

Mandatory reporting

Does a requirement to report a dismissal or resignation to a professional body override the full and final nature of a record of settlement? "Yes" says the Employment Relations Authority, but take care. **Paul Robertson** explains.



FOR TEACHERS, NURSES

and similar professionals there is a requirement that the employer notifies the appropriate professional body following the resignation of an employee or their dismissal in some circumstances. The Education Act, for instance, makes such reports mandatory for teachers where misconduct or competence is being investigated at the time.

In two recent decisions of the Employment Relations Authority, employees complained about this practice, saying it was contrary to the full and final nature of a record of settlement and breached the confidentiality of the mediation.

In *Perrott v BOT Rotorua Boys High School*, a former employee said that he was unaware that the principal was going to notify the Teaching Council about his competency. The topic had not been discussed at mediation.

He said that he was misled into signing the record of settlement and/or he signed under false pretences, namely that no issues about his competency had been or were going to be raised

with the Teaching Council.

He relied upon the terms of the settlement that recorded that the board had not commenced a formal disciplinary or advice and guidance programme and that it would support his continued registration.

The Employment Relations Authority rejected his complaint. He was aware of competency issues as they had been raised with him and he was either aware, or should have been aware, that the Teaching Council would require a mandatory report from the board.

In *Russ v BOT Taihape Area School*, the former employee complained that the notification to the Teaching Council was delayed by two years, and that it contained confidential information about the mediation. In this instance the record of settlement referred to the need to make a mandatory report, but the Authority found the report was delayed by two years.

When the report was finally received, that led to an investigation by the Teaching Council. The Council did not uphold the

allegations, mainly because the passage of time made it difficult to investigate.

The Authority concluded there was no timeframe for lodging the mandatory report in the record of settlement, and hence there was no breach. There was also no prejudice because the delay worked in the teacher's favour because the Council was unable to investigate the allegations.


As regards the content of the notification, there was reference to the mediation and the comment that it was "a totally unproductive day". The Authority said that there was no limit in the record of settlement about what could be included in the report to the Teaching Council. In any event, the information disclosed about the mediation did not fall within the statutory definition of confidentiality in the Employment Relations Act.

GOOD NEWS

These decisions are helpful as they confirm that the statutory duty under the Education Act to report to the Teaching Council will override the full

and final nature of a settlement. It remains unclear the extent to which the duty trumps any obligation of confidentiality.

In spite of these decisions, it is probably wise to address the need for the notification head on when negotiating a settlement, rather than to surprise the former employee and risk a challenge to the settlement.

There can be other problems—for instance in *Roy v BOT Tamaka College*, the 90-day period for bringing a personal grievance was extended because the principal delayed in sending the former employee a copy of the mandatory notification. The employee had been chasing the principal for a copy so he could decide whether to progress his personal grievance. 

Perrott v BOT Rotorua Boys High School [2019] NZERA 74
Russ v BOT Taihape Area School [2019] NZERA 155
Roy v BOT Tamaka College [2014] NZEmpC 153

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