



DEAL OR NO DEAL?

A teacher who claimed he signed a settlement agreement under duress after an acrimonious dispute was not successful when he asked the Employment Relations Authority to reopen his personal grievance.

Paul Robertson outlines the elements necessary to establish duress.

AFTER AN ACRIMONIOUS

employment dispute, the signing of a settlement agreement between the parties is intended to bring a welcome end to hostilities.

Commonly the agreement is then witnessed by a mediator invoking powers under the Employment Relationship Act (section 149) to ensure that the settlement cannot be challenged.

Sometimes, however, the settlement agreement is not signed off by a mediator. Can the agreement be challenged?

"Yes" said the Employment Relations Authority, but only in limited circumstances.

COMPULSORY RELIGIOUS ACTIVITY

The dispute in this case was between a teacher at an Auckland college and the board of trustees. The teacher had become upset at what he viewed as compulsory religious activity at the school.

He complained to the Minister of Education, the Human Rights

Commission and the Ministry of Justice alleging that he was bullied by staff because of his atheist beliefs and that he was punched in the head by the principal for not bowing during prayers.

The board investigated. The teacher then alleged that he was also bullied and subjected to aggressive behaviour by the board and its New Zealand School Trustees Association (NZSTA) adviser.

In meetings with the board, the teacher usually, but not always, had a solicitor present.

Six days after the last meeting the teacher signed and returned a settlement agreement prepared by the NZSTA adviser. The agreement was not witnessed by a mediator.

Four years later, the teacher lodged a complaint with the police alleging that he had been assaulted. He also raised a personal grievance saying that he had been coerced into signing the agreement and he asked the

Authority to reopen his personal grievance.

The Authority accepted that (a) there had been an agreement between the parties and that (b) it could enforce that agreement to prevent the teacher continuing with his grievance, unless the agreement was obtained under duress.

ELEMENTS NEEDED TO ESTABLISH DURESS

There are five elements necessary to establish duress. These are:

- (a) There must be a threat or pressure;
- (b) That threat or pressure must be improper;
- (c) The victim's will must have been overcome by the improper pressure so that his or her free will and judgement are displaced;
- (d) The threat or pressure must actually induce the victim's manifestation of assent;
- (e) The threat or pressure must be sufficiently grave to justify the assent from the

victim, in the sense that it left the victim no reasonable alternative.

The Authority did not find evidence of duress and refused to reopen the personal grievance. It found the teacher was forthright in defending and complaining about his treatment, he attended most of the meetings with a lawyer and he took time to reflect before he signed the agreement.

The teacher alleged that at the last meeting he was told that "...he had to do it and sign [the agreement]".

The Authority held there was no evidence (beyond that of the teacher) that the statement (if made) had any influence upon him signing the settlement agreement six days later.

Roy v BOT Tamaki College [2013] NZERA Auckland 514

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