

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Peter Thomas Robert Heaslip (Applicant)

**AND** Hirangi Primary School Board of Trustees  
(First Respondent)

AND Ministry of Education, The Secretary for Education (Second Respondent)

**REPRESENTATIVES** Peter Thomas Robert Heaslip In person  
Peter Murphy, Advocate for First Respondent  
Andrew Gainé Counsel for Second Respondent

**MEMBER OF AUTHORITY** Y S Oldfield

**INVESTIGATION** 10 September 2002  
**MEETINGS** 15 November 2002

**CLOSING SUBMISSIONS** 16 December 2002, 28 January 2003, 4 February 2003

**FURTHER INFORMATION** 9 April 2003, 15-18 April 2003  
**AND COMMENT**

**DATE OF DETERMINATION** 5 May 2003

**DETERMINATION OF THE AUTHORITY**

This matter has had a long history in the Employment Relations Authority. It was lodged in December 2001, at which time the employment relationship problem was described by the applicant in the following terms:

*“the Hirangi Primary School Board of Trustees, being my employers, have failed to provide me with conditions of employment that are medically, economically and professionally safe, thereby constructively dismissing me from my position.*

...

*The facts that have given rise to the problem are:*

*(a) As a direct result of a letter written by another party (Multiserve) but not rejected, challenged or answered by my Employers, I was subjected to such alarm worry and stress that I have been on sick leave from 9 October 2001.*

*(b) Without justification or consultation my salary has been radically reduced (to well under half of what it was) plus I have been placed under a continuing threat that I may have to repay about \$65,000 in allegedly overpaid salary.*

*(c) My status as a teacher has been openly questioned by Multiserve, and this had not been answered by my Employers although they have both the duty and the information to do so. Further my Employers, without offering any explanation, have failed to sign off my re-registration as a teacher, rendering me technically unable to perform my duties, since they require me to be a currently registered teacher."*

Dr Heaslip went on to request that the problem be resolved by:

- Restitution of his status as a Registered teacher with a current practising certificate;
- Reinstatement of his original salary, plus back pay, including payment from the time he went onto unpaid sick leave until such time as he obtained "*an equivalent or higher position elsewhere;*"
- Payment of the costs associated with a civil action against Multiserve (the details of such proposed action were not provided.)

The Principal of Hirangi School replied on its behalf, as follows:

*"A requirement of the job is that the person must be a trained teacher. Untrained teachers are to be paid at the untrained teacher rate (clause 5.3.2 Primary Teachers Collective Employment Contract.)*

...

*Peter Heaslip said he had other unspecified qualifications amounting to "equivalency" to teacher training. Peter Heaslip refused to supply any details. Multiserve did not act on any instructions from the Hirangi Board in reducing Dr Heaslip's salary to that of an Untrained Teacher. Without details of his teacher Training, our Board are unable to instruct Multiserve to reinstate his salary to his previous level. It was within Dr Heaslip's ability to sort the qualifications issue out in the first few days and he chose not to. We do not have the information available to us to act on his behalf. Only Peter Heaslip and/or the Teacher Registration Board can prove that he has trained Teacher Equivalency."*

As the parties had not attempted mediation prior to the matter being lodged in the Authority, they entered into that process as a first step towards resolving the problem. It took some time and was not ultimately successful. Because of that, it was September of 2002 before I began my investigation by travelling to Taupo to meet with Dr Heaslip, Mr O'Hara and the Board's Chairperson, along with Peter Murphy of the School Trustees Association. Neither Dr Heaslip nor Hirangi School Board of Trustees were represented by legal counsel then or at any time subsequently.

At that meeting I sought to clarify the issues for investigation and requested a copy of Dr Heaslip's terms and conditions of employment. I was provided with the Primary Teachers Collective Employment Agreement for the period 1 July 2001 to 30 April 2003 (to which I shall refer as the *PTCEA 2001*.) Mr Murphy and Mr O'Hara expressed the tentative understanding that the relevant clauses of the collective contract that had been in force when Dr Heaslip was first employed (the

term of which was 1 February 1998 to 30 April 2001 and which I shall call the *PTCEC 1998*) were similar to those in the *PTCEA 2001*.

It was subsequently clarified for me that Dr Heaslip was not a member of NZEI and had never been party to the 1998 PTCEC or the PTCEA 2001.

At the meeting and in Minutes that followed it (see attachments) I advised the parties that in order to decide whether Dr Heaslip had a personal grievance in relation to the reduction in his wages I would need to come to some conclusions about the operation of his employment agreement. As those minutes explain, this made it necessary for me to notify other parties to the *PTCEC 1998* and the *PTCEA 2001*, namely the Ministry of Education and the union party, *NZEI*. I subsequently afforded both these parties the opportunity to make submissions, which they took up. In addition, by consent, the Ministry was joined as a party to the proceedings.

The matter was adjourned until 15 November 2001 during which time I received helpful submissions from the Ministry of Education and from NZEI. I also received from the parties a large volume of correspondence and other documentary material in no particular sort of order. Consideration of this information clarified the precise nature of the legal and factual issues for my determination, but the essential employment relationship problem that brought Dr Heaslip to the Authority remained essentially unchanged. It is in two parts which can be summarised as follows:

1. In October 2001 Multiserve unilaterally reduced his salary. He does not accept that it was entitled to do so.
2. Soon after, Mr O'Hara advised that he declined to attest to Dr Heaslip's competence. Dr Heaslip says this was unjustified and has effectively shut him out of his profession.

