

**IN THE EMPLOYMENT COURT  
AUCKLAND**

**[2013] NZEmpC 156  
ARC 64/13**

IN THE MATTER OF      a challenge to a determination of the  
   Employment Relations Authority

BETWEEN                      ELGIN EDWARDS  
   Plaintiff

AND                              CAROL ANDERSON, LIMITED  
   STATUTORY MANAGER OF BAY OF  
   ISLANDS COLLEGE  
   Defendant

Hearing:                      Auckland  
   16 August 2013 by telephone conference

Appearances:                Emily McWatt, counsel for plaintiff  
   Tim Oldfield, counsel for defendant

Judgment:                    16 August 2013

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**INTERLOCUTORY JUDGMENT OF CHIEF JUDGE G L COLGAN**

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[1]      What would normally be contained in a minute issued to the parties after a conference call will, for reasons that will become apparent, take the unusual form of this interlocutory judgment.

[2]      Until 18 April 2013, Elgin Edwards was the Principal of Bay of Islands College in Kawakawa. On that day he was dismissed by the school's Limited Statutory Manager who was acting as Mr Edwards's employer instead of its Board of Trustees. Mr Edwards raised a personal grievance alleging that he had been dismissed unjustifiably and seeking remedies including reinstatement as the school's Principal.

[3] After an investigation meeting conducted on 16 and 17 July 2013, the Employment Relations Authority determined on 31 July 2013<sup>1</sup> that Mr Edwards had been dismissed justifiably.

[4] Mr Edwards has challenged that determination and has elected that his challenge be by hearing de novo. He is again seeking the remedy of reinstatement as Principal at Bay of Islands College

[5] The school's Limited Statutory Manager, Carol Anderson, has put in place a process for the appointment of a replacement Principal whom it is hoped will start in that role at the beginning of the 2014 academic year.

[6] From 18 April 2013 to the present, and probably until the end of this year, there has been and will be an Acting Principal at the school but the defendant considers this is an unsatisfactory situation for a number of educational and employment reasons. Mr Oldfield has advised the Court that the defendant is aware that Mr Edwards is seeking reinstatement and of the possibility that if he is successful on his challenge and reinstatement is ordered, there may be significant difficulties for both the school and any newly appointed Principal. Mr Oldfield says, however, that the defendant will, if necessary, contend that reinstatement of Mr Edwards will be impracticable because of the permanent appointment of a replacement (among other grounds).

[7] The lawyers agree that a hearing of the challenge will take four and possibly five days. Unfortunately, the Court simply does not have any available fixture of this length before the end of 2013. Although the Court has proposed to the parties that they may wish to consider being a backup fixture in the event that one of several lengthy cases set down over the coming months does not go ahead, the defendant's two principal witnesses are, in combination, unavailable to give evidence for most of the rest of this year because they will be overseas. The defendant says that it would not be satisfactory either to try to take their evidence before their departures from New Zealand or by video conference call.

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<sup>1</sup> [2013] NZERA Auckland 327.

[8] In these circumstances I propose to still leave open the option of the case having a backup fixture if one comes available and dealing then with the potential unavailability of persons whom I accept will be key witnesses for the defendant.

[9] In these circumstances, however, there is no point yet in attempting to give the parties a certain fixture in 2013. Rather, subject to the availability of witnesses, the case can and will be heard in the week commencing 17 March 2014. Because many of the witnesses are teaching staff at the college or nearby schools, the Court will attempt to hear the case in or near Kawakawa to minimise the disruption to the professional lives of those witnesses giving evidence.

[10] I record, also, that the possibility of a judicial settlement conference in early September 2013 was offered to the parties. There have, however I am told, been three attempts to settle this case in mediation including one after the Authority's determination was issued. I accept, having heard from counsel, that this is probably one of those cases that requires a judgment and so there will be no direction to further mediation and the option of a judicial settlement conference will not be taken up.

[11] The other factor affecting Mr Edwards's dismissal is that this has had to be, and has been, reported to the Teachers Council, which is obliged statutorily to investigate and determine what effect, if any, this may have upon Mr Edwards's professional registration. Counsel are not aware of what, if any, steps the Teachers Council may have taken, or proposes to take, in light of Mr Edwards's challenge to the Authority's determination.

[12] Because other persons who are not parties to these proceedings may be affected by them (applicants for the position of Principal at Bay of Islands College, the Teachers Council and the broader school community), this is in the form of an interlocutory judgment.

[13] In the circumstances set out above, I adjourn the application, now for a more urgent hearing than that allocated in March 2014, to Monday 9 September 2013 at 9 am. I decline to abridge the time for the filing of a statement of defence except to

the extent that this must be filed and served no later than 12 noon on Friday 6 September 2013, or 30 days after service of the statement of claim on the defendant, whichever is the earlier.

[14] There will be a further directions conference with counsel at 9 am on 9 September 2013.

[15] Leave is reserved for either party to apply for any further orders or directions on reasonable notice.

GL Colgan  
Chief Judge

Judgment signed at 2 pm on Friday 16 August 2013