

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Elgin Arthur Edwards (Applicant)

AND Julie Webb as Limited Statutory Manager of the Board of Trustees of Tokoroa High School (Respondent)

REPRESENTATIVES Richard Harrison, Counsel for Applicant
Paul Robertson, Counsel for Respondent

MEMBER OF AUTHORITY Leon Robinson

INVESTIGATION MEETING 26 January 2005
27 January 2005
3 February 2005

DATE OF DETERMINATION 3 March 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] This is an application by an employee for remedies arising out of an alleged unjustifiable action by his employer.
- [2] The employee Mr Elgin Edwards (“Principal Edwards”) was suspended by the Limited Statutory Manager Ms Julie Webb (“Ms Webb”) from his employment as Principal of Tokoroa High School on 19 November 2004. He says that suspension was unjustifiable.
- [3] By an interim determination dated 24 December 2004, Principal Edwards was granted reinstatement from suspension.
- [4] Principal Edwards sought the Authority’s assistance in resolving his employment relationship problem by granting him reinstatement, declarations and compensation for unjustified suspension. Principal Edwards now seeks recommendations from the Authority rather than declarations.
- [5] The parties were unable to resolve the differences between them by the use of mediation.

The evidence

- [6] Principal Edwards was permanently appointed as Principal of Tokoroa High School on 21 June 2004. He had previously been the deputy Principal for ten years. He has 28 years service in education - 17 of those years in senior administration.

[7] Tokoroa High School was plagued with difficulties last year and has attracted much negative media attention. Those problems include the complete breakdown of the school's computer system network, financial difficulties, a fire which destroyed 25% of the school's classrooms and allegations of staff bullying.

[8] The powers and duties of the school's Board of Trustees in relation to financial operations were vested in a limited statutory manager in June 2004.

[9] By notice in the New Zealand Gazette dated 15 November 2004, Ms Webb was appointed limited statutory manager in respect of replacing the Board as employer and in relation to communications. Ms Webb's appointment took effect as from Friday 19 November 2004. I am satisfied from my own enquiries that the Gazette Notice was published on the previous day on 18 November 2004.

[10] Ms Webb telephoned Principal Edwards at around 9.00 pm on Thursday 18 November 2004 and requested to attend the morning staff meeting the following day in order to brief staff on her role as Limited Statutory Manager. Principal Edwards agreed. Ms Webb naively believed that all staff would be present. All staff are not present at these meetings and such meetings typically comprise most teaching staff with the exception of those on duty monitoring students. Principal Edwards had no reason to apprehend Ms Webb did not appreciate that. Principal Edwards asked Ms Webb what her view was of her role as statutory manager. When she explained her view, Principal Edwards told her he disagreed.

[11] On the morning of Friday 19 November 2004, Ms Webb arrived at Principal Edward's office and on learning of a morning senior manager's meeting (called the "admin staff meeting") which was about to take place, requested to attend. These meetings involve the Principal and the Deputy Principals at 8.15 am each day. The admin staff meeting that particular day was to discuss administrative matters relating to the Education Review Office ("ERO") visit to the school that was to take place at the beginning of the following week. Ms Webb insisted on attending the morning admin staff meeting. Mr Edward advised her that it was not appropriate and he eventually required Ms Webb leave his office. Principal Edwards considered Ms Webb's attendance inappropriate because the meeting was administrative and because he wished to discuss the pending ERO visit with the senior management staff prior to the morning staff meeting. He told Ms Webb he would meet her in the staff room. Mrs Barbara Graham, one of two school Deputy Principals ("Mrs Graham") attended the latter part of this meeting. I find that Ms Webb did not give Principal Edwards an instruction to allow her to attend.

[12] Ms Webb addressed the morning staff meeting and explained to the teaching staff present her appointment as limited statutory manager. I find that Principal Edwards informed Ms Webb the bell had rung at the conclusion of the session and that he did so politely.