In addition, the Ministry then lodged a counter claim of its own, namely, a claim for:

3. Repayment of salary allegedly overpaid to Dr Heaslip during his employment at Hirangi School up to October 2001, in the sum of **\$58,646.02**.

### **Chronology of events**

1. Prior to his employment at Hirangi School in 1999 Dr Heaslip was employed as a secondary school Materials Technology teacher. He went into secondary teaching after having been involved in education work for the Ministry of Transport. Before entering secondary teaching, he had not completed any teacher training other than what was provided to him by the Ministry of Transport.
2. In 1995 the Teacher Registration Board (now the Teachers Council) took steps to arrange registration of all unregistered teaching staff in schools. This included Dr Heaslip.
3. In June 1995, as part of this process, Dr Paul Wood (former principal of Melville High School) wrote to the Teacher's Registration Board confirming Dr Heaslip's suitability for registration. That letter read in part as follows:

*"During the various times that Peter Heaslip was employed at Melville High School, he was successfully inducted into the teaching of Graphics, Maths, English, Science and Social Studies. In each subject he had a different Head of Department. As the Principal for some part of that time (1989-1994) I was satisfied that Dr Heaslip had received appropriate supervision and appraisal, and had acquitted himself well.*

*As with my previous statement, I confirm that I fully support Dr Heaslip's registration as a teacher. He is in every way a fit and satisfactory person to be a teacher. The combination of his training (albeit with the Ministry of Transport), teaching experience, and qualifications exceed in every way the standard comparable to a Diploma in Teaching."*

4. References were also supplied from Heads of Department with whom Dr Heaslip had worked.
5. As a result of these endorsements, Dr Heaslip was duly registered. His registration remained current at the time of his employment at Hirangi school.
6. At the time the Authority's investigation of this matter began, Mr O'Hara, the Ministry of Education, and the Board of Trustees of Hirangi School remained unaware of the process I have just described in paragraphs 3-5 above.
7. In March 1999, in anticipation of the disestablishment of his secondary school position Dr Heaslip applied for an advertised position as Resource Teacher, Learning and Behaviour (RTLB) based at Hirangi School.
8. He completed and presented a standard application form. On the first page was a space marked "EDUCATIONAL QUALIFICATIONS." In this space he filled in *MA* and *Dip.Ed.Guidance* and noted that he expected to complete a *Graduate Certificate in Gifted Education* early in 1999. He also indicated that there was a possibility that he would complete the qualifications of *MEd(Special Ed)* and *Grad Cert Prac Psych* the same year.
9. The next page of the application form contained a box marked "*TEACHERS' COLLEGE ATTENDED.*" In that space Dr Heaslip wrote "Hamilton Teachers' College."
10. Dr Heaslip had indeed attended Hamilton Teachers College, but had not graduated. He asserts that this should have been clear from the entries for 'qualifications' on his application form.
11. Dr Heaslip duly attended an interview but was not asked any questions about his teacher training.
12. Dr Heaslip was appointed to the RTLB position on **3 April 1999**. I reproduce here his letter of employment from Kevin O'Hara, principal of Hirangi Primary School, in its entirety:

*"Dear Peter,  
this letter is to inform you that you have been appointed to the position of resource Teacher Learning and behaviour, based at Hirangi Primary School, Mawake Place. Turangi.*

*You will be employed by and responsible to the Board of Trustees of Hirangi Primary School but will also be supervised by the RTLB Management Committee and will work with students and teachers in four other neighbouring schools, namely:*

*Tongariro High School  
Turangi Primary School  
Tauranga-Taupo School  
Kuratau School*

*Details of the position:  
Starting date: Mon 16<sup>th</sup> August 1999  
Tenure: permanent*

*Salary: \$47,100 plus 1 management unit \$2350 totalling \$49,450.*

*This is a full time position.*

*Thankyou also Peter for your offer to work in an unpaid capacity for a minimum of 10 hours per week from 12/7/99 to 13/8/99 on policy and procedure development with the other RTLB and the management Committee. This gesture is very much [sic] appreciated by the Committee."*

13. When he appointed Dr Heaslip (and for some time after) Mr O'Hara assumed that Dr Heaslip had a Diploma in Teaching. He told me that the lack of this diploma would not necessarily have disqualified Dr Heaslip from consideration for the RTLB position, but said that it would have been his firm preference to have the position filled by the holder of a Diploma in Teaching.
14. It is common ground that upon appointment Dr Heaslip became subject to an individual employment contract that incorporated the terms and conditions of the Primary Teachers Collective Employment Contract (PTCEC 1998). At the time, Mr O'Hara's knowledge and understanding of the detail of that document were limited. For his part Dr Heaslip had no knowledge at all of what it contained. (I note here also that in my experience there is nothing unusual in a busy primary school principal leaving the detail of wage and salary matters to Multiserve on the basis that that organisation has the greater expertise in the area.)
15. Between April and August, as he had offered to do, Dr Heaslip worked in an unpaid capacity and in **August 1999** he took up his new position. Dr Heaslip had not previously worked as a primary school teacher of any sort. For a time he remained a member of the secondary teachers' union (PPTA.) At no stage did he become a member of the primary teachers' union (NZEI.)
16. Upon appointment, in recognition of the wide ranging qualifications he claimed to have, he was exempted by the Ministry from the training usually undergone by new RTLB.
17. The employment relationship did not go entirely smoothly during Dr Heaslip's first year in the job. There was some conflict between Dr Heaslip and Mr O'Hara, and between Dr Heaslip and other schools in the cluster. However, those matters were addressed and at the start of 2001 there were no outstanding employment issues of a magnitude that would have given rise at that stage, to either competency procedures or to a personal grievance.
18. In late **May 2001** Dr Heaslip sought and was granted unpaid leave of absence for an overseas trip from July to September.
19. In **June 2001**, along with other staff, he underwent a performance appraisal by an external appraiser. Dr Heaslip describes the results of the appraisal as unremarkable but Mr O'Hara told me that a number of the conclusions gave him cause for concern. However, he did not pursue these concerns because, by the time the results of the appraisal had come in, Dr Heaslip was about to take his leave. Mr O'Hara told me:

*"All Hirangi staff were appraised during the same week and I received 4-5 page appraisal summaries for all 16 teachers. I did not select Peter's appraisal for immediate attention since at that point I did not feel under any time restraint.*

*The period between receipt of appraisals and the end of term was taken up with routine school work, plus end of term staffing and finance issues and Ministry of Education deadlines and requirements.*

*All the appraisal reports needed to be read and absorbed and in some cases required further clarification with the appraiser.*

*Peter's report did raise issues under the guidelines dimension "Professional relationships" and needed discussion with him before signing.*

*I did not have the opportunity to work with Peter on his appraisal at that time and I had the expectation to meet with him at some stage later on."*

20. There was however another factor which had the potential to affect the timeframe for any consideration of Dr Heaslip's performance. His practising certificate was due to expire in late 2001.
21. A few days before leaving on his trip, Dr Heaslip placed on Mr O'Hara's desk the forms relating to his re-registration. Mr O'Hara wished to discuss the results of the performance appraisal with Dr Heaslip before proceeding to attest to his performance as satisfactory and so decided to defer any action on Dr Heaslip's re-registration until his return from his trip. At this stage, there was no immediate urgency regarding the re-registration process. Mr O'Hara had telephoned the Teacher Registration Board around the end of July to check if he could have an extension of time for signing off the practising certificate and this was confirmed. (I note also that registration itself is not cancelled immediately upon the lapsing of a practising certificate.)
22. On his return from his trip at the end of **September**, Dr Heaslip checked whether Mr O'Hara had completed his attestation, and heard that he had not. Mr O'Hara intended to follow up this approach with some action on the appraisal however other unrelated events were about to overtake him.
23. Dr Heaslip received the following letter, dated **2 October 2001**, from *Multiserve* (the agency responsible, on behalf of the Ministry of Education, for the payment of teacher salaries):

*"Dear Peter*

***Re: salary payments***

*It has come to our attention that you do not hold a recognised Diploma of Teaching and are not therefore a trained teacher for salary under the provisions of the primary teacher s' Collective agreement.*

*It is therefore necessary to reduce your base salary to \$24,000 pa effective PP615, pay-day 17 October 2001.*

*You have been overpaid salary since 16 August 1999 when you commenced an RTLB position. The Ministry of Education is looking at the possible recovery of the overpaid salary since that date."*

24. The letter went out over the signature of Tina Price, Deputy Manager, Payroll Services. Dr Heaslip asked Ms Price for further explanation and on 5 October 2001 she wrote to him again. This letter read in part:

*"...*

*It is necessary to hold the appropriate qualifications to receive the salary of a trained teacher as salary is determined on the basis of qualifications. Teacher registration is not a determining factor in relation to entitlement to trained teacher salary in the Primary teaching sector.*

*Following a random spot check of your records it was identified that you do not currently hold any qualifications that confirm the status of trained teacher. Please let us know immediately if you have these qualifications and send certified copies to Mutiserve so that entitlement to be paid at trained teacher rates can be confirmed.*

*If you have any further queries regarding this issue I suggest that you contact the Local Management Centre of the Ministry of Education in Hamilton.”*

25. Dr Heaslip then sought the advice of Mr O’Hara. On Dr Heaslip’s behalf, and with his authority, Mr O’Hara telephoned Multiserve and asked why they had not given Dr Heaslip a chance to verify his teacher training credentials before reducing his salary. The reply was that Multiserve had telephoned Dr Heaslip around mid-September and he had referred them to the Teacher Registration Board.
26. By now, Mr O’Hara had realised that Dr Heaslip did not have a Diploma in Teaching. Mr O’Hara’s understanding was that the resolution of Dr Heaslip’s problem was a matter of Dr Heaslip demonstrating to the Ministry that he had an equivalent qualification. Indeed the statement in reply (as quoted above) indicates that this was still his understanding when that document was lodged with the Authority in December 2001. He advised Dr Heaslip to communicate directly with the Ministry over the issue.
27. Dr Heaslip e-mailed the Ministry’s regional manager on **9 October**. The e-mail read in part as follows:
 

*“This letter may be taken as authorisation to check my file with the Teachers Registration Board. As I hold copies of letters to and from TRB indicating that I completed a long process to establish equivalency, then a search of my file should yield this information. It should then be possible for MoE to write to me to confirm my original salary entitlement; to apologise for the manner in which this matter was treated; and to make good for the harms done to me.”*
28. Also on **October 9** Dr Heaslip went on sick leave. He had been suffering ill-health even before his overseas trip but says the stress arising out of the sudden reduction in his salary compounded this.
29. Meanwhile, Mr O’Hara still had not signed the attestation necessary for the renewal of Dr Heaslip’s practising certificate, and amidst the consternation that had arisen over the sudden cut in Dr Heaslip’s pay, had not found a suitable opportunity to talk to him about this.
30. On or about **18 October** Dr Heaslip e-mailed Mr O’Hara about both these issues, as well as others which are not relevant to these proceedings. In his reply Mr O’Hara noted that:

*“the salary reduction...is an issue between Multiserve and yourself”*

...

