

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 50/10
5277576

BETWEEN NATASHA HOLLAND
 Applicant

AND BRIGHT BABES LIMITED
 TRADING AS BRIGHT
 BABES EARLY LEARNING
 CENTRE
 Respondent

Member of Authority: Vicki Campbell

Representatives: Alan Taylor for Applicant
 Rob Coltman for Respondent

Investigation: On the Papers

Submissions Received: 11 December 2009 and 18 January 2010 from Applicant
 22 December 2009 from Respondent

Determination: 8 February 2010

DETERMINATION OF THE AUTHORITY

[1] Ms Natasha Holland claims Bright Babes Limited trading as Bright Babes Early Learning Centre (“Bright Babes”) has breached the terms of a Record of Settlement entered into by the parties on 10 October 2008. Ms Holland claims that the breach of the Record of Settlement is a breach of s 149 of the Employment Relations Act (‘the Act’) and seeks the payment of a penalty. Bright Babes denies the claims.

[2] The issues for this determination are whether:

- there has been a breach of the Record of Settlement;
- if so, does that breach constitutes a breach of s 149;
- Should a penalty be awarded?

The Record of Settlement

[3] Ms Holland was employed as a Head Teacher at Bright Babes early childhood centre in Hamilton from February to September 2008. On 11 September 2008 Ms Bramwell, a director of Bright Babes approached Ms Holland with the details of a written complaint received from a parent. Ms Holland was advised Bright Babes intended investigating the complaint, at which time Ms Holland resigned and left her employment.

[4] Subsequently Ms Holland raised a personal grievance for constructive dismissal. The parties participated in successful mediation on 10 October 2008 and resolved their employment relationship problem. The parties entered into a Record of Settlement which was signed by the Department of Labour Mediator pursuant to the Act.

[5] The terms of the Record of Settlement included a statement to protect the confidentiality of all matters discussed at mediation. Further, Ms Holland was to resign her employment with effect from 12 September 2008. The fact of that resignation was to be published on the staff notice board and in a newsletter to parents by way of the following agreed statement:

Natasha Holland has resigned from Bright Babes Early Childcare Centre from 12 September to focus on completing her Early Childhood Training. She leaves with our best wishes, and our thanks for her contribution during her time with us.

[6] Finally the parties confirmed that the agreements reached in the Record of Settlement were:

...full and final settlement between the parties of all matters arising out of the employment relationship between the applicant and respondent.

[7] On 4 May 2009 Bright Babes sent a letter to the New Zealand Teacher's Council ("NZTC") advising it that Ms Holland had resigned the previous September following notification to Ms Holland of a complaint by a parent which Bright Babes had intended to investigate.

[8] NZTC wrote to Ms Holland and advised her of the notification of her resignation and the process to be undertaken by NZTC in dealing with the issue. On completion of its investigation NZTC advised Ms Holland and Bright Babes that no further action would be taken by NZTC.

[9] Ms Holland asserts that the action by Bright Babes in writing to NZTC was a breach of the full and final settlement clause of the Record of Settlement. Ms Holland

says the full and final nature of her agreement with Bright Babes means that Bright Babes could do nothing further with regard to her employment with it including notifying NZTC of her resignation.

[10] The NZTC is a crown entity – established under Part 10 s 139AC of the Education Act 1989. Since 1 September 2004 the Education Act has required mandatory reporting of resignations of teachers where an employer had advised the employee it intended to investigate any aspect of the conduct of the teacher or the teachers' competence¹.

[11] The Education Act makes it an offence for an employer to fail to report as required by s 139AK, without reasonable justification². The penalty for such a failure is a summary conviction, and a fine up to \$5,000.

[12] Pursuant to her legal obligations, and following mediation Ms Mary Bramwell, notified NZTC that Ms Holland had resigned from Bright Babes after she had been notified of an intention to investigate a complaint of serious misconduct.

[13] After receiving the notification, NZTC made telephone contact with Ms Bramwell and advised that further information was required and suggested she use the template letter available on NZTC's website. Using the template letter and following the instructions on the template, Ms Bramwell provided the additional information NZTC sought. It was following receipt of this letter that in May 2009 NZTC wrote to Ms Holland and informed her of the notification it had received.

[14] In submissions on behalf of Ms Holland it is contended that while it is acknowledged the respondent had an legal obligation to advise NZTC of Ms Holland's resignation, the explanations provided by Bright Babes contained information which was subject to the confidentiality clause of the Record of Settlement.

[15] I accept the submissions of Counsel for Bright Babes that it was under a statutory and mandatory obligation to report Ms Holland's resignation, given that it arose as a direct result of her being informed of a parent complaint and the intention by Bright Babes to investigate the complaint. Albeit the resignation was confirmed as a result of the mediation meeting.

¹ Section 139AK, Education Act 1989.

² Section 139A0.

[16] The information required to be provided to NZTC is contained in the Education Act and the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 (“the Rules).

[17] I am satisfied the information provided by Bright Babes in its report to NZTC in May 2009 was information it was required to provide pursuant to the Education Act and the Rules. I find the letter did not disclose any of the terms of settlement entered into between the parties. Further Ms Holland has not shown that any of the discussions held in mediation were disclosed in the letter.

[18] I find Bright Babes Ltd trading as Bright Babes Early Learning Centre did not breach section 149 of the Employment Relations Act. I am unable to be of further assistance to Ms Holland.

Costs

[19] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, Bright Babes may file and serve a memorandum as to costs within 28 days of the date of this determination with any responses by Ms Holland to be lodged within 14 days of receipt. I will not consider any application outside that timeframe.

Vicki Campbell
Member of Employment Relations Authority