[13] At about 9.30 am, Ms Webb met with Principal Edwards. Principal Edwards' secretary Ms Janita Poko ("Ms Poko") attended and took notes and Mr Dean Ria the Chair of the Board of Trustees ("Mr Ria") attended the latter part of the meeting. Principal Edwards genuinely had a dispute about their respective roles as he had signalled to Ms Webb the previous evening. He outlined his view of the situation and clarified his position with a diagram on a whiteboard. Ms Webb and Mr Ria told Principal Edwards they did not agree with Principal Edwards' view but I find that they did not engage him in discussion about the matter. I find that Principal Edwards pleaded with Ms Webb to work with him to resolve the matter and he even proposed mediation in relation to it. There was however, no immediate resolution but the parties did agree to discuss the matter early the following week. I rely on Ms Poko's evidence in corroboration of Principal Edwards' evidence.

[14] I find that Principal Edwards gave legitimate explanations to Ms Webb as to why she could not immediately be accommodated with an office - a request she had also made. I accept Ms Poko's evidence in corroboration in making that finding. I also accept the expert witnesses' evidence that such arrangements in schools where office space is typically at a premium, are difficult to make at short notice.

[15] I find too that Principal Edwards advised Ms Webb that he had arranged for her to meet the senior management staff later that day at 12.00 pm. Because the meeting with these staff is referred to as "admin staff meeting" Ms Webb expected she was meeting the non-teaching support staff who had not been present at the morning teaching staff meeting earlier that day. Her understanding was incorrect.

[16] Ms Webb contacted Mr Peter Murphy of the School Trustees Association ("Mr Murphy") between 11.00 am and 12.00 pm for advice about dealing with Principal Edwards. Ms Webb and Mr Murphy resolved that Principal Edwards was to be suspended. I find that Ms Webb did not seek advice from Mr Murphy about the dispute Principal Edwards had raised in relation to his role as Principal and hers as limited statutory manager. Mr Murphy assisted Ms Webb in drafting a letter to Principal Edwards which was given to him later that day. Mr Murphy also gave advice to Ms Webb as to how to effect the suspension.

[17] Principal Edwards arranged a meeting of the senior management team at 12.00 pm where Ms Webb addressed them about her appointment. He had advised Ms Webb of this arrangement following the meeting which commenced with her at 9.30 am. Ms Webb had apprehended she was to meet the non-teaching staff of the school that were not present at the morning staff meeting.

[18] Principal Edwards was suspended later that day at about 3.15 pm. By letter the same date, he was advised of allegations against him as follows:-

It is of very serious concern to me that you unreasonably ordered me out of your office, refused me access to speak to some staff members and refused my attendance at a meeting that I had a lawful and reasonable right to ask to attend. I am also very seriously concerned about the disrespectful attitude you appear to have towards me in my role of Limited Statutory Manager and that you may be inconsistent in providing me with information and essential assistance that I require in my role of Limited Statutory Manager.

[19] Principal Edwards gives a full account in an affidavit in support of his preliminary application for reinstatement of his contact with Ms Webb on Friday 19 November 2004. Ms Webb disputed that account and relied on a report prepared by Mr Tony Ryan as her reply to that preliminary application. Ms Webb had engaged Mr Ryan to review events which occurred between her and Principal Edwards on 19 November 2004. Mr Ryan's report is critical of Principal Edwards.

[20] Principal Edwards deposed as to the manner in which his suspension was effected as follows:-

67 At 3.15 pm Ms Webb knocked on the door and asked to come in with Dean Ria. I said "Sure come on in". Ms Webb came in and said "I have a letter we want to read to you." She gave me a copy and started reading.

68 Ms Webb then stopped and said "Oh by the way do you need a support person?" I said "Are you expecting a response now, because if you are then I will need a support person?" Ms Webb said "No we are not requiring you to respond". So I said "Well if you are not expecting a response from me now and you are only reading the letter then I do not need a support person".

69 Ms Webb read the letter, periodically taking my copy back to correct it. At the end of the letter she asked me to sign that I had received the letter, she looked at me and I waited. She then said "Are you going to respond?" I said "Julie we already agreed about that. You made it clear no response was required and I said I would not respond without a support person". Ms Webb said "In that case you are suspended until Wednesday". A copy of the letter I was handed is attached and marked "EAE 31".

