

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 66/10
5295063

BETWEEN DEAN WILLIAMSON
Applicant

AND VICTORIA INSTITUTE (NZ)
LIMITED
Respondent

Member of Authority: Alastair Dumbleton

Representatives: Applicant in Person
Peter Meng, advocate for Respondent

Investigation Meeting: 12 February 2010

Determination: 15 February 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This determination confirms in writing the compliance order given orally at the investigation meeting held with urgency on 12 February 2010 at 1.30pm.

[2] Application before the Authority was made by Mr Dean Williamson under s 137 of the Employment Relations Act 2000 for an order requiring the respondent, Victoria Institute (NZ) Limited (VINZ) to comply with a determination of the Authority given on 5 February 2010 (under AA46/10).

[3] In that determination the Authority resolved the employment relationship problems brought to it by Mr Williamson in relation to his employment as an English teacher by VINZ and the termination of that employment, purportedly on the grounds of redundancy. Upon finding his dismissal to be unjustified, the Authority ordered that Mr Williamson be reinstated immediately.

[4] The Authority also ordered VINZ to pay to Mr Williamson wages lost as a result of his unjustified dismissal in a total sum of \$6,500, with interest at 5% per annum to be paid on that amount from 9 January 2010. VINZ was ordered to pay \$4,000 compensation to Mr Williamson, pursuant to s123(1)(c)(i) of the Act.

[5] On 12 February, after hearing from Mr Williamson and Mr Peter Meng, the Principal of VINZ, the Authority was satisfied that its determination had not been complied with.

[6] Mr Williamson and VINZ received the Authority's determination of 5 February on the same date. After the weekend Mr Williamson returned to VINZ at about 8.30am on Monday 8 February ready to resume his employment at 9 am.

[7] He found that his name was not on the list of teachers for any class that day. Mr William Wang advised him that he would not be teaching any class, although there were apparently five that day with named teachers allocated to each of them.

[8] Mr Meng confirmed to the Authority that Mr Williamson had not been reinstated, mainly he says because there is no class for Mr Williamson to teach.

[9] Mr Williamson lodged his application for compliance the same day, 8 February 2010. He applied with urgency because he has been through the process of mediation and investigation meetings on three occasions prior to the determination and has remained unemployed. He is opposed to further mediation.

[10] VINZ lodged a statement in reply on 11 February opposing the application for compliance. It gave its view that the determination of the Authority was unfair and that the school had no class or students for Mr Williamson. The statement continued:

Dean's reinstatement is not welcomed by the school and its staff. We hope the evidence provided by the school be considered and was taken into account before making the decision.

[11] Application was made by VINZ for a stay of execution of the determination. In this regard the following comment was made: *The school is thinking about..... appeal.*

[12] On 12 February at the investigation meeting Mr Meng advised that no challenge had been filed with the Employment Court although he said VINZ is still considering that step and seeking legal advice about it.

[13] As made clear by s 180 of the Act, a challenge to the Court against an Authority determination under s 179 does not operate as a stay of proceedings on the determination of the Authority, unless the Court or the Authority orders that.

[14] The belief of VINZ and/or Mr Meng that the Authority's determination is wrong is not a basis for a stay of execution or exercise of discretion not to order compliance. The investigation has not been reopened and the determination cannot simply be revisited by the Authority with a view to changing it once it has been made. *De novo* challenge is available to a party seeking a better outcome from an Authority investigation.

[15] I am not persuaded there is any good reason to stay the enforcement of the determination while VINZ ponders what, if anything, it should do next.

[16] If VINZ does not want Mr Williamson to return to teaching at the school it is open to Mr Meng to try and reach some arrangement or accommodation with him whereby the determination will be performed or part-performed to his satisfaction until any further action has been decided upon and taken by VINZ. I have recommended that VINZ consider engaging the assistance of the mediator. Just as Mr Williamson initiated mediation during his employment, VINZ too can do that now if it wishes, and the Authority may consider directing the parties to mediation if requested.

[17] As well as being reinstated to all the rights and benefits of the employment agreement, Mr Williamson again becomes subject to the obligations of that agreement and must properly and fully perform all the duties as are outlined in it and the position description. Any failure to do so may provide VINZ his employer with grounds to take disciplinary action against him.

Compliance order

[18] I therefore confirm the compliance order made orally; VINZ is to reinstate Mr Williamson by 9am on Monday, 15 February 2010 to the position of English Teacher at the VINZ language school. The terms of his employment are as set out in the determination of 5 February, at paras.[37]-[39] inclusive.

[19] Further, VINZ is ordered to reimburse the wages as provided for in para.[40] of the determination, pay compensation as provided for in para.[43] and pay costs under para.[45], by Monday, 22 February at 9am.

[20] Mr Williamson is to be paid \$500 gross for the week commencing Monday, 8 March. That is the amount he would have earned if VINZ had reinstated Mr Williamson as ordered. Interest is to be paid on that sum from 15 February at 5% per annum.

[21] VINZ is also to pay \$70 to Mr Williamson to reimburse the filing fee for the compliance application.

[22] Mr Meng and Mr Williamson have been advised of the remedy available under s 140 of the Act where any person fails to observe or carry out the terms of a compliance order made by the Authority. The remedy lies in the Employment Court and, if exercised, may lead to a fine of up to \$40,000 being imposed on the party in default, and/or an order for sequestration of property, as well as having other restrictions placed on that party.

A Dumbleton
Member of the Employment Relations Authority