*“If Multiserve are concerned with trained teacher status, then I would suggest you show them your letter from TRB granting equivalency to the Trained teacher certificate.”*

...

*“I discussed with STA the fact that I had not dealt with the Teacher Registration renewal before it fell due and that I should attend to it immediately. Their advice was to get the trained teacher issue out of the way first.*

...

*If you wish me to, I will contact the TRB and explain to them the events that have overtaken the my original intention to sign your teacher registration.”*

31. Dr Heaslip was not satisfied with these responses from Mr O’Hara. He considered that it was the responsibility of the school, as his employer, to sort these problems out. On 17 November he emailed Mr O’Hara noting that at that point, Hirangi had:

“...

- *TWO signed statements from Christina [Dr Heaslip’s wife and herself a primary school deputy principal] stating that I have completed an equivalency process with the Teachers Registration Board.*
- *A copy of my RTLB training exemption letter.*
- *A successful Appraisal Report (dated June, 2001)*

*There is, therefore no good reason for Hirangi to refrain from acting as a Good Employer.*

...”

32. He went on to say that the school should direct Multiserve to restore his salary to its former level and sign off on his practising certificate.
33. Mr O’Hara did neither of these things. Initially he had postponed signing off the practising certificate because of issues arising out of Dr Heaslip’s appraisal. Now he deferred it further because he was concerned that Dr Heaslip’s credentials might not be satisfactory in that his qualifications might not be genuine or might not be “up to scratch.”
34. From this point on Dr Heaslip continued to communicate regularly with the Ministry, the school and on occasions, with the Teacher Registration Board. He authorised all concerned to have full access to his file at the Teacher Registration Board.
35. However, despite being requested to do so, he did not provide either Mr O’Hara or Multiserve with any further information about how he had obtained registration, or what teacher training he had had. It remained his position that he should not have to provide this information. He reiterated that the fact that he was registered (which was a matter of public record) should suffice.
36. I asked Dr Heaslip to explain this refusal, but he could not give me an answer.
37. Mr O’Hara told me that before signing off a practising certificate he had to be confident of a teacher’s character and fitness to teach. The uncertainty surrounding Dr Heaslip’s qualifications, and his refusal to supply verification of these, called both his character and fitness into question in Mr O’Hara’s mind.
38. As we have seen, Dr Heaslip proceeded to lodge the matter with the Employment Relations Authority in December 2001.

39. Dr Heaslip remained on sick leave and never returned to his duties. He received sick pay (at the reduced salary level) until it ran out after about two weeks and after that, lived off savings. He provided Mr O'Hara with medical certificates covering a total period of approximately six weeks.
40. Mr O'Hara told me that because Dr Heaslip remained on sick leave he considered himself unable to take any further steps in relation to any employment issues he had with Dr Heaslip. However, he said he reassured Dr Heaslip on more than one occasion that his job remained open for him.
41. Dr Heaslip's refusal to provide any further information about these issues led the Ministry to seek verification of the authenticity of his other qualifications. He did not provide this and as a result his exemption from RTLB training was withdrawn on 11 April 2002.
42. I note that although I received a significant volume of documentary evidence in the course of this investigation, I saw nothing to verify the applicant's alleged doctorate or other qualifications. However, as a courtesy to him, I have honoured his wish to be addressed as "*Dr Heaslip.*"
43. In June 2002 the parties participated in mediation but did not succeed in resolving the grievance. Afterwards (June 22 2002) Dr Heaslip tendered his resignation.
44. In October 2002 the Teachers Council declined an application by Dr Heaslip to have his practising certificate renewed. Its written report endorsed Mr O'Hara's unwillingness to sign it off the previous year.

## **Conclusions**

*Joinder of the Ministry as party to the employment relationship problem.*

45. In its submissions the Ministry outlined to me the statutory framework which governs teachers' employment and the setting of their remuneration. Key points of that outline included:
- S91 F Education Act 1989 prevents a Board paying all or part of a teachers salary unless it has received consent from the Minister;
  - S91 H of the same statute restricts the number of appointments and employment of all regular teachers to pay-rolled schools;
  - Under s.90 of the Education Act 1989 Boards of Trustees are subject to the provisions of the Public Finance Act and are required to be fiscally responsible when spending Crown funds.
  - Boards are able to make payments in addition to those in the collective agreement provided that such payments have the consent of the Minister and the concurrence of the Secretary for Education. In Dr Heaslip's case the Ministry received no application for concurrence and I was told that it was likely that if such a request had been received it would have been refused.
46. The overall effect of this statutory framework is that pay-fixing in the primary teaching sector is not at the sole discretion of the employing school; it is subject to the overarching control of the

Ministry and Secretary for Labour. Hence the Ministry's concurrence with my view that it should to be joined as a party, and claim for relief in these proceedings.

