

Attention is drawn to paragraph 35 prohibiting publication of certain information contained in this determination.

Determination Number: CA 87/05  
File Number: CEA 116/04

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Rae Jean Reynolds (Applicant)  
**AND** Board of Trustees of Buller High School (Respondent)  
**REPRESENTATIVES** Rae Jean Reynolds In person  
Anthony W Robinson and Amanda Butler, Counsel for Respondent  
**MEMBER OF AUTHORITY** Paul Montgomery  
**INVESTIGATION MEETING** 14 February 2005  
15 February 2005  
16 February 2005  
17 February 2005  
**DATE OF DETERMINATION** 22 June 2005

DETERMINATION OF THE AUTHORITY

***Employment relationship problem***

[1] The applicant, Mrs Reynolds, claims she was constructively dismissed from her employment as Library Assistant at Buller High School on 4 July 2003. She seeks \$147,271 loss of potential earnings, reimbursement of lost wages, expenses and costs of \$13,851.72, compensation for hurt and humiliation in the sum of \$30,000, compensation for loss of benefits in the sum of \$30,000 and exemplary damages of \$100,000. The total claim is \$321,122.72.

[2] In her statement of problem, Mrs Reynolds isolates the four key issues in her grievance:

- I. *The Deputy Principal Judith Millar's unjustified and unprofessional conduct of 3rd July 2003 when she made an angry public accusation against me in the presence of students.*
- II. *The Principal, Peter Robertson's justification of Mrs Millar's actions and his failure to state an intention to act upon my complaint despite him being*

*aware of my emotional fragility due to past complaints and my statement to him that this could force my resignation.*

III. *The Board Chairman, Mr Campbell's obstruction of justice by departing from due process (Board policy) and misleading the Board by recommending that 'no investigation was necessary'.*

IV. *The Board of Trustees failure to respond to my request to them for a Board investigation into the matter.*

[3] The Board of Trustees (BOT) denies dismissing Mrs Reynolds either actually or constructively and declines to meet the applicant's claims.

[4] The parties attended mediation in which they were, regrettably, unable to resolve their differences.

### ***How the problem arose***

[5] Mrs Reynolds's position as Library Assistant at the high school was supervised by a member of the teaching staff. That teacher held the title of Teacher with Library Responsibility (TLR). It is not necessary to detail the significant difficulties Mrs Reynolds experienced as a result of this teacher's behaviours, but their impact on her over a protracted period led to the applicant tendering her resignation on 3 June 2003 to come into effect on 4 July 2003.

[6] The notice of resignation led to a concerted effort on the part of the Principal, Mr Robertson, to resolve the issue and retain the services of a valued member of the high school staff. The teacher causing the difficulties was relieved of his responsibilities for the library and it was intended to replace him in this role with Mrs Millar, the Deputy Principal, with whom the applicant had had good rapport.

[7] It was proposed that the applicant would take sole charge of the library with oversight rather than direction from Mrs Millar, that her salary would be adjusted to acknowledge her responsibilities and that the scheduled upgrade of the library would be given greater priority in the school's maintenance programme. Mrs Batt, the Executive Officer, was asked to work with Mrs Reynolds in developing a position description for the new role.

[8] The applicant did not formally withdraw her resignation but engaged actively with relevant staff in all aspects of the role she had been offered. Everything appeared to be back on track as the end of the term approached. Sadly, it was not.

[9] By way of background, the library is some distance from the administration block at the high school. The main doors to the library are through a lobby which is accessed from an open quadrangle. It also has a side door which opens out onto a smaller quadrangle which is bounded on three sides by the library, a home economics room and a science laboratory. This smaller quad had become something of a haunt for smoking pupils, who, to ensure their transgressions went undetected, posted a lookout for marauding teachers on yard duty.

[10] Mrs Reynolds had cause on 23 June 2003 to bring to the attention of Mrs Millar the behaviour of a female pupil whom she had seen smoking in the area. She also told Mrs Millar that a certain pupil had been on sentry duty. This male pupil had recently returned to the high school after a period of alternative education.

[11] The high school staff and outside agencies had committed very significant efforts to support the young man with his difficulties and to enable his return to school. A major contributor to this support was Ms Mary Smith, the counsellor.

