

No relief for teacher

Can a casual employee raise a personal grievance? This question was answered in a recent decision of the Employment Relations Authority. **Paul Robertson** outlines the lessons to be learned.



THIS CASE CONCERNED A

teacher engaged on a casual basis in a school as a day-relief teacher, covering for permanent teachers who were absent. In March 2007, he was relieving in a class when he used an offensive swear word several times when he had problems with equipment and then made a joke that was open to misinterpretation.

The deputy principal wrote alleging the teacher had acted in a manner which brought the profession into disrepute. The teacher responded to the allegations, but the DP upheld the complaints and the teacher was removed from the roster for relief teachers. The misconduct was reported to the Education Council in the form of a mandatory report.

The teacher complained that he was “unjustifiably dismissed” by being removed from the short-term relieving pool, and had been disadvantaged when the school made a report to the Education Council. He sought reinstatement to the relievers’ pool as well as compensatory remedies.

THE ARGUMENTS

The school argued that because the teacher was employed on a casual basis, and the investigation into the misconduct and notification to the Teachers Council took place when he was no longer employed, it owed no employment duties to the teacher at all. In any event, its actions were fair and reasonable.

PERMANENT OR CASUAL?

Counsel for the teacher argued he was not casual; he had been employed on a permanent, part-time basis. The Authority reviewed the individual employment documents and the regularity of the appointments to find out the true nature of the relationship.

The teacher said that he worked exclusively for the school, was one of the first relief teachers to be called upon and that he always accepted. He went beyond what most of the other relief teachers did at the school, including attending sports games after school and weekends and staff meetings.

The principal explained that

the school had approximately 25 teachers in the day-relief pool and that there are times when the teacher declined offers on the day of relief. His hours ranged from one hour to as many as 20.5 hours a week.

The Authority member accepted that the teacher was employed under the terms of an individual employment agreement mirroring the terms of the collective agreement. The payroll records stated that the teacher was paid as a reliever.

The Authority concluded that the teacher was engaged on a casual basis and focused on the fact that he could always “say no” to an offer of work, and the school did not have to offer him work.

There was no work for the teacher unless another teacher was away; the relieving work was wholly dependent on a permanent teacher being absent.

WHAT DUTY WAS OWED?

The complaints by the teacher related to decisions made after his final engagement as a casual relief teacher. The Authority con-

sidered whether there was an ongoing duty of good faith owed at that time.

“No” said the Authority member, the duty of good faith only applies while a person is an employee, and his complaints related to a time when he had ended his last period of casual employment.

The teacher was not an ‘employee’ for the purposes of the Employment Relations Act between engagements. For this reason, the Authority had no jurisdiction to consider his complaints.

AND THE LESSON IS?

Employers variously employ staff on casual, fixed term and permanent bases. These arrangements affect the legal rights and remedies of ‘employees’ bringing claims.

A Teacher v A School Board of Trustees [2018] NZERA Christchurch 47

PAUL ROBERTSON is a partner at Heaney & Partners in Auckland. Visit: www.heaneypartners.com

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PAUL ROBERTSON | Partner: direct dial: (09) 367 7004 email: paul.robertson@heaneypartners.com www.heaneypartners.com
 Phone: (09) 3030 100 Fax: (09) 3677 009 Level 13, PwC Tower, 188 Quay Street, Auckland PO BOX 105391, Auckland. 1043. DXCP18503