**47. I do not propose to discuss further the legal basis for treating the Ministry as a party to these proceedings except to say that I have accepted that as appropriate both in terms of the legal framework as it has been outlined to me by Mr Gaine, and on the basis of the Ministry's agreement to being joined as party.**

*Issues (1) and (2) Was Multiserve entitled to reduce Dr Heaslip's salary as it did in October 2001 and is it entitled to damages in relation to the alleged overpayment?*

48. Although it is common ground that Dr Heaslip was employed under an individual contract which incorporated the provisions of the collective contract, the parties never formally recorded anything about this (although they were required to do so) or discussed what the effect of this would be.

49. I note that it was not expressly stated, but appears to be implicit in everything the Ministry has said, that it considers that the relevant provisions of the PTCEC 1998 (if they do differ from what is in his letter of appointment) must take precedence over the statements made in the letter of appointment about the salary. That is, the Ministry appears to take the position that if there is any inconsistency between what is in the letter and what is in the incorporated collective contract, the provisions of the collective contract override what is in the letter of appointment.

**50. I do not accept this submission. Dr Heaslip is entitled to rely on the express words of the letter of appointment. The verbal agreement that he would enjoy equivalent benefits to those contained in the collective agreement cannot, in my concluded view, operate to reduce his express written terms of employment without further express agreement to that effect.**

**51. It is not in dispute that there was no such agreement therefore the terms contained in the letter of appointment, including the level of salary set there, stand.**

**52. In other words, Dr Heaslip is entitled to the terms and conditions set out in his letter of appointment as well as any additional benefits contained in the PTCEC 1998. The Ministry, through its agent Multiserve, is not entitled to vary any of these terms unilaterally.**

**53. Multiserve's actions therefore amount to a breach of Dr Heaslip's contract. It is not entitled to any repayment of salary paid prior to October 2001 and its actions give rise to a personal grievance.**

54. For completeness, and because the Ministry has argued that Dr Heaslip should have known or at least informed himself what was in the PTCEC 1998, I have considered alternative bases for determination of the case, including aspects of the law relating to contracts as set out in s.162 of the Employment Relations Act 2000, and relevant case law.

55. The Ministry has submitted that Dr Heaslip's individual employment contract in 1999 tied him to the terms and conditions of the 1998 PTCEC, and that the PTCEA 2001 never formed part of his terms and conditions of employment.

56. However, when the 2001 PTCEA came into effect both Dr Heaslip and Mr O'Hara understood that his salary would increase pursuant to that agreement. In my view, this gives rise to a

strong implication that the individual contract incorporated the terms of the PTCEC 1998 *and successive collective documents which followed it.*

- 57. I cannot therefore accept the Ministry's submission that only the PTCEC 1998 is of relevance here. The effects of the provisions of both documents are relevant and are considered below.**

*The PTCEC 1998*

58. The 1998 PTCEC was entered into by the Secretary for Education under delegation from the State Services Commission in accordance with s.74 (3) of the State Sector Act 1988 and was binding on employing Boards of Trustees and employee parties.

59. Clause 10.1 of the CEC provides that in relation to a dispute concerning that contract, an employing Board of Trustees shall act together with or in consultation with the Secretary of Education.

60. The relevant provisions of the 1998 PTCEC read:

*“1.4.4 For the purposes of this contract ‘teacher’ shall mean a primary teacher who has been fully registered or provisionally registered or registered subject to confirmation by the Teacher Registration Board.*

*1.4.5 For the purposes of this contract “untrained employee” shall mean an employee without recognised teacher training qualification(s) who is employed in a teaching position.*

...

*5.10 Recognised Qualifications*

*5.10.1 (a) The qualifications chart sets out recognised qualifications for the purposes of determining entry points into the salary scale. The full qualifications chart will be set out annually in the Education Gazette.*

*(b)The basic qualification for primary teaching is the NZ Diploma of Teaching.”*

*5.3.2 Untrained employees*

*Untrained employees shall be placed on Step 1 of the base scale. The maximum base scale rate for an untrained employee is Step 2 of the base scale.”*

61. The Ministry put its position regarding the meaning of the collective contract as follows:

*“Due to a mistake as to Dr Heaslip’s qualifications he was employed on the same salary he was previously employed on as a Manual Training Teacher under the terms and conditions of the secondary teacher’s collective contract. This allowed suitably qualified but untrained teachers to be paid at the trained teacher rates detailed in the collective.*

*When Dr Heaslip resigned his position as a Manual Training teacher to take up the position of RTLB, he then came under the coverage of the PTCEC. This contract does not allow untrained teachers to proceed beyond the untrained teacher rates detailed in the contract. Dr Heaslip believes that as he was a registered teacher and because he had an exemption from RTLB training, that this was a teacher training qualification” in terms of 1.4.5 of the CEC.*

