

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

CA 149/08
5044115

BETWEEN	ASSOCIATION UNIVERSITY STAFF First Applicant	OF
	DAVID LAMB Second Applicant	
AND	VICE-CHANCELLOR LINCOLN UNIVERSITY Respondent	OF

Member of Authority: Paul Montgomery

Representatives: Peter Cranney, Counsel for Applicants
Raewyn Gibson, Advocate for Respondent

Investigation Meeting: 18 December 2007 at Christchurch

Joint Memorandum: Received 20 May 2008

Submissions received: 24 July 2008 from Applicants
26 August 2008 from Respondent

Determination: 2 October 2008

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In the latter part of the investigation meeting, the parties asked the Authority to adjourn its investigation to provide the opportunity for them to attempt to resolve the disputed issues between themselves. The request was granted and, by way of a joint memorandum, the representatives have requested the Authority to make findings on two issues only and further, that it need not address the matter of remedies in this determination.

Issues

[2] The two issues to be resolved are:

- Whether it was a term of Mr Lamb's employment that he would receive automatic salary increments and move through the senior lecturer scale quickly; and
- What is the correct interpretation of the criteria set out in the schedules to the collective agreement for progression for Senior Lecturer (below the bar)?

Alleged pre-contractual representations

[3] This matter arises from telephone conversations between Mr Lamb and Ms Valerie Hutton, a human resources adviser employed in this role by the University since July 1995. Following his application for a vacancy, Mr Lamb had been interviewed by telephone and later was invited to attend a face-to-face interview in New Zealand. It was after returning to England that Mr Lamb received *a number of calls with Ms Hutton*.

[4] Mr Lamb contends that, in the course of these calls:

Ms Hutton said that anniversary increment would be automatic and that I would be able to advance quickly through the lecturers' scale. In the end I accepted level 3 on the senior scale, but on the basis of what Ms Hutton had said. Although I did not speak directly with Julie Williamson (also of human resources) I was aware that Ms Hutton was communicating with Ms Williamson throughout.

[5] The evidence from Ms Hutton and Ms Williamson, both of whom are very experienced in pre-employment protocols, persuade me to the view that Mr Lamb is mistaken in his belief of what was said. I accept it is a belief genuinely held however, the absence of any diary notes or notes taken during the course of telephone conversations with Ms Hutton have confirmed my view.

[6] This difference of opinion is however, not particularly relevant in the circumstances as Mr Lamb signed a written offer of employment which does not contain any reference to these alleged representations. The terms of the offer put to Mr Lamb provide no assurances of an automatic increment at the time of the anniversary review, nor a *quick progression* through the grades. Rather, the offer

refers to the annual salary advancement and promotion process which includes the criteria for progression for a Senior Lecturer (below the bar).

Interpretation of criteria for progression for Senior Lecturer (below the bar)

[7] This dispute concerns the correct interpretation, application and operation of the collective agreement's terms relating to the salary progression for senior lecturers. That is, academic staff who, having met the criteria established in the relevant documents, have progressed from lecturer to senior lecturer status.

[8] As all parties are thoroughly familiar with the relevant documents, I do not intend to quote extensively from them. Rather, having studied the relevant sections, I will address the representatives' submissions in the light of the plain words as set out in those documents and in particular clause 4 of the Criteria for Promotion/Advancement for Academic Employees.

[9] For the applicants, Mr Cranney submits that there is an obligation on the University, imposed by clause 4.1 of s.4 which is headed Advancement through the Senior Lecturer Steps, to meet an expectation to advance senior lecturers through the senior lecturer steps so that they reach the bar in the senior lecturer scale within a six year timeframe. He says:

The opening words of clause 4.1 (having given evidence of achieving consistently high standards over a sustained period in the key tasks of the job) are plainly a reference back to clause 3.2 which also uses the words consistently high standards over a sustained period.

[10] He goes on:

The relevant employee will have achieved the consistently high standards already, in order to be promoted to senior lecturer. Having done so, the employee concerned can normally expect to reach the bar in the senior lecturer range within a six year timeframe – the next words in 4.1. The two different portions read together identify the starting point the end point and the normal maximum duration of a senior lecturer's progression. The starting point is already demonstrated high standards; the end point is "the bar in the senior lecturer range"; and the normal maximum duration is identified as an expectation – that is that a senior lecture [sic] can normally expect to reach the bar within a six year timeframe. The word within is important. It emphasises that the six year timeframe is the maximum period normally expected for advancement.