70 Ms Webb then stood up and started to walk out. I asked "Could you, please, clarify what you mean by suspended?" Ms Webb replied "You're suspended on full pay and you aren't required at work". I said "thank you" and they left.

71 I packed up my bag, collected my clock and tissues from the hall junior exams. I gave a quick brief to Butch Rothman, Barbara Graham and Janita Poko. These people would be immediately responsible in my absence and in organising the school and ERO visit on Monday. I popped down to the Dean's room and spoke to Mr Ria and Ms Webb "that I had left my personal things in my office". They made a commitment to ensure they were looked after and I left the school.

[21] The disciplinary matter has not been concluded. I find that Principal Edwards was told he was suspended for three days. He was in fact suspended until, by order of the Authority, he was reinstated some five weeks later on 24 December 2004.

Discussion

[22] Clause 6.2 of the Secondary Principals' Collective Agreement provides as follows:-

If the alleged misconduct is deemed sufficiently serious the principal may be either suspended with or without pay or transferred temporarily to other duties subject to the following:

a. Other than in exceptional circumstances, the board shall not suspend the principal without first allowing the principal either personally or through a representative a reasonable opportunity to make submissions to the board about the alleged misconduct and the appropriateness of suspension in all the circumstances. The board shall take into account any submissions made by or on behalf of the principal before determining the matter of suspension.

b. The board shall use its best endeavours to ensure that the period of suspension is kept to the minimum possible time consistent with ensuring that the allegations of misconduct are properly investigated and that the principal is treated fairly at all times.

[23] Having seen and heard Mr Ria, Ms Webb and Principal Edwards I find the above narrative at paragraph [20] of the events on the morning of 19 November 2004 as Principal Edwards outlines it, proved. Mr Ria's evidence to me at the investigation meeting substantially corroborates Principal Edwards' evidence.

[24] I state too, having seen and heard these witnesses, where there is dispute between Principal Edwards' and Ms Webb, I prefer Principal Edwards' evidence. Ms Webb's evidence was in conflict with other witnesses. I prefer Ms Patricia Cowley's evidence to Ms Webb's having observed both witnesses. I note too that I had to correct Ms Webb's recall of correspondence authored by her to Ms Cowley which Ms Webb was not aware that I had been provided with by Ms Cowley. Ms Webb told me she presented Ms Cowley with an option when that was plainly not the case.

[25] Mr Harrison for Principal Edwards submits that the suspension was unlawful. He says it was not substantively or procedurally justified. He argues the suspension was a brutal response given Principal Edwards had acceded to all of Ms Webb's requests. He submits too that Principal

Edwards' actions were consistent with his duties as Principal and there was no misconduct on his part.

[26] I find that in the circumstances, a response such as suspension was not appropriate having regard to a genuine dispute between the parties. I find that Principal Edwards had raised a genuine dispute about the delineation between his role as Principal and Ms Webb as limited statutory manager. He had earlier raised the matter with Ms Webb the previous evening when she telephoned him at home. He raised the matter again the following morning and he sought to clarify matters with her. I incline to the view Ms Webb did not give proper consideration to Principal Edwards' position. Whether or not she held her own views, she owed a duty to him to consider those views and communicate openly with him about them. I find that she did not do so. She ought to have. The statutory duty of good faith required her to take on board what he had raised and to give due consideration to those views. She was then entitled to dismiss or reject them if she disagreed. In these circumstances with the presence of a genuine dispute, suspension was not the appropriate response. Principal Edwards seeks guidance from the Authority as to the dispute he had raised. I comment on this aspect of matters at the conclusion of this determination.

[27] I accept that it is typically the case that a limited statutory manager will discuss protocols with a Principal at the commencement of their appointment. I find that Ms Webb did not do so and she ought to have before she took the steps she did on the morning of 19 November 2004.