62. The Ministry went on to say “*Clause 1.4.5 is categorical. A teacher must have successfully completed and gained a recognised teacher training qualification. Untrained means a teacher without recognised teacher training.*”
63. Thus, according to the Ministry, schools could appoint “untrained” persons to teaching positions but to be paid as a primary teacher under the PTCEC teachers must be trained and qualified as primary teachers.
64. The Ministry said that its records showed that Dr Heaslip had not completed a formal teacher training course, and there has been no evidence since then to the contrary. The Ministry submitted that the fact that Dr Heaslip was fully registered by the Teacher Registration Board did not mean he held a recognised teaching qualification, or was a trained teacher. While the secondary sector recognised his other qualifications for salary purposes the primary sector did not.
65. Therefore, it submitted “*Mr Heaslip was mistakenly placed on the wrong step of the base scale and overpaid by \$58,646.02.*” From October 2001, therefore, the Ministry reduced his salary to that payable at Step 1 of the base scale of the PTCEC 1998.
66. The submissions provided to me by NZEI were consistent with the Ministry’s interpretation of clauses 1.4. Both agreed that under the terms of that contract, a registered teacher employed as an RTLB in 1999 and who did not hold a diploma in teaching, should under the terms of the PTCEC 1998 properly have been placed on the untrained employee rate, that is, no higher than step 2 of the base scale. This had not happened in Dr Heaslip’s case. He had been placed on a much higher step of the salary scale.
- 67. I accept that the interpretation NZEI and the Ministry have placed on the 1998 PTCEC is correct.**

#### *PTCEA 2001*

68. Turning to the PTCEA 2001, I note that contrary to what Mr O’Hara, Mr Murphy and Dr Heaslip all told me at my first meeting with them, the provisions of the PTCEC 1998 and the 2001 PTCEA turned out to be very different.
69. The terms of the 2001 PTCEA contained a definition of “untrained employee” that put the emphasis on registration rather than the holding of a particular qualification:
- “Untrained employee” shall mean an employee with or without recognised teacher training qualifications who is not fully registered or provisionally registered or registered subject to confirmation by the Teacher Registration Board and who is employed in a teacher position.*”
70. The language of the PTCEA 2001 is plain and unambiguous. **I am satisfied that under its terms, a teacher such as Dr Heaslip who was registered but did not hold a diploma in teaching, would not be classified as an untrained employee.**

#### *The Contractual Mistakes Act 1977.*

71. The Ministry submits that Dr Heaslip was overpaid by mistake arising out of the fact that everyone (from the school to Multiserve) had wrongly assumed that he did indeed hold a Diploma of Teaching. It says that the mistake is that both parties believed Dr Heaslip held a

teaching qualification. It says further that this mistake is a mutual mistake of the kind specified in s.6 of the Contractual Mistakes Act 1977, that is:

- A mistake which induced entry into the contract, and
- A mistake that has arisen after the formation of the contract and which is related to its performance.

72. The Ministry goes on to say that its agent (Multiserve) mistakenly overpaid Dr Heaslip and had no authority to do so. It further says that Crown money paid by mistake must be recovered.

*Dr Heaslip's view*

73. Dr Heaslip pointed out that at the time of his appointment as RTLB there had been considerable publicity about primary teachers having obtained pay parity with secondary teachers. He said that this led to the reasonable inference on his part that he would receive the same salary in the primary sector as he had been receiving in the secondary.

74. He said that if he had known the Hirangi job was to be paid around half his previous salary, he would not have taken the job. He argued that anyone, in fact, would think very carefully about taking up a job at half the salary of his or her previous position.

75. Furthermore, he said, even had the contract been based on mutual mistake, it would still stand as Hirangi "*got what it agreed to pay for.*"

76. The Ministry submits that there was a mutual mistake in that both Dr Heaslip and the school believed he held a teaching qualification. Expressing it this way makes it sound more like a common mistake (that is, where both parties have made the same mistake) rather than a mutual mistake (where the parties are at cross purposes.) Taking Mr Gaine's submission in its entirety however, it seems clear that he intends me to consider whether there has been a mutual mistake. I agree that if the parties were mistaken at all, their mistakes were not the same.

77. At the time the contract was entered into, Dr Heaslip believed himself qualified to teach. (Indeed, he still does.) He knew perfectly well however, that he did not hold a Diploma in Teaching, and had never claimed to do so. Meanwhile, at that time, Mr O'Hara assumed that Dr Heaslip held a teaching diploma.

78. Clearly they were not making the same mistake. One party held a certain view about the value and effect of the qualifications he held, the other made a wrong assumption about whether the first party held a particular qualification.

79. However, I remain unconvinced that these different views of the situation amount to a situation of mutual mistake, for the following reasons:

- Dr Heaslip's belief cannot properly be characterised as a mistake at all. It is his opinion, albeit one not necessarily shared by other members of his profession.
- Mr O'Hara made an assumption. An assumption is not a mistake, and a contracting party is not protected from the consequences of failing to check out an assumption before entering into a contract. Mr O'Hara did not turn his mind to checking Dr Heaslip's qualifications. (Indeed, given that Dr Heaslip worked in secondary teaching, I would have expected an interview for a primary sector job to have included questions on the type and year of

qualifications.) Therefore, Mr O’Hara did not make a mistake in terms of the Contractual Mistakes Act 1977.

- Even if Mr O’Hara’s assumption did amount to a mistake about Dr Heaslip’s qualifications, I remain unconvinced that this induced entry into the contract. Mr O’Hara told me that he would have preferred any RTLB he appointed to hold a Diploma in Teaching, but did not see this as an essential prerequisite. The Ministry’s RTLB Guidelines booklet, at page 35, sets out a comprehensive list of required attributes for the RTLB position. These include *teacher registration, a current practising certificate* and a driver’s licence amongst other personal attributes. A primary, or other, teaching diploma is not mentioned however.