[12] On the morning of 3 July 2003, at the staff briefing at 8.30am, Mrs Reynolds raised the issue of the smokers outside the library and in that context raised the name of the young man who acted as lookout. The applicant's intention, in raising the matter, was to ask for general assistance on the part of duty staff in keeping an eye on the small quadrangle.

[13] Unknown to Mrs Reynolds at the time was the fact that Mrs Millar had interviewed the female student smoker referred to her by the applicant, and had dealt with the incident in accordance with the relevant policy. Mrs Millar saw the applicant's statement as an assault on her professional standards and interjected at the briefing that the matter had been dealt with. Ms Smith was affronted that the name of the sentry had been raised in front of the full staff.

[14] Mrs Reynolds stated that she had referred the matter to Mrs Millar and in response to the Deputy Principal's interjection, the applicant said that she saw the matter as an ongoing problem.

[15] Unaware of the hackles that she had inadvertently raised, Mrs Reynolds returned to the library to continue her work and prepare for the end of term the following day, 4 July 2003.

[16] Immediately following the staff meeting, the Principal, Mrs Millar and Ms Smith met briefly to consider the incident. Mr Robertson suggested that Mrs Millar speak to Mrs Reynolds and try to resolve the issue between themselves.

[17] Early that afternoon, Mrs Millar went to the library to speak to Mrs Reynolds. The Deputy Principal described the event as *a discussion* while the applicant called it *an angry public accusation* to which, she says, she was too shocked to reply. Mrs Reynolds's description uses the word *public* as she says there were students in the library at the time of Mrs Millar's visit. Mrs Millar does not recall seeing students when she called to the library.

[18] Taken aback by the content of the Deputy Principal's complaint and the manner of its delivery, Mrs Reynolds went to the Principal's office to make a complaint about this behaviour. Mrs Reynolds said she waited in the foyer until Mr Robertson became available at around 5.50pm.

[19] The applicant claims Mr Robertson dismissed her complaint, commenting that the Deputy Principal's manner was forthright and that he had experienced her *straight to the point* approach himself and that perhaps she (Mrs Reynolds) could have approached the request for assistance made at the staff meeting in a better way.

[20] The applicant says the Principal saw his deputy's behaviour as acceptable and that Mr Robertson was attempting to blame the applicant for the incident and gave no assurance that he would investigate it.

[21] Mr Robertson says he did refer to the Deputy Principal's style when approaching issues, that he was not defending Mrs Millar's actions or behaviour, but that given the tasks to be done on the last day of term, asked the applicant to give him a little time to get to the bottom of the incident. The Principal says that Mrs Reynolds agreed to consider that request overnight.

[22] What both agree is that Mrs Reynolds made it clear that the incident might give rise to her resignation.

[23] The following morning, while having his breakfast, Mr Robertson was telephoned by the applicant who advised him she had decided to resign from her position. Again he sought time to

allow him to follow up on the applicant's complaint but without success. Mrs Reynolds announced her resignation to the staff at the morning briefing, stating that that day would be her last at the high school.

[24] Mrs Millar again went to the library some time after 5 o'clock on Friday 4 July to speak to the applicant and to apologise for the manner in which she had addressed the issue with Mrs Reynolds the day before. Mrs Millar says she did apologise and said that on reflection, she could have handled the matter differently. Mr Reynolds, the applicant's husband, who was in the library at the time, says that Mrs Millar's tone and approach was *conciliatory* and her speech was at times lost in the hum of the library computers. Regrettably, the Deputy Principal's approach to the applicant did not change her view of the situation, in fact Mrs Reynolds later wrote that Mrs Millar was *blatantly unrepentant* and that the visit was *Mrs Millar's second attack*.

[25] It is noted that Mrs Millar's visit to the library was at the behest of another staff member, not the Principal. Also, when the applicant spoke to Mrs Batt about the incident in the course of the day, Mrs Batt also urged Mrs Reynolds to give herself some time to assist a resolution to be achieved. It is significant also that the applicant's documents (p51 bundle of documents) refer to the alleged breach by Mrs Millar as the *least* of the four breaches Mrs Reynolds says formed the basis of her grievance.