[28] I also consider that the suspension was unwarranted because the conduct was not sufficiently serious to require such a response. I accept because I heard evidence from experts in the education field, that suspension is reserved for only the most serious of cases. That is the understanding those in the field would have. These present facts are not sufficiently serious in my assessment to deserve the response of suspension. I find for reasons I amplify later, Principal Edwards was suspended because he had a "disrespectful attitude."

[29] As well, Principal Edwards had in fact acceded to all of Ms Webb's requests eventually later the same day. Suspension was therefore as Mr Harrison submits a brutal response. Even though he had done so, Ms Webb had resolved he should still be suspended. When she took advice about suspension, she knew that all her requests had been met.

[30] Most critically, I find that Principal Edwards was not accorded a sufficient opportunity to be heard on the decision to suspend him prior to that decision being taken. I find Principal Edwards to be a credible witness and I have no doubt whatsoever about any aspect of his evidence. His position as evidenced from the correspondence and documents lodged is consistent throughout these proceedings. He also said that he took detailed notes of material events as they occurred. I accept unreservedly his narrative of events that transpired on the morning of 19 November 2004.

[31] I have no doubt that had Principal Edwards been provided with an opportunity to comment on whether he should be suspended, he would have sought to remain in his employment. I do not accept that he would have remained silent if he had been asked. There was a lot of work to be done to prepare the school for the following year and there was an ERO visit the following week. The school was in a delicate position and Principal Edwards as Principal was instrumental in dealing with the difficulties that plagued the school. I accept that he was anxious to remain in his duties. He would have done all he could to continue his duties at such a critical time. He was denied the opportunity however of making his case. He was not given a chance to be heard about whether he should have been suspended.

[32] I consider that Principal Edwards' suspension was in these particular circumstances tantamount to disciplinary action itself. He was removed from his duties at a critical time and that

in my view was effectively punitive because of what was happening at the school and his central role in dealing with the situation. I do not regard the removal of Principal Edwards from his duties because he had a disrespectful attitude as an appropriate response in those prevailing circumstances.

[33] As well, the suspension extended over a prolonged period. As a Principal of a community high school with a public profile, as well as the attendant negative publicity and media attention that the school had attracted, it was inevitable that there would be a heightened stigma about his suspension. It was all the more crucial that any decision to suspend him was made carefully in a considered and measured way giving him a prior opportunity to be heard before it was taken. I am also not satisfied that the respondent kept this suspension to the minimum possible time. I am not persuaded that Ms Webb took sufficient steps to have the matter dealt with without delay so as to minimise any harm to Principal Edwards.

[34] A fair and reasonable employer would have extended that opportunity. Ms Webb did not do so and acted in breach of Clause 6.2 of the Principals' Collective Employment Agreement and therefore **I find that the decision to suspend Principal Edwards was unjustifiable and he has a personal grievance for unjustifiable disadvantage.** Principal Edwards is entitled to remedies in settlement of that personal grievance.

Contribution

[35] Having made that finding and in considering both the nature and the extent of the remedies to be provided, the Authority is bound by section 124 of the Employment Relations Act 2000 to consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly.

[36] What precisely was the "situation" that gave rise to the personal grievance?. I am mindful that the employer has yet to conclude its disciplinary investigation of the substantive allegation against Principal Edwards. In this determination, I am concerned to find contributory conduct towards the personal grievance as I have found it – i.e. the personal grievance for the unjustifiable suspension. That is to be distinguished from situation of the substantive allegation. Caution is required because the investigation into the substantive allegation is yet to be concluded. It is not desirable that I intrude in that continuing investigation.

[37] Ms Webb tells the Authority that Principal Edwards was shouting and yelling at her but she does not say that in her prepared brief. She portrays a situation where she feared for her physical safety while she was in Principal Edwards' office and that she felt intimidated. She says in her prepared brief:-

Mr Edwards became very aggressive. He ordered me out of the room and forbade me from speaking to the Deputy Principals. Mr Edwards was quite red in the face, he glared at me, at one point he came closer to me and I wondered whether he was going to hit me or at least grab my arms and force me out of the room. I have not encountered that behaviour from him before. He was more than angry, he was wild. I was scared. At that point I got angry and stood my ground, refusing to leave his room.

