IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

AA 289/08
5130215

	BETWEEN	DR PETER HEASLIP
		Under the Name
		ANNE-MARIE DIMMENDAAL VALLYON
		Applicant
	AND	RAGLAN AREA SCHOOL BOARD OF TRUSTEES
		Respondent

Member of Authority:	Alastair Dumbleton
Representatives:	Dr Peter Heaslip in person Prue Dawson, counsel for Respondent
Telephone conference:	11 August 2008
Determination:	13 August 2008

DETERMINATION OF THE AUTHORITY

Application to reopen investigation

[1] On 14 July 2008 an application to reopen an investigation was lodged in the Authority pursuant to clause 4 of Schedule 2 of the Employment Relations Act 2000.

[2] Reference was made in it to an Authority determination given nearly three years earlier, on 1 August 2005, under AA 283/05 by member K Anderson. A copy was attached to the application as required.

[3] On the front of the determination the parties to the investigation are expressed to be *"Anne-Marie Dimmendaal Vallyon"* and *"Board of Trustees, Raglan Area School."*

[4] The grounds relied upon in the reopening application are stated as follows:

> *To correct [including payment of wages etc to Ms Vallyon] an anomaly in the Member's Conclusion; to compensate for the Employer's lack of Good Faith; to compensate for subsequent "forced sale" real estate losses; and payment of interest on moneys due to Ms Vallyon.*

[5] An accompanying memorandum signed by Dr Peter Heaslip states that the reopening application is being lodged "*in my name, with me continuing to act as Agent for Ms Anne-Marie Dimmendaal Vallyon."*

[6] Dr Heaslip also advised:

> *The matters sought to be addressed are:*
>
> *(a) Not in any way a re-litigation of the original Determination.*
>
> *(b) An attempt to correct an error in the meaning of the Member's Conclusion.*
>
> *(c) Ending the respondent's failure to act as a Good Employer.*
>
> *(d) Payment to Ms Vallyon of moneys due to her; plus interest; plus compensation for the respondent's failure and the subsequent "knock on" effect in creating a "forced sale" of Ms Vallyon's property.*

[7] In response to the application the Board of Raglan Area School lodged a statement in reply on 6 August 2008. The Board's counsel raised an issue about the identity of the applicant. Ms Dawson advised that the Board did not accept that Ms Vallyon had appointed Dr Heaslip to be her agent or representative and that the Board believed Dr Heaslip intended to act, and had acted, as if he rather than Ms Vallyon had become the applicant.

[8] During the 12 August telephone conference Dr Heaslip confirmed that he regarded himself as the applicant, a legal status or capacity he claimed had been transferred or assigned to him by Ms Vallyon.

[9] Dr Heaslip confirmed that he had not communicated with Ms Vallyon for about two years, although he had heard she was in frail health and financially unable to continue with the case herself. The closest contact Dr Heaslip said he had had with Ms Vallyon was through her son some weeks ago.

[10] Dr Heaslip confirmed that he understood that in making the application in his own name and in his own right (such as he might have) he could in principle become personally liable for any costs award made in favour of the respondent.

[11] Leaving aside the issue of Dr Heaslip's standing in this case, as discussed in the telephone conference there seems to be no grounds disclosed in the reopening application upon which it might reasonably succeed. The application appears to be an appeal against the 2005 Authority determination and is therefore a matter requiring an application to the Employment Court, by way of challenge under the Act. Further, the application has been excessively delayed by some three years and the reasons for this, as given by Dr Heaslip, were not at all persuasive as to the justice of allowing the matter to be reopened so long after it has been determined previously. Even on the papers it appears doubtful that upon a reopening any different determination would be reached, as Dr Heaslip was not seeking to present new evidence which had only come to light after the original investigation but was simply wishing to "re-litigate" the investigation and obtain a different and more favourable determination from it.

[12] Also, there is no remedy available in the Authority in relation to the alleged *"forced sale"* of an employee's real property, unless that is through compensation available in a successful claim of personal grievance. The claim heard by the Authority in 2005 was not such but a dispute and recovery action.

[13] After Dr Heaslip confirmed that it had been his intention to proceed as applicant in his own name, the Authority directed that the reopening application had not been properly brought and that the investigation of it would continue no further.

[14] I now confirm that the main reasons for that direction and outcome are that Dr Heaslip cannot step into the shoes of the applicant from an earlier proceeding, even with her consent, and personally take over her claim. Ms Vallyon had no ability to subrogate, transfer or assign her personal capacity as a party to an employment relationship, or her right to seek by determination a resolution of any problem in that relationship.

[15] There is nothing to indicate that Ms Vallyon is even aware of this application, let alone has agreed to Dr Heaslip trying to reopen her 2005 claim.

[16] To continue the investigation would in the circumstances be an abuse of process.

[17] Ms Dawson has sought costs because of the expense her client has been put to. In response Dr Heaslip regrettably sought to blame the support staff of the Authority for putting him in the situation of being exposed to a costs award. He has asked that the Authority reimburse him the $150 filing fee and indemnify him for any order that may be made against him.

[18] I do not accept that the Authority support staff gave any advice to Dr Heaslip that he could substitute himself for Ms Vallyon as applicant.

[19] I consider that an award of costs is just in all the circumstances. I note that on 4 July 2008 some 10 days before lodging his reopening application, Dr Heaslip was advised by Ms Dawson that if the Board incurred costs as a result of any application of his to the Authority being unsuccessful, her client would consider seeking costs.

[20] When this matter was before the Authority over three years ago the respondent fully participated in the investigation meeting through a representative from the School Trustees Association. Dr Heaslip's role then was *"Advocate for the Applicant"*, who was Ms Vallyon. It is clear that he has sought to continue this case in the District Court and in the Authority as a personal crusade taken up on behalf of a person who is probably not aware of what he is doing.

[21] The respondent has unnecessarily been put to costs of $1,681.50 plus GST in preparing a statement in reply and taking part in the lengthy telephone conference.

[22] In the circumstances I consider that an award of $900 is appropriate as compensation for some of the expense incurred by the Board through having to become involved in this badly misguided action. Accordingly Dr Peter Heaslip is ordered to pay $900 costs to the Raglan Area School Board of Trustees, pursuant to clause 15 of Schedule 2 of the Act.

A Dumbleton
Member of the Employment Relations Authority