80. In relation to the last point I note that at the time the wages issue first arose, Mr O’Hara himself expressed the view that a demonstration of “equivalency” might satisfy the Ministry that Dr Heaslip was trained. As late as September 2002, when I held my first meeting with him and Dr Heaslip, he remained unclear about just what was required for a teacher to be considered “trained” in terms of the PTCEC 1998.

**81. For these reasons, I do not agree that the individual employment agreement between Dr Heaslip and the school was based on mutual mistake in terms of the Contractual Mistakes Act 1977.**

82. For completeness I note that there is only one other type of mistake for which relief can be granted. That is a unilateral mistake by one party about which the other party knows at the time. If Mr O’Hara did make a mistake, I heard no evidence to suggest that Dr Heaslip knew of it at the time.

*The Contractual Remedies Act 1979*

83. I have also considered the effect on this case of the *Contractual Remedies Act 1979*, which statute binds the Crown.

84. Section s.6 (1) of that statute provides:

*“(1) If a party to a contract has been induced to enter into it by a misrepresentation, whether innocent or fraudulent, made to him by or on behalf of another party to the contract-*  
*(a) He shall be entitled to damages from that other party in the same manner and to the same extent as if the representation were a term of that contract that had been broken; and*  
*(b) He shall not, in the case of a fraudulent misrepresentation made negligently, be entitled to damages from that other party for deceit or negligence in respect of that misrepresentation.”*

**85. I have come to the conclusion that Dr Heaslip was induced to enter into an individual contract of employment by an innocent misrepresentation. The misrepresentation was the confirmation (in the letter of appointment) of a level of salary that the school was not authorised to offer.**

86. In coming to this conclusion I have relied heavily on *George v. Attorney General [1994] 1 ERNZ 933*.

87. In that case, a police recruiting officer told a mature candidate for the Police force that upon graduation he would receive a particular salary. The candidate accepted a place at Police College on the basis of this information.

88. However, the representation given was not consistent with the terms of the applicable collective contract. This made it contrary to Part IV of the Police Act 1958 which provided that remuneration for the Police Force was to be set by agreement between the Commissioner of Police, acting in consultation with the State Services Commission and the New Zealand Police Association (that is, there was no provision at all for individual contracts for commissioned officers.) Upon graduation, the police officer received a lower level of remuneration than he had been led to believe he would get.

89. The parallels between that case and Dr Heaslip's case are marked:

- In both cases the employee took up the employment in reliance on the level of salary indicated.
- In both, the employee had no reason to suspect that the offeror was not authorised to make the offer.
- In both cases a statutory framework governed conditions of employment in the sector, and the offers had not been made in accordance with the requirements of that framework.
- In both, it was not until some time later that it emerged that the level of salary offered had not been properly authorised.

90. I note however that unlike the police recruiting officer, who did not have authority to offer terms and conditions of employment at all, Mr O'Hara was authorised to offer employment to teachers. It was also within his discretion to employ teachers on individual contracts, provided that any payments outside the level of the collective contract were authorised by the Ministry.

**91. The effect of all this is that Dr Heaslip is entitled to relief under the Contractual Remedies Act 1979. Any such relief would take the form of damages to place him in the position he would have been in if the salary he was offered had in fact been the correct rate to offer him all along. However, Dr Heaslip has brought this case as a personal grievance, and I propose to deal with remedies under s.123 of the Employment Relations Act 2000.**

**92. Also for completeness I note that Mr Heaslip did not, at the time of employment, claim to hold a Diploma in Teaching. I am satisfied that there was no misrepresentation, at that time, about that qualification, on his part.**

*Issue (2) Did Mr O'Hara's refusal to affirm that Dr Heaslip met the 'satisfactory teacher' requirements amount to a personal grievance?*

93. Mr O'Hara explained to me that at first he had intended only to defer signing Dr Heaslip's attestation rather than to decline to do so altogether. He did not see the initial delay as having any serious consequences, in itself, for Dr Heaslip.

94. As we have seen, however, the unfolding of the employment problem, Dr Heaslip's sick leave and the issues around his "equivalency" or lack of it, led Mr O'Hara to defer the sign off indefinitely. Not to put too fine a point on it, he reached the conclusion eventually that he simply could not attest to Dr Heaslip's suitability as a teacher.

95. I requested and obtained a copy of the Teacher Registration Board publication:

“A SATISFACTORY TEACHER AND RENEWING A PRACTISING CERTIFICATE.”

96. At page 10 that publication states:

*“to renew a practising certificate every three years the Act requires the Teacher Registration Board to be satisfied that a registered teacher applying for a practising certificate has satisfactory recent teaching experience...”*

97. It then goes on to explain that ‘Satisfactory recent teaching experience’ means:

- *“Being employed in new Zealand during at least 2 of the previous 5 years, **and***
- *In the general education system of an institution in New Zealand approved by the Teacher Registration Board for this purpose, **and***
- *As a teacher or principal or in a position seen by the Teacher Registration Board as equivalent to a teacher, **and***
- *Satisfactorily completed.”*

*“Satisfactorily completed” means:*

- *The teaching must be at a standard determined by the registration Board to be a satisfactory standard, appropriate to the level of experience and responsibilities of the teacher (This standard is set out in the policy’s ‘a satisfactory teacher’) **and***
- *The teacher is actively involved in professional development; **and***
- *There are no further matters that the Registration Board needs to be satisfied about—such as reported to it under the requirements of Section 129 or s.138A or s. 138B of the Education Act.”*

*p.11.*

98. The policy’s ‘a satisfactory teacher’ identifies four ‘dimensions’ of teaching in which a principal must be able to affirm that the teacher is satisfactory. These are ‘professional knowledge,’ ‘professional practice’, ‘professional relationships,’ and ‘professional leadership.’