[38] One Ms Angela Toy a teacher aide at the school says in her prepared brief to the Authority that she could hear shouting. She says the yelling went on for five minutes. She says too that the door opened and she could hear Principal Edwards continue to yell at Ms Webb.

[39] Even Ms Webb does not give that evidence in her prepared brief. Nor for that matter does Mrs Graham, Ms Poko or the other deputy Principal Mr Butch Rothman ("Mr Rothman"). I find

Ms Graham, Ms Poko and Mr Rothman to be credible witnesses and I accept their evidence. Mrs Graham tells the Authority there was no shouting and yelling. She was present in the latter part of the meeting in question.

[40] Mr Chris McKenzie tells the Authority Ms Toy had earlier disclosed to him she was “out to get Elgin”. She denied that evidence when I put it to her. Having seen and heard Ms Toy and Mr McKenzie, I prefer Mr McKenzie’s evidence. I find Ms Toy an unreliable witness.

[41] It is odd that Ms Webb does not in her prepared brief give evidence of Principal Edwards shouting and yelling at her. Nor does she give that evidence in her affidavit filed in the interim application for reinstatement. She gave oral evidence of it however. It is curious that she did not see fit to mention it in her brief - a rather material omission. Equally curious, the letter given to Principal Edwards when he was suspended makes no mention of this behaviour. Ms Webb writes that letter as a comprehensive chronological narrative recording events leading up to the suspension. It is extraordinary then that she does not mention there what she would now have the Authority believe.

[42] As well her prepared brief states:-

I was shaken by the encounter with Mr Edwards. I could not see how I could properly carry out my role as LSM unless I could have access to staff members, particularly the senior management of the school, and unless I could attend meetings.

[43] I regard that statement as Ms Webb’s rationale for suspending Principal Edwards. Be that as it may, she does not refer in the letter of 19 November 2004 to the directly relevant factual events which might arguably have justified suspension. That letter is the most contemporaneous record of events. I accept Principal Edwards’ denials and I conclude by finding that Principal Edwards was not shouting or yelling at Ms Webb.

[44] Having made that finding, I consider whether there is any other conduct which could be regarded as blameworthy. I am not able to find that Principal Edwards was obstructive. I have already said that Principal Edwards did in fact allow Ms Webb to meet staff members and the senior management team. All the requests Ms Webb made on 19 November 2004, were eventually accommodated. Her requests were accommodated when they were deemed operationally convenient by Principal Edwards as the person charged with the day to day management of the school.

[45] Even if I were to accept the evidence that Ms Webb gives at para [37] above, I do not consider that suspension was an appropriate or required response. I have reached the view that Ms Webb suspended Principal Edwards because he had a “disrespectful attitude”. That is what she refers to in her letter of 19 November 2004 - not that he was yelling or shouting or that she felt intimidated by him. She describes Principal Edwards being red in the face, glaring at her and coming closer to her at one point. She says he was wild. That behaviour led to the suspension. She resolved to stand her ground and became angry herself. She well knew Principal Edwards’ view of matters. She knew he was guarding his territory as Principal responsible for day to day management matters because he had raised the matter with her the previous evening. They clearly disagreed however about his right to do so. It is the fact of this genuine dispute as I have found it, that influenced Principal Edwards’ behaviour and further, as I have found Ms Webb did not have proper regard or give due consideration to his position that I am unable to diagnose Principal Edwards conduct as blameworthy.

[46] Ms Webb knew of the dispute raised by Principal Edwards yet she did not see fit to deal with the matter appropriately prior to her actions on the morning of 19 November 2004. She well knew

of the issue. She did not deal with it prior to acting on her appointment and going into the school. It seems to me that if she had given the matter its due consideration, the present employment relationship problem may have been averted. Considering matters this way, it would be inequitable to lay blame with Principal Edwards when he had done all that he could to seek resolution or clarification.

[47] I find that Principal Edwards did not contribute to the situation that gave rise to the personal grievance and there was no blameworthy conduct on his part which could constitute contributory fault which led to that situation. There is therefore no basis for reducing the nature and extent of the remedies to be granted.