### ***The issues***

[26] The Authority needs to determine these core issues:

- Was the resignation tendered by the applicant on 3 June 2003 and effective at 4 July 2003 *live* when the incident on 3 July 2003 occurred; and
- In the event that the *first resignation* was not *live* at the above date, how does this affect the applicant's claims in relation to events which led to that resignation; and
- Did the request for assistance made by the applicant at the staff briefing on 3 July 2003 give rise to the Deputy Principal's visit to the library later that day; and
- Did the Deputy Principal's statements and her manner in addressing the applicant give the applicant grounds for repudiating the employment agreement; and
- Was the request by the Principal (after he was advised of the problem) for some time to address the applicant's complaint reasonable in the circumstances; and
- What, if any, contractual obligations did the respondent Board have to meet the applicant's post-resignation demands; and
- In the event the applicant succeeds, what remedies are just in the circumstances of the case?

### ***The investigation meeting***

[27] Prior to the investigation meeting in Westport a preliminary meeting was held in Christchurch to isolate the issues and to appraise both parties of the Authority's investigation approach. That initial meeting resulted in the applicant reducing the extent of her reliance on the issues relating to

the role of the former TLR in her claim. Essentially, Mrs Reynolds accepted these aspects of her claim were time-barred.

[28] This meeting also led to the applicant and her husband agreeing to provide both the Authority and the respondent with the evidence their supporting witnesses would give at the main meeting.

[29] At the Westport meeting, the Authority heard evidence from the applicant; her husband Paul; Mr David Hamilton and Mrs Dianne Hooper, both teachers at the high school; and briefly from Mr Kevin Fastier who appeared under summons in relation to documents he was said to have in his control.

[30] Although I had been expecting evidence from the applicant's counsellor in respect of the alleged damage Mrs Reynolds suffered as a result of her grievance, the applicant withdrew this witness. I was, as a result, unable to evaluate on an evidential footing, the views of this witness.

[31] For the respondent, the Authority heard evidence from Mr Robertson, the Principal; Mrs Millar, the Deputy Principal; Mrs Batt, the Executive Officer; Ms Smith, the Guidance Counsellor; and Mr Peter Campbell, the Board Chairman.

[32] I express the Authority's appreciation to those attending and who gave evidence in a difficult, and at times, charged setting.

[33] As Mrs Reynolds represented herself, she was afforded considerable latitude in terms of procedure, particularly given a claim in excess of \$300,000. The applicant and her witnesses needed to have their evidence heard and carefully considered. The respondent was equally entitled to respond itself in the face of an exceptionally high claim for remedies. The Westport meeting took 3½ days.

[34] This was a matter that would have benefited from professional input at the investigation meeting. There is no doubting Mrs Reynolds's commitment to her quest and her earnest efforts to establish her claims. I commend her for that energy and commitment.

[35] In the course of the investigation meeting I made an order suppressing the names of the TLR and the male student acting as lookout. I now prohibit the publication of any details which could lead to identifying these individuals.

### ***Discussion and analysis***

[36] There is no doubt that the applicant was highly regarded by her Principal and by her employer, the Board of Trustees. Both, in the face of the earlier resignation, sought to retain her services by giving her sole charge of the library, advancing the library upgrade and addressing her employment conditions and remuneration. These positive moves clearly established the respondent's keen desire to retain a valued person and a competent employee.

[37] It is of concern that a claim that went to mediation at \$30,000 escalated to one in excess of \$300,000 when lodged with the Authority. Essentially, the facts had not changed but the applicant's perceptions had. From a straightforward claim under the Employment Relations Act 2000, elements based on Health and Safety in Employment Act, Protected Disclosures Act and a seeming myriad of other statutes and protocols were added to the mix. Exemplary damages were sought but with no supporting evidence, a claim for 17 years (discounted by 50% for no apparent reason) loss of earnings and undocumented legal and other costs when Mrs Reynolds had been legally represented.

[38] Following her resignation without notice on 4 July 2003, the applicant was no longer an employee of the respondent once she finished work on that day. The employment relationship was over. That presents problems for the applicant in respect to the third and fourth grounds of her claim.

[39] This case has been far from straightforward because the applicant's evidence was characterised by imprecise legal understanding and written evidence was frequently altered in response to questioning.

[40] Returning to Mrs Reynolds' statement of problem, the third and fourth grounds cited relate to events which occurred after the applicant resigned. To that extent, these two grounds constitute wishes on the part of Mrs Reynolds, but wishes which the Principal and Board had no legal obligation to entertain. In spite of this, both sought to have the applicant withdraw her resignation, in order to retain her skills. Those efforts failed.

