

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

WA 119/10  
5280660

BETWEEN

DR DANIEL SPERNAT  
Applicant

AND

MID-CENTRAL DISTRICT  
HEALTH BOARD  
Respondent

Member of Authority: P R Stapp

Representatives: Bill Manning, Counsel for the Applicant  
Fiona McMorran, Advocate for the Respondent

Investigation Meeting: 3 June 2010 at Palmerston North

Determination: 30 June 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] Dr Spernat claimed the reimbursement of the cost of a training course with a receipt during his employment with Mid-Central District Health Board (the Board). The course was to take place in Australia, but after Dr Spernat had left the Board and he had returned to Australia to work. The Board, at the time that Dr Spernat claimed the cost of the course, declined his claim. The Board now claims that it is not required to reimburse the sum because:

- (a) Dr Spernat was not employed by the Board at the time the course occurred;
- (b) Dr Spernat was not covered by the multi-employer collective employment agreement at the time the course occurred;
- (c) The Board complied with the terms of the multi-employer collective employment agreement.

**The issue**

[2] The issue for determination is whether Dr Spernat is entitled to reimbursement of the claim for the cost he incurred to attend the course.

**The facts**

[3] Dr Spernat joined Mid Central District Health Board from Australia and took up a training position with the Board. His training position was overseen by various Australian medical colleges to become vocationally registered as a consultant. His role with the Board as a registrar involved him with on-the-job training under the supervision of college-appointed consultants and he was required to fulfil the colleges' educational curricula. The training scheme requires registrars, such as Dr Spernat, to rotate from employer to employer so as to maximise the diversity of training experiences.

[4] Dr Spernat was allocated to the New Zealand region for his advanced training with the Board for a period of 12 months which ended on 7 December 2008. At the time he was covered by a multi employer collective employment agreement (Resident Doctors' Association and District Health Boards 29 August 2008-31 December 2009).

[5] His training programme entailed three compulsory meetings which he was required to attend. One of them was an annual scientific meeting and he was paid and reimbursed the cost from the Board during his time at the Board. This involved overseas travel and was accepted by the Board.

[6] Dr Spernat paid the registration fee for another course on 4 September 2008. The course was an annual scientific meeting scheduled to be held in Brisbane 8-12 March 2009. By the time the course occurred, Dr Spernat had left the employment with the Board, to take up a training position in Australia. When he applied for the reimbursement of the registration cost he knew he would be returning to Australia, and the Board knew that too. When he applied for the course and paid the registration fee, he did so to take advantage of a discounted "*early bird*" price available at the time.

[7] His claim for reimbursement was made on or about the date of the receipt, being 10 October 2008 when he was employed by the Board. The claim was declined by the Board.

## The parties' cases

### *The respondent's case*

[8] The dispute is about the interpretation of clause 28.3 of the multi-party collective employment agreement (MECA) in force at the time. Clause 28.3 reads as follows:

***Employment Related Expenses:***

*“The employing District Health Board shall reimburse the actual and reasonable costs of the training undertaken in the pathway to obtain vocational scope of practice, on the production of receipts.”*

[9] The clause goes on to describe “costs” for the purposes of the clause including:

*“... course, examination, modules and clinical assessments and other fees where they are incurred as a direct result of training required for achieving vocational scopes of practice.”*

[10] At issue is whether or not clause 28.3 is able to be literally interpreted (applying the leading cases on the interpretation and application of employment agreements under the Employment Relations Act 2000: *Godfrey Hirst New Zealand Ltd v. National Distribution Union* (unreported, AC62/04, ARC45/04, 27 October 2004, Colgan J); *Association of Staff in Tertiary Education Inc: ASTE Te Hau Takitini O Aotearoa v. Hampton, Chief Executive of the Bay of Plenty Polytechnic* [2002] 1 ERNZ 491; *Flight Attendants and Related Services New Zealand Association v. Bilmans Management Ltd* [1991] 1 ERNZ 938).

[11] During the Authority's investigation meeting there was a focus on the word “undertaken”. In essence, the Board relied on clause 28.3 to mean that the training course was to be “undertaken” at the time. The expectation would be that the registrar making such a claim would be employed by the Board and employed under the coverage of the multi-party collective employment agreement. The Board says this can not be so in Dr Spernat's circumstances because he had returned to Australia at the time of the course.