Compensation

[48] In his affidavit in support of his interim application for reinstatement from suspension Principal Edwards stated:-

72 I was very shaken. I've never been suspended before. I felt demeaned, publicly vilified and professionally destroyed. All this happened when the school was just about to have an ERO visit and we were in the middle of an important appointment process.

[49] While he was initially told he was suspended for three days, he was suspended for some five weeks until he was reinstated by the Authority.

[50] He said he was distressed to learn that staff were told to say that he was on stress leave and that there were rumours in the Tokoroa community that he had been suspended or fired. He said the delay in dealing with his suspension allowed the media to get hold of the story. He is distressed by the damage to his reputation and standing in the community. He described the situation as a nightmare. He said there was a belief in the community and the media that he had committed a serious offence to warrant the punishment of suspension.

[51] I have considered Principal Edwards' evidence of the effects the suspension has had on him as well as the evidence of his wife Mrs Maureen Edwards. Principal Edwards broke down and lost his composure on two occasions when he attended the Authority's meeting last December. Principal Edwards was completely devastated by the suspension and its consequences and I accept his Counsel's description that he is now a broken man because of it.

[52] Mrs Edwards says that her husband was stunned by the suspension particularly with the ERO visit the following week. She says the shame and "dirtiness" he felt about the situation and himself meant that showering became an important part of cleansing. She says he does not sleep for more than a couple of hours at night and they often have cups of tea in the night. She says he has suffered stomach aches, migraines and chest pains. Prior to his suspension he would sleep solidly for eight hours or more. She says too her husband would not go out and his confidence was very low. They became fearful of answering the telephone in case it was the media. Mrs Edwards describes the situation for her husband and their family as devastating, destructive and soul destroying. She says it will take a very long time to recover from the trauma her husband and their family have suffered.

[53] I am satisfied that Principal Edwards has suffered humiliation, loss of dignity and injury to his feelings. He suffers that loss as a result of the Respondent's actions and the failure to accord him his legal entitlements. He is entitled to be compensated for that loss. **The Respondent is ordered to pay to Principal Edwards the sum of \$12,000.00 as compensation.**

Recommendations

[54] Principal Edwards seeks recommendations from the Authority. I consider it is appropriate and necessary to do so in terms of supporting this employment relationship to be a continuing and productive one. In this part, I make some observations and ultimately recommendations to be of assistance to the parties.

[55] By the Minister's Gazette notice of 15 November 2004, "*all functions, powers and duties of the board as an employer (whether statutory or otherwise)*" were vested in Ms Webb as limited statutory manager. I am concerned about whether Ms Webb actually fully appreciates the scope of the obligations on her because I was surprised by her responses when I sought clarification from her of her understanding.

Governance vs Management

[56] Principal Edwards would have it that Ms Webb's powers are exercised subject to his role as Principal responsible for the day to day management of the school. That was in essence the dispute between these parties which Principal Edwards sought to resolve with Ms Webb.

[57] It is my view that Ms Webb as limited statutory manager has no more or no less powers, functions and obligations as an employer than the Board of Trustees had prior to her appointment. There is a direct coincidence of powers. What the Board of Trustees was empowered or obliged to do becomes vested in her. That is the plain meaning of the words of the gazette notice.

[58] The appointment of a limited statutory manager is one of the interventions available to the Minister or Secretary of Education where there is a risk to a school.

[59] The purpose of the Act which amended the 1989 Act is set out at Section 78(h) as:-

The purpose of this Part is to provide for a range of interventions that may be used to address risks to the operation of individual schools or to the welfare or educational performance of their students.

It was intended that there would be new powers to enable the Minister or the Secretary of Education to intervene, when necessary, but only to the extent required to resolve difficulties.

[60] Sections 75 and 76 of the Education Act 1989 provide:

75. *Board*

Except to the extent that any enactment or the general law of New Zealand provides otherwise, a school's Board has complete discretion to control the management of the school as it thinks fit.