[41] Turning now to the first ground of grievance, having heard and considered the evidence, I think it is more likely than not that there were students present when Mrs Millar went to the library towards the end of the first period after lunch on 3 July 2003 to speak to Mrs Reynolds about the events at the staff briefing that morning. Mr Hamilton, in his evidence, stated that students from his form class had been party to a discussion and an account from others as to what had occurred in the library between Mrs Millar and Mrs Reynolds. I also accept that Mrs Millar's approach was assertive as she, in concert with the Principal, perceived the applicant's statement at the briefing to be an *ambush on the management of the high school*. I am of the considered view that Mrs Millar's approach was over-boisterous, however, I also take the view that, given her perception of the incident at the staff briefing, in the light of her having dealt with the female student referred to her by the applicant, she felt her professional competence had been challenged. In her replies to questions from the Authority, Mrs Millar said that there were two matters of considerable concern to her; the first being the unfair criticism of her own apparent inactivity, and her concern at the raising of the name of the young man said to be acting as lookout.

[42] I am of the view that Mrs Reynolds's request for support from duty staff was not intended to challenge Mrs Millar's competence but was seen that way by Mrs Millar and by Mr Robertson and Ms Smith. It appears to be an issue of purposes mistook which resulted in unintended consequences. On the face of the evidence the Authority heard, the applicant was simply asking for support from duty staff and not attempting to undermine or attack members of the senior management team.

[43] There are three generally accepted grounds on which a constructive dismissal may be based. They are:

- (a) The employee is given the option to resign or be dismissed; or
- (b) The employer follows a course of action designed to induce the employee to resign; or
- (c) A breach on the part of the employer is of such seriousness that the employee is entitled, on the basis of such a breach, to repudiate the employment agreement.

[44] In this case, the first ground has never been alleged and in fact does not apply.

[45] In its submissions, based on a range of established cases, the respondent strongly suggests that the second ground has been alleged as the basis of the applicant's claim. I can understand the reasons for those submissions given the disparate nature of the allegations made by the applicant.

[46] I take the view that the applicant's claim for constructive dismissal lies upon the third ground and solely on the incident which took place in the library on 3 July 2003 and the alleged refusal of the Principal to take the applicant's complaint seriously. I accept that the manner of Mrs Millar's approach, particularly with some students present at the time, to have been professionally inappropriate. I also accept that, having already dealt with the referral made by Mrs Reynolds, Mrs Millar misinterpreted the applicant's plea for assistance. I understand why she saw this in the light she did. However, I also understand why Mrs Reynolds was taken aback by Mrs Millar's approach, given that Mrs Reynolds was not attacking nor ambushing Mrs Millar. To be blunt, Mrs Millar, given her position and experience (not to mention her awareness of the circumstances under which Mrs Reynolds agreed to stay following the earlier difficulties), needed to take a less assertive and more inquisitive approach in making her views known to the applicant.

[47] To her credit, late on 4 July 2003 Mrs Millar approached Mrs Reynolds and apologised for her earlier inappropriate communication. In short, she recognised her lapse and was prepared to apologise.

[48] Significantly, Mr Reynolds followed Mrs Millar into the library when she visited at or about 5.30pm on 4 July. His evidence was that Mrs Millar was conciliatory and *quietly spoken*. That appears an attempt by Mrs Millar to begin mending the broken bridges.

[49] Turning to the second plank of the applicant's grievance claim, which is that Mr Robertson justified Mrs Millar's actions and failed to state an intention to act upon the applicant's complaint *despite him being aware of my emotional fragility due to past complaints and my statement to him that this could force my resignation*, it is clear from Mr Robertson's evidence that the applicant appeared very upset. The following day was the last day of the term and to compound matters, Mr Robertson's laptop computer had melted down and he was naturally anxious about the important data it contained. However, in spite of this vexing event, it appears to me that he did listen to what Mrs Reynolds told him and asked for a little time to enable him to follow up. On her own evidence, the applicant says that she agreed to consider this proposition overnight. That, it seems to me, was not an unreasonable request and particularly so since Mrs Batt, whom the applicant had visited at around 4.30 that day, says in her evidence:

*Later that same day – 3 July – Rae came to my office at approximately 4.30pm. She was very emotional and told me about her discussion with Judith Millar in the library. Rae portrayed the debate between herself and Mrs Millar. ... I told Rae that this issue had to be dealt with and could not be ignored and I suggested that she needed time given her emotional state, to collect herself and gather her thoughts first. It did not seem to me, given Rae's state of mind at the time, that the matter could be resolved then and there. I felt that a resolution and reconciliation between the parties was needed but it was far too soon given that Rae was very upset.*

[50] It seems to me that the allegation of the applicant that Mr Robertson gave her no assurance that he took her complaint seriously, nor did he give her an undertaking that he would pursue the matter, quite unusual in the circumstances. In the time following what I have referred to as the applicant's *first resignation*, the Principal was consistently and industriously involved in remedying the state of affairs as previously described in this determination. Nowhere in the evidence can I find any clear request on the part of the applicant that the Principal give her a specific undertaking as to the actions he intended to take.

[51] I also am of the view that, given the earnest efforts of Mr Robertson to retain the applicant's services following the *first resignation*, any such undertaking was unnecessary.

[52] I have no doubt that Mrs Reynolds felt and feels very aggrieved by what she perceived as unjustifiable treatment by the Principal and the Board of Trustees as her employer. However, I must take an objective view based on the evidence. In particular, having observed Mrs Reynolds at the interlocutory meeting in Christchurch and the investigation meeting in Westport, I became conscious of her at times intemperately emotional language and her tendency to overstate situations.

### ***The determination***

[53] I find that the resignation on one month's notice tendered by the applicant on 3 June 2003 was withdrawn by implication by the applicant. The evidence is clear. Presented with a range of improvements to her position and security of tenure, Mrs Reynolds actively engaged in embracing the prospect offered. I find that but for the altercation with Mrs Millar on 3 July 2003, the applicant would be employed as sole charge Librarian at the high school.

[54] As a result, I find that the applicant's claims based on events which led to that *first resignation* have no validity. I would add that in spite of the applicant withdrawing any claims based on the TLR's behaviour at the preliminary meeting, Mrs Reynolds continued to press these at the Westport meeting.

[55] I find that Mrs Reynolds made a genuine request for the vigilance of duty staff in the area behind the library. I accept that the applicant had no intention to *ambush* anyone, but simply asked for assistance. The evidence of other staff present at the briefing convinces me of this. I accept that Mrs Millar and Ms Smith took umbrage for different reasons. I also find that each misunderstood the message from Mrs Reynolds and took inappropriate action. Mrs Smith, in spite of her memo to staff about the reintegration of the *lookout boy*, warned the young man off. Mrs Millar, to her credit, decided to address what I find were her misunderstood concerns about her integrity regarding the disciplinary referral, directly with the applicant. I find she did it poorly and I find she acted unprofessionally in addressing the issue. Clearly, there were students present and I find that the request made by Mrs Reynolds at the staff briefing earlier that day gave rise to the Deputy Principal's visit to the library.

[56] Clearly, Mrs Reynolds was upset at the manner displayed by Mrs Millar. Mrs Reynolds took her complaint to the Principal for action that same day. She did not resign at that point but agreed to consider Mr Robertson's request to give him time to investigate the matter. I find that having made a legitimate complaint about the Deputy Principal's behaviour towards her, the applicant was required to allow the Principal a reasonable time to fully investigate that complaint. In effect, she denied him that opportunity and tendered her resignation without notice the following morning. In short, Mrs Reynolds repudiated the employment agreement after consideration and without permitting an investigation to begin.

[57] I find, in these particular circumstances, the applicant was unreasonable and not entitled to repudiate the employment agreement on the basis either of what was said to her by Mrs Millar or her allegation that the Principal failed to give her an assurance that he would investigate the matter.

[58] Having resigned without notice, thereby severing the employment relationship, Mrs Reynolds was not entitled to any inquiry, whether by the Principal or by the Board of Trustees. Simply put, she could request but she could not demand.

[59] I find that grounds 3 and 4 of the applicant's claim are unsustainable as no obligation for investigation survived the applicant's severance of the relationship.

[60] The applicant's case necessarily fails. Mrs Reynolds does not have a personal grievance against her former employer and the Authority is unable to assist her further.

*Costs*

[61] I urge the parties to attempt a resolution of this matter between themselves. If that is not possible, then each party is granted leave to make submissions to the Authority on this matter.

Paul Montgomery  
Member of Employment Relations Authority