

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 130
5408347

BETWEEN CHRISTOPHER SCOTT ROY
Applicant

A N D BOARD OF TRUSTEES OF
TAMAKI COLLEGE
Respondent

Member of Authority: T G Tetitaha
Representatives: Applicant in Person
Gary Reading, Advocate for Respondent
Investigation Meeting: Hearing on the papers
Submissions Received: 11 March 2013 from Applicant
No submissions from Respondent
Date of Determination: 15 April 2013

DETERMINATION OF THE AUTHORITY

Determination

- A. There are factual disputes which can only be determined at substantive hearing;**
- B. The matter is to proceed to hearing on 13 May 2013**

Employment relationship problem

[1] Mr Christopher Scott Roy was employed by Tamaki College as a teacher from February 2007 until he resigned on 29 September 2010. He alleges he was constructively and unjustifiably dismissed because of his atheist beliefs. He states Tamaki College saw Christian/Mormon faith as a core responsibility to which he was indifferent and reluctant to accept or practise as a condition of his employment.

[2] The Board of Trustees of Tamaki College (Tamaki College) disagrees. They refer to a record of settlement dated 5 November 2010 between the parties, the lengthy delays in raising the grievance and refer to Mr Roys having similar proceedings before the Human Rights Tribunal. It states these remove the Authority's jurisdiction to resolve the personal grievance.

Issues

[3] There are three preliminary issues regarding the Authority's jurisdiction to inquire into this personal grievance. These are:

- (a) Does the record of settlement dated 5 November 2010 prevent the Authority from inquiring into this matter?
- (b) As a consequence of the personal grievance being raised out of the 90 day period, should leave be granted to allow the Applicant to file out of time?
- (c) Does the filing of proceedings in the Human Rights Commission prevent the Authority from hearing this matter?

[4] The parties agreed at a teleconference to deal with the three issues on the papers. Parties confirmed they had filed all evidence and were directed to file further submissions.

Does the record of settlement dated 5 November 2010 prevent the Authority from inquiring into this matter?

[5] Mr Roy submits the Authority has jurisdiction to resolve his personal grievance because he was under duress, suffering trauma from the dismissal and had had no access to legal advice. He alleges he did not know what was settled by the paperwork at the time. At a teleconference on 4 March 2013 Mr Roy confirmed he had no medical evidence to support the alleged duress and trauma and had been to see the Grey Lynn Community Law Centre for legal advice.

[6] The Record of Settlement has not been signed off by a mediator attesting to compliance with the formalities required under s149. Accordingly whether there was

contractual compromise or accord and satisfaction¹ resolving matters will be a matter of fact to be determined at hearing.

[7] A settlement agreement can be set aside where there is duress or undue influence at the time the compromise is entered into. It is a question of fact whether or not duress or undue influence existed.²

[8] Given the above, the Authority declines to resolve the disputed matters of fact on the papers.

As a consequence of the personal grievance being raised out of the 90 day period, should leave be granted to allow the Applicant to file out of time?

[9] The personal grievance was filed on 23 January 2013 – two years and 26 days out of time. An application for leave to file a personal grievance out of time has been made by Mr Roy. To be granted leave, Mr Roy must show the delay in raising the personal grievance was occasioned by exceptional circumstances including those set out in section 115 and it is just to grant leave. One exceptional circumstance is where an employee has been “so affected or traumatised by the matter giving rise to the grievance that he ... was unable properly consider raising the grievance within the period specified” being 90 days.³ This is a question of fact which can only be resolved at hearing.

[10] In the circumstances the Authority declines to resolve this issue on the papers.

Does the filing of proceedings in the Human Rights Commission prevent the Authority from hearing this matter?

[11] Tamaki College submits that the issues of religion are not within the jurisdiction of the Employment Relations Authority but within the Human Rights Commission’s jurisdiction. The Authority has jurisdiction to consider discrimination on the basis of religious belief pursuant to s 103(1)(c) (where an employee has been discriminated against in the employee’s employment) and one of the prohibitive grounds of discrimination being religious belief (s 105(1)(c)).

[12] Mr Roy claims the matters before the Human Rights Commission are not linked with these “new employment issues”. There is little in the way of factual

¹ *CableTalk Astute Network Services Limited v Cunningham* [2004] 1 ERNZ 506

² See above at [44]

³ Section 114(1) and (4) and 115

evidence about what was before the Human Rights Commission. Accordingly, the Authority declines to resolve this issue as a preliminary matter.

Determination

[13] Given the factual disputes which can only be determined at hearing, the Authority declines to resolve this application upon the papers. The matter is to proceed to hearing on 13 May 2013.

T G Tetitaha
Member of the Employment Relations Authority