99. Mr O’Hara considered and I accept, that the question mark over Dr Heaslip’s qualifications (which grew to relate to all his alleged qualifications) put all of these dimensions in doubt.

100. In addition, however, Mr O’Hara formed a view that Dr Heaslip was being obstructive and evasive in relation to the requested verification of his qualifications. Both the manner in which he conducted himself, and the fact that the requested verification never arrived, called Dr Heaslip’s integrity and professionalism into question.

101. This led Mr O’Hara to be concerned that there were ‘further matters’ pursuant to s.129, s.138A and s.138B of the Education Act about which he needed to satisfy himself before signing the attestation.

102. “Further matters” include matters relating to character and general fitness to teach.

103. I have concluded that Mr O’Hara’s view was well founded. I have already told Dr Heaslip, during the course of our meetings, that I consider the school, Multiserve and the teacher Registration Board all to be entitled to seek verification of the authenticity of his qualifications. His steadfast refusal to provide this seriously undermined his credibility in the most serious way. Mr O’Hara had no real choice about declining to affirm Dr Heaslip as a satisfactory

teacher; to have done otherwise would have been in breach of his obligations to the Teacher Registration Board.

104. Dr Heaslip has not satisfied me that he has a personal grievance in relation to this claim.

### **Remedies**

**105. Dr Heaslip has been partially successful with regard to the matters he has lodged with the Authority. I conclude that he has a personal grievance in relation to the reduction in his salary but not in relation to the refusal to sign off his practising certificate.**

106. This complicates the question of remedies. Dr Heaslip claims that he had been constructively dismissed and seeks remedies of lost earnings and compensation for hurt and humiliation.

107. However, even if Mutiserve had not reduced his salary, other matters independently rendered him unable to work.

108. The first was his pre-existing ill-health. He told me that he had been diagnosed with terminal cancer early in 2001 and that his trip to Ireland that year was prompted by the urgent need to go while he was still well enough to travel.

109. Dr Heaslip was clearly unwell prior to October 2001 when Multiserve cut his wages. While I accept that the stress of its actions is unlikely to have improved his general health, I am not persuaded that he would otherwise have been fit for work.

110. The second matter relates to his failure to verify all his relevant qualifications. Any return to employment would have required immediate attention to this, so that his practising certificate could be renewed.

111. Similarly, the consequent withdrawal of his RTLB training exemption in April 2002 would have continued to stand unless he established that he did have qualifications that entitled him to exemption. Without the exemption, he would have been required to take steps to enrol in suitable training as a condition of any return to work. He was strongly opposed to doing so.

**112. In short, there were a number of variables impacting on his capacity to return to work. It has not been established that Dr Heaslip would have returned to his position as RTLB but for the unilateral variation to his salary. Hence, I cannot conclude that there has been a constructive dismissal. The grievance is one of unjustified disadvantage only.**

113. It also follows that I cannot conclude that his ongoing loss of pay, after his sick leave ran out, was a direct result of his personal grievance.

**114. Consequently, I am able to award losses of earnings only for the period between the salary cut and the point where his sick leave ran out. I leave it to Multiserve to check his records and compute quantum but I note that the parties have leave to seek further assistance from the Authority if any dispute arises over quantum.**

115. Dr Heaslip is also entitled to an award of compensation for the distress that arose out of Multiserve's actions. Quantifying this has not been straightforward. He was clearly deeply distressed, as anyone would be, by the sudden and drastic cut in his pay. However he was also very deeply distressed by the fact that his qualifications had been called into question. As I have noted, the school and the Ministry were entitled to inquire into that matter, and Dr

Heaslip's sense of outrage at being requested to verify his qualifications was not justified. On this issue, I consider the school and Ministry to be completely vindicated. Any fault lies with Dr Heaslip whose obstructive and unhelpful behaviour gives rise to a strong inference that he is not being honest about all or some of his qualifications.

116. The award of remedies I make, therefore, is to compensate Mr Heaslip for that portion of his distress that relates to the pay cut, and only that. I have taken into consideration the abruptness of the cut, the limited nature of the consultation about it, and the seeming failure by the Ministry to consider the effect of Dr Heaslip's individual contract of employment.

117. I have also considered the remedies awarded to Mr George in his case against the Commissioner of Police. In that case, the employment continued. Mr George received only a nominal sum of \$1,000.00 general damages but did receive a substantial award of damages for loss of income. Also, the differential in the two rates of pay in Mr George's case was much smaller than the 50% pay cut taken by Dr Heaslip.

**118. Taking all factors into consideration I order the respondents to pay to Dr Heaslip the sum of \$10,000.00 pursuant to s.123(c)(i) as compensation for the distress he suffered as a direct result of the reduction in his salary.**

### Costs

119. Costs normally follow the event. Dr Heaslip has been partly successful in his claim and on that basis he has leave to make application for costs. I note that since he has been unrepresented throughout he will be entitled to reimbursement of his filing fee and reasonable disbursements, where supported by appropriate documentation in the form of receipts.

Y S Oldfield  
Member of Employment Relations Authority