[11] In addressing the issue of the rate of progression through the steps a senior lecturer can expect, Mr Cranney submits:

There is an obligation on the respondent, imposed by clause 4.1 to meet an expectation to advance senior lecturers through the senior steps so that they reach the bar in the senior lecturer scale with [sic] a six year timeframe.

[12] In submissions on behalf of the University, Ms Gibson says the respondent agrees the clause (4.1) *means what it says*, except that its meaning is that *the criteria for advancement through the senior lecturer steps within a six year timeframe requires the senior lecturer to fulfil the criteria and must meet the obligations specified in clause 4*. Ms Gibson then cites five reasons why the opening words of clause 4.1 *having given evidence of achieving consistently high standards over a sustained period in the key tasks of the job ...* is not a reference back to clause 3.2 as submitted by Mr Cranney.

[13] First, Ms Gibson points out that clause 3.2 specifies the criteria a lecturer must meet in order to be promoted to the senior lecturer status. Further, she submits that clause 4 provides the criteria for *advancement through the senior lecturer steps* and the obligation placed on senior lecturers for them to have an expectation to reach the bar on the senior lecturer scale within a six year timeframe. She opines the obligation is on the senior lecturer who will have *given evidence of achieving consistently high standards over a sustained period in the key tasks of the job*. Therefore, Ms Gibson says *the job* referred to in the first section of clause 4.1 is the role of senior lecturer, not that of a lecturer.

[14] Further, Ms Gibson submits that the actual criteria of achieving consistently high standards is separate and distinct between clause 3.2 and clause 4.1. She points out that clause 3.2 in relation to lecturers states *there must be evidence of consistently high standards over a sustained period and at least three of the listed criteria* compared with clause 4.1 which provides *having given evidence of achieving consistently high standards over a sustained period in the key tasks of the job*.

[15] Finally, on behalf of her client, Ms Gibson submits that the words in clause 4.1 should not be interpreted as a duplication of a criterion required to advance to senior lecturer status, but is, as the plain ordinary words of the clause state, an obligation on a senior lecturer to fulfil if they are to have an expectation of progressing to the bar in the senior lecturer scale within a six year timeframe.

[16] Ms Gibson acknowledges that senior lecturers can *normally expect to reach the bar in the senior lecturer range within a six year timeframe*. However, the

respondent maintains that this provision setting out the *normal* expectation clearly allows for deviation and does not place any obligation upon the University to ensure a senior lecturer progresses to the bar within a six year timeframe. She opines *to the contrary, the onus is on the senior lecturer to meet the specific criteria set out in clause 4 in order to progress.*

[17] I find the clear intention of the document is to set out the criteria for advancement for academic employees. The sections of the document are deliberately discrete, each standing in its own right. Each section addresses criteria and terms which relate specifically to academic staff in that section, and does not admit the possibility of transposing or importing terms or criteria from any other section.

[18] The evidence heard in the course of the investigation meeting was consistent with the submissions made by Ms Gibson. I refer in particular to the evidence of Dr Stefanie Rixecker, Professor Caroline Saunders and Ms Williamson.

[19] While I have considered in some detail the submissions of Mr Cranney, based on a reading of the plain words and the plain meaning conveyed by s.4.1, I cannot accept the proposition that the obligation to enable upward progression within the steps of the senior lecturer grade lies with the respondent. I am of the view that it is clear that the respondent has set out the criteria it requires a senior lecturer to meet as a prerequisite for advancing to the step above.

[20] For the reasons given earlier in this determination, I do not accept that there is any nexus between clause 3.2 and clause 4.1 in spite of a similar phrase being used in both clauses.

Declarations

[21] In response to the questions posed by the parties in their joint memorandum, I find:

- It was not a term of Mr Lamb's employment that he would receive automatic salary increments and move through the senior lecturer scales quickly;

- In order to be able to progress through the senior lecturer steps within a six year timeframe, senior lecturers must first meet the criteria and the obligations provided for in clause 4.

Costs

[22] Costs are reserved.

Paul Montgomery
Member of the Employment Relations Authority