation on an employer, when considering whether or not to suspend an employee, to discuss that possibility with the employee and consider what if any submissions the employee wishes to make. While there is not the need for an extensive investigation required when considering whether or not to take disciplinary action, an employer must demonstrate that their actions were *what a fair and reasonable employer would have done in all the circumstances*. (Section 103A of the Act). In this instance, after commencing the disciplinary investigation against Mr Lewis, the Board Chairperson became concerned about Mr Lewis's behaviour. Mr Lewis was advised of these concerns and the fact that the Board was considering his suspension. He was asked to either attend the meeting or provide written responses and reminded that he had a right to seek independent advice. Despite his protestations regarding the shortness of time Mr Lewis did attend the meeting and was given an opportunity to discuss his possible suspension. The subcommittee considered Mr Lewis' input and decided that, in light of his *increasingly erratic behaviour* it was necessary that he be suspended while the disciplinary investigation was completed. I find that the Boards actions in suspending Mr Lewis *were what a fair and reasonable employer would have done in all the circumstances*. **Mr Lewis' suspension was justified and he does not have a personal grievance in this regard.**

Was Mr Lewis' dismissal justified?

[35] I have found that Mr Lewis's dismissal was not motivated by retaliation. However it is still for the employer to demonstrate that the action they took in dismissing an employee was *fair and reasonable in all the circumstances*. The Board received a complaint from a senior teacher, Mrs Reyneke, that she had been bullied by Mr Lewis to such an extent that her health was seriously affected. They had no option but to investigate that complaint. Mr Lewis was advised of the complaint and given a number of opportunities to respond. Mr Lewis has argued that advice of some of these meetings was too short but this ignores the often repeated statement in Mr Harrison's letters that the subcommittee would delay its investigations to suit Mr

Lewis. The subcommittee were at pains to point out to Mr Lewis that he was entitled to be represented and on several occasions delayed meetings to ensure that Mr Lewis had proper opportunity to prepare his responses and to attend meetings in person.

[36] Mr Lewis' response to the complaint against him was to continue to allege not only that the complaint was vexatious but to insist that it was he who had been wronged. Faced with this obdurate inability by Mr Lewis to acknowledge any culpability whatsoever, or make any real attempt to engage in a meaningful discussion with the subcommittee, the subcommittee, and subsequently the Board reached the conclusion that Mrs Reyneke's complaint was valid and that Mr Lewis should be dismissed.

[37] Having reviewed all of the steps in the process carried out by the Board in dismissing Mr Lewis it is possible to identify minor defects. However I have reached the overwhelming conclusion that the Boards actions in dismissing Mr Lewis were what any fair and reasonable employer would have done in all circumstances. **Mr Lewis' dismissal was justified and he does not have a personal grievance in this regard.**

Summary of findings

[38] By way of summary of the findings set out above, I have reached the conclusion that:

- **Mr Lewis is debarred by section 114(6) of the Act from commencing an action in the Authority in relation to the grievance he raised with his employer in 2004.**
- **Howick College have no legal obligation to reimburse Mr Lewis any further monies in respect to his trip to England.**
- **Mr Lewis' workload during 2007 was not *intolerable* and the Principal did take appropriate steps in response to the concerns raised by him.**
- **Mr Lewis was not bullied but rather those around him reacted in an entirely predictable way to the way in which he behaved towards them.**
- **Mr Lewis dismissal was not in retaliation for his making a protected disclosure complaint.**

- **Mr Lewis' suspension was justified**
- **Mr Lewis's dismissal was justified**

Concluding comments

[39] I have dismissed all of Mr Lewis' claims against Howick College. However even if I had found Mr Lewis' dismissal to be unjustified, it is extremely unlikely that I would have acceded to Mr Lewis' request that he be reinstated. By his constant complaints and personal attacks, throughout the course of the Board's disciplinary process and the Authority's investigation, on the Board Chairperson, the Principal and the Head of Department, Mr Lewis has totally destroyed any trust and confidence his employer may have had in him. Under these circumstances reinstatement would have been entirely impractical.

Costs

[40] Costs are reserved and the parties are requested to attempt to settle this issue between themselves in the first instance. If they are unable to do so Howick College may file a submission in respect to costs within 28 days of the date of this determination. In that event Mr Lewis will have 14 days in which to file a response. The parties are advised that I will not accept submissions outside of this timetable except with leave.

James Wilson

Member of the Employment Relations Authority