[12] In the Board's submissions, Dr Spernat was not an employee and was not covered under the MECA at the time the course took place. On this basis, the Board says that it was entitled to decline the request for the reimbursement.

[13] In addition, the Board has relied upon implying that the MECA can only apply to persons employed within the coverage of the agreement and in the employment of one of the parties to the MECA with the additional words: "*when the benefit arises*".

[14] The Board has made submissions on the issues of compliance and breaches in defending the claims in the statement of problem. As I said at the time of the investigation meeting the employment relationship problem is not about a remedy for a compliance order, because a ruling will require the Board time to abide by any determination. In this regard the issue is about the interpretation, application and operation of the MECA. Also, there is no claim for any remedy for a breach as such, and therefore I do not need to make any findings on that because there is a genuine dispute in regard to clause 28.3 of the MECA that is being pursued by the applicant.

[15] I do not traverse all of the submissions made on behalf of the applicant because my findings will cover the various relevant points.

### **Determination**

[16] The applicant's claim for his reimbursement of the cost of the training course must be successful for the following reasons, I hold:

- (a) Clause 28.3 can be interpreted literally and on its plain meaning.
- (b) Dr Spernat was employed by Mid Central District Health Board at the time he made his claim and produced a receipt, and he was covered at that time under the MECA.
- (c) The word "*undertaken*" must be read in its full context in the clause. It does not mean that he must attend the course while he was employed by the Board before being reimbursed, but means that the training fits the "*pathway to obtain vocational scope of practice...*". Potentially this is a provision under the clause that will survive the end of the employment relationship.

- (d) There is no dispute that Dr Sprenat's registration was in accordance with his training and that the course met the criteria of his training covered under the terms of the MECA.
- (e) Terms can not be implied in Clause 28.3 because it does have a plain meaning.
- (f) The production of a receipt accompanied Dr Sprenat's claim to meet the requirement of Clause 28.3.
- (g) The agreement reached under the MECA allocates the cost of training to the employer. All employers under the MECA share the benefits and burdens of the trainee scheme. The cost, on the production of receipts is part of the bargain agreed to by the Boards, and Dr Sprenat accepted the offer of the arrangement upon becoming employed by the Board and being covered by the MECA.
- (h) The Board has accepted an Australasian link as part of the approved training arrangement. There is no dispute that the course Dr Sprenat applied for came within the criteria for his training and that it is an accepted part of the training regime.
- (i) The Board had paid reimbursements previously to Dr Sprenat for his training including another course overseas. This is only important to confirm overseas training courses are permitted and had been approved for Dr Sprenat.

[17] This is an unusual situation in regard to Dr Sprenat coming from Australia in the first place, and returning to Australia, but the clause does not make any allowance to exclude that situation from the obligation on the Board to pay the training costs. Indeed the clause does not say '*when the benefit arises*'.

[18] I wish to add that the submission from Mr Manning about applying the *BP Refinery (Western Port) Pty Ltd v Shire of Hastings* (1977) 16 ALR 363 tests for implying terms is entirely accepted by me. He referred to New Zealand cases also: *Devonport Borough Council v Robbins* [1979] 1NZLR 23 and *Attorney General v New Zealand Post Primary Teachers Association* [1992] 1 ERNZ 1163, 1168.

Firstly, it would not be reasonable and equitable to imply a term that would distort the bargain and price to which the parties agreed. Secondly, implying a term would distort what had been agreed by Dr Spernat and the Board when he accepted the offer to work at the Board under the coverage of the MECA. Thirdly, an implied term would ignore the benefit of the scheme that applies under the MECA where the cost of the training is borne by the employer. Fourthly, clause 28.3 is effective without implying a term and it is not necessary “*to give business efficiency to the contract*”.

[19] A final point that I will make is that the situation is very unusual. The approach taken by the Board is understandable. However there can not be a precedent where criteria apply to the approval of training and which is open to the Board’s consideration.

[20] In conclusion, I summarise that actual costs are reimbursed. The reimbursement applies once costs have been incurred for approved training. The costs are incurred when an employee paid for them. Dr Spernat paid for them when he was an employee. The parties must have intended that where someone is undertaking training that has to be paid for in advance by the employee at the time such a payment is to be reimbursed. It would be unreasonable for an employee to have to wait until the training is provided to get reimbursed.

### **Conclusion**

[21] My conclusion is that Dr Spernat is entitled to the reimbursement of the cost of the training he applied for with a receipt.

[22] Costs are reserved.