



SETTLEMENT AGREEMENT SAVES SCHOOL

The Employment Relations Authority refused to assist a school principal who raised a personal grievance alleging he had been coerced into resigning and the board of trustees had breached its duty of good faith. As Paul Robertson explains, a settlement agreement, signed by a mediator, prevented the challenge.

WHEN AN AUCKLAND

principal raised a personal grievance against his former employer, the Employment Relations Authority refused to assist because the parties had entered into a settlement agreement signed by a mediator

THE BACKGROUND

Mr Spanhake was the principal of Whenuapai Primary School. His employer, the school's board of trustees, was concerned about his performance and his relationship with the board. The board met with Mr Spanhake to discuss these concerns and Mr Spanhake offered to resign from his position as principal.

The board accepted his offer and, shortly after, the parties entered into a settlement agreement. At the parties' request a mediator signed the agreement pursuant to section 149 of the Employment Relations Act. The parties did not attend mediation.

Mr Spanhake later raised a personal grievance alleging that the board had breached its duty of good faith. Also, rather than

being a genuine resignation, he alleged that he had been coerced into resigning by the board, and that, as a result, he had been constructively dismissed.

A major difficulty for Mr Spanhake was that the settlement agreement precluded him from raising his personal grievance. Mr Spanhake argued that the agreement was void on the basis that he had been pressured into signing. In legal parlance, he had entered into it under duress.

OFF TO THE AUTHORITY

The board argued that (a) the Employment Relations Authority does not have jurisdiction to order that a settlement agreement, signed by a mediator under section 149, is void on the ground of duress and hence (b) Mr Spanhake was unable to raise his personal grievance.

The sole issue for determination by the Authority was whether it had jurisdiction to declare a settlement agreement void because it was entered into under duress.

The Authority considered a

range of matters in reaching its decision. The key point was the process a mediator must go through before signing a settlement agreement.

The Authority noted that mediators are empowered to sign a settlement agreement only "at the request of the parties". Further, section 149 imposes requirements upon mediators before they sign a settlement agreement. These are that the mediator, as an independent third party, must:

- Explain to the parties the effect of signing the agreement. This includes telling them that (a) the terms of the settlement are final and binding and that the agreement cannot be cancelled pursuant to the Contractual Remedies Act 1979 and (b) except for enforcement purposes, the agreement cannot be brought before the Authority or a court; and
- Be satisfied that the parties understand the effect of signing the agreement.


Together, these warnings operate

as 'safeguards' against duress by ensuring that the 'will' of each party to the settlement agreement is not "overborne by improper pressure which induces a manifestation of assent" (the essential elements of duress).

As a result of the Authority's finding, Mr Spanhake was unable to take his claim against the board any further.

THE LESSON

It is not unusual for an employee to have second thoughts after agreeing to resign from a school. Having an agreement signed by a mediator is the most effective way to prevent a challenge by an unhappy former employee. Boards should note that it is not necessary to attend a mediation to gain the benefit of the agreement being signed by a mediator.

Spanhake v Whenuapai Primary School Board of Trustees [2015] NZERA Auckland 295 

PAUL ROBERTSON is a partner at Heaney & Partners in Auckland. ASHLEY AYTON helped with this article. Visit: heaneypartners.com

HEANEY & PARTNERS

BARRISTERS & SOLICITORS

QUALITY OUTCOMES

to School Trustee Liability & Employment Disputes