76. *Principals—*

(1) *A school's principal is the Board's chief executive in relation to the school's control and management.*

(2) *Except to the extent that any enactment, or the general law of New Zealand, provides otherwise, the principal—*

(a) *Shall comply with the Board's general policy directions; and*

(b) *Subject to paragraph (a) of this subsection, has complete discretion to manage as the principal thinks fit the school's day to day administration.*

[61] Those provisions are somewhat imprecise in that there is no specific statutory definition of respective roles or where governance ends and management begins. I do not consider I should say anything further about this aspect of matters because the substantive allegations against Principal Edwards are yet to be concluded.

[62] I regard section 75 as encapsulating the general management prerogative that an employer has. A Board's exercise of its prerogative must be carried out fairly and in accordance with statutory and contractual obligations.

[63] The Principal is an employee of the Board. The day to day administration of the school is entirely at his/her discretion. The Principal has the overall responsibility for the day to day management of the school within the policies and delegations established by the Board of Trustees.

[64] The employment relationship between the Principal and the Board of Trustees is fashioned at all times by the terms which the law implies in contracts of employment. Those implied terms include the implied terms of confidence and trust, fair and reasonable treatment, and a duty not to do anything calculated or likely to destroy the relationship of confidence and trust. Those duties are mutual duties which the parties owe to each other.

[65] The relationship is further conditioned by the statutory duty of good faith which is also a mutual obligation.

[66] The Board of Trustees is subject to a higher standard because it is required by law to be a good employer. That higher standard was also vested in Ms Webb. That statutory duty imposes on Ms Webb an express obligation to accord Principal Edwards fair and proper treatment.

[67] The mere fact of Ms Webb's appointment as limited statutory manager and the circumstances in which that appointment is made, does not extinguish the implied duties, express obligation to be a good employer and the statutory duty of good faith. However, those circumstances may properly influence the way in which those duties and obligations are exercised. The law relating to Principal Edwards' employment contract with the Board (and Ms Webb) remains unaffected by the fact of her appointment.

[68] Ms Webb's powers as limited statutory manager are not unfettered. Her powers and authority are subject to the rights and obligations which subsist in the existing contracts of employment that the Board has with its employees. Any actions which Ms Webb takes as limited statutory manager are carried out subject to those duties.

[69] Having made the above observations, I make these recommendations to the parties with a view to preventing further employment relationship problems:-

- (i) The parties take steps to establish working protocols between them that recognises both Principal Edwards' discretion as Principal for the day to day management and administration of the school and Ms Webb's ultimate overall responsibility for the school's operation.
- (ii) Ms Webb receives assistance to recognise the legal obligations owed to Principal Edwards under his contract of employment with the Board and in particular, the way in which the implied terms, express obligation to be a good employer and statutory duty of good faith are to be observed in the exercise of her overall responsibility for the school's operation.

[70] Mr Robertson submits that there can be no determination against Ms Webb. He cites section 78Q of the Education Act 1989 which is as follows:-

78Q Protection of limited statutory managers and commissioners

No limited statutory manager, and no commissioner, is personally liable for an act done or omitted by him or her, or for any loss arising out of any act done or omitted by him or her, if the act or omission was in good faith and occurred in the course of carrying out his or her functions.

[71] Mr Robertson says that section is a “showstopper” and precludes any findings or remedies against Ms Webb. I do not accept that submission. Ms Webb as limited statutory manager is not above the law. The section does not decree that no proceedings shall lie against a limited statutory manager or commissioner. It operates to indemnify any limited statutory manager or commissioner. Ms Webb is entitled to call on the Ministry of Education or Secretary to meet any orders against her.

[72] I decline to grant the remedy sought by way of determination in respect of paragraph 2.1 of Principal Edwards’ counsel’s submissions. I am not persuaded to make such a finding having regard to the very limited involvement temporally between Ms Webb and Principal Edwards on 19 November 2004.

Costs

[73] I invite the parties to resolve any costs issues between them but should they be unable to agree, they may make application within a reasonable period to have the matter determined.

Leon Robinson
Member of Employment Relations Authority