

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2023] NZEmpC 185  
EMPC 160/2023**

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

BETWEEN                      KIRSTY HILFORD  
   Plaintiff

AND                                WHANGĀREI BOYS' HIGH SCHOOL  
   BOARD OF TRUSTEES  
   Defendant

Hearing:                      27 October 2023  
   (Heard at Whangārei via judicial settlement conference)

Appearances:                A Halse, advocate for plaintiff  
   R Harrison, counsel for defendant

Judgment:                    30 October 2023

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**CONSENT JUDGMENT OF JUDGE B A CORKILL**

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[1]      On 27 October 2023, I convened a judicial settlement conference (JSC) for the parties to a challenge brought in respect of a preliminary determination of the Employment Relations Authority, which had concluded that the plaintiff's disadvantage grievance had not been raised within 90 days.<sup>1</sup>

[2]      The challenge has been set down for hearing in late November 2023. The plaintiff's dismissal grievance is currently under investigation by the Authority.

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<sup>1</sup>      *Hilford v Whangārei Boys' High School Board of Trustees* [2022] NZERA 425 (Member Dumbleton).

[3] At the JSC, the parties agreed that by consent, the challenge should be allowed on certain terms which will apply to the remainder of the Authority's investigation to proceed. A joint memorandum has been filed to support the making of a consent order.

[4] I make the following order by consent in the terms requested:

- (1) The challenge (EMPC 160/2023) is allowed on the following basis, without any issue as to costs.
- (2) It is agreed that Mrs Hilford may put forward evidence of a disadvantage grievance arising out of the following events:
  - (a) A discussion at the meeting with the Principal on 20 October 2020;
  - (b) a discussion with Ms Sylva, said to have raised relationship issues approximately one week after the 20 October 2020 meeting;
  - (c) discussions alleged to have taken place between advocates involving relationship issues (the advocates being Korine Pascoe and NZEI Te Riu Roa representatives);
- (3) The parties agree that the Authority may investigate the events in para (2)(a)–(c) and decide whether these give rise to a disadvantage personal grievance.
- (4) The defendant accepts that the fixed term agreement with the plaintiff was not valid and the parties agree that the plaintiff's employment was terminated on 26 January 2021.
- (5) The matters for determination by the Authority regarding the unjustified dismissal decision [are] remedies as follows:

- (a) Lost remuneration as from 26 January 2021, including as to the length of the award;
  - (b) the hours of work that make up the lost remuneration calculations;
  - (c) the earnings of the plaintiff for the period of any award under para (5)(a) to be calculated and taken into account in relation to the award; and
  - (d) other remedies and factors that apply in ss 123, 124 and 128 of the Employment Relations Act 2000.
- (6) The grading dispute will be resolved by determining whether Mrs Hilford should have been employed on Grade B Step 3, or Grade C. If it is determined that Grade C applies, then the period for any payment at this grade, [will be included in] the calculation of remedies at para (5).

[5] I understand the representatives will confer as to any necessary directions for the resumption of the investigation of Mrs Hilford's disadvantage and dismissal grievances in the Authority.

[6] Since the challenge has been resolved, the fixture scheduled for its hearing is vacated.

BA Corkill  
Judge

Judgment signed at 12 pm on 30 October 2023