

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 25
5305448

BETWEEN

MARGARET WOOD
Applicant

AND

BOARD OF TRUSTEES OF
WOODFORD HOUSE
SCHOOL
Respondent

Member of Authority: G J Wood

Representatives: Gary Tayler, for the Applicant
Phil Taylor, for the Respondent

Investigation Meeting: 23 November 2010 at Napier

Submissions Received: By 14 December 2010

Determination: 21 February 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Ms Margaret Wood, claims that she was unjustifiably constructively dismissed. After being given a year of absence due to stress she was required on her return in February 2010 to teach languages, which she had never done before and claimed was incapable of doing properly. This was said to result from the desire of the respondent, the Board of Trustees of Woodford House School (Woodford House/the BOT) to get her to resign and/or was such a serious breach of duty to her that it was reasonably foreseeable that she could not be expected to work under those conditions.

[2] In response, Woodford House claims that all teachers are required to be able to teach all areas of the New Zealand curriculum and that Mrs Wood simply resigned

without notice before the commencement of the first term, leaving it no alternative but to replace her immediately.

Factual Discussion

[3] Woodford House is an integrated school for Year 7-13 girls. It therefore covers what was formerly known as the intermediate schooling years, as well as secondary schooling years.

[4] Mrs Wood is a highly experienced teacher who had been employed at Woodford House for many years. Since 1999 she had been head of department in what was known as the intermediate department, namely Years 7 and 8. As head of the department, her job description involved contributing to the formulation of school policy, supervising teaching, ensuring top standards in the department and:

... to teach within the department and if necessary, in other departments where qualified. This will require following the tasks and the teachers' job description and where appropriate, those for a whanau teacher.

[5] In 2008, the Education Review Office (ERO) had evaluated the school's performance. One of its minor findings was *review of some Year 7 and 8 curriculum areas is necessary in order to strengthen teaching and learning, and to provide students with continuity of high-quality learning experiences*. Under the subheading *Areas for improvement*, it was stated:

In most curriculum areas, Year 7 and 8 students participate in high interest, relevant programmes based on well assessed learning needs and pertinent teaching practices. However, some programmes are not well planned, with few links to the identified needs of individual students and small groups and little alteration of units for learning within groups.

[6] Part 6 of the report dealt with recommendations:

ERO and the Board of Trustees have developed the following recommendations:

6.1 That managers and other relevant staff review two Year 7 and 8 curriculum programmes to ensure teaching matches current theory and practice; ...

[7] After many years as head of department, and faced with what she felt was inadequate staffing, amongst other things, Mrs Wood was granted leave of absence for medical reasons in the 2009 year.

[8] In Mrs Wood's absence in 2009, the Board and management of Woodford House determined, pursuant to the 2008 ERO review, to change the intermediate department structure, and introduce the new curriculum, in 2010. In accordance with Mrs Wood's long advocated position, a third core teacher was to be appointed. Also relevant was a recommendation that included the retention of specialist teachers for languages, amongst other subjects. Mrs Wood was informed by the then principal that:

The BOT ratified the proposal, with the view that while the recommendations may be subject to modification, the goals were unilaterally approved.

[9] When informed of these developments while on leave in 2009 Mrs Wood responded by noting that she would communicate her thoughts in writing in due course.

[10] In Mrs Wood's absence, a new principal was appointed. She felt that the intermediate department would benefit from moving to a home room type situation, whereby students were taught a lot more of their classes by their home room teacher. With the support of the Board, she decided not to implement the recommendation that language teaching would be provided by specialists. She therefore decided that Mrs Wood would be required to teach two language classes a year, despite her never having taught languages before.

[11] There were a number of reasons for this. First, whilst she was aware that Mrs Wood had had the year off, she knew that she was fit and well to commence employment the next year. Second, all intermediate teachers are required to be able to teach the full curriculum. Third, the principal felt this particularly applied to Mrs Wood as a highly experienced teacher. Fourth, language teaching was being promoted by the Ministry of Education as very important within schools and although not yet compulsory, was expected to become so for Year 7 and 8 teaching in the near future. Fifth, the Ministry had developed substantial resources such as manuals, videos and tapes for teachers new to languages accordingly, who were being encouraged to learn with the students. Sixth, once teachers like Mrs Wood had done the courses for the first time, it would become much easier in following terms and years to teach those classes.

[12] On 3 December, the new principal met with Mrs Wood for the first time. They discussed the future of the intermediate school and the home room concept. In that and following discussions, Mrs Wood raised her concerns about the home room concept and shift from the previous approach of specialist teachers in many areas. The principal made it clear that the new approach was what would be operating the next year.

[13] On 17 December the principal wrote to Mrs Wood setting out her class allocation and curriculum responsibilities for 2010. These included two language classes, one in Maori to commence in semester 1, and one in French to commence later in the year. Mrs Wood's immediate reaction was that she could not and would not teach languages, as she was incapable of doing so. This was particularly so in Te Reo, where she had no experience. She felt she could not do justice to the classroom (even looking at the materials much later), particularly as her only experience in Te Reo until then had been *a small amount of Maori singing and greetings*.

[14] Other concerns Mrs Wood had about her teaching load were resolved to her satisfaction, such as swapping maths and science classes to limit the number of new areas she would be teaching.

[15] Mrs Wood did not believe that the language teaching situation would continue either and took no steps over the Christmas period or during the week she was at school before 20 January to look at the materials. On the other hand, she did make a number of proposals (which were all ultimately rejected by the principal) that would have meant that she would not be required to do that teaching and that others be brought in to do it. In particular, she wrote a letter on 12 January asking the school to look at alternatives, especially considering her year's absence and the other significant changes in the curriculum. More specifically, she proposed:

- Swapping physical education for languages with another staff member;
- Senior school language teachers taking the classes;
- Another physical education teacher taking up the aforementioned physical education teacher's work so that she could be free to do the language teaching (which would be paid for personally by Mrs Wood);
and

- Mrs Wood would look after a number of deaf students for that period a week rather than teach languages.

[16] None of the proposals was acceptable to Woodford House because not only did they detract from the home room concept, but they were either impracticable and/or more costly for Woodford House. In particular, the physical education teacher swap with Mrs Wood could not occur because of timetabling issues; single language teachers were already fully committed, languages being a key new focus in the curriculum; it was inappropriate for Mrs Wood not to do her job but to pay someone else to do it; and it was more appropriate that an experienced professional in teaching deaf students was kept on and be the contact point for all deaf students in the school, rather than just some of them.

[17] Mrs Wood did not look at the language teaching resources until 4 February at the earliest. I am satisfied that Mrs Wood had been referred to these materials well in advance of this date.

[18] The resources for Te Reo include a 297 page loose leaf page guide and support material package, plus DVDs and CDs. The guide covers 20 units that needed to be covered in the teaching sessions. The DVD and CD materials were to be shown to the students in the course of classes. Teachers such as Mrs Wood could also get assistance from other specialist language teachers at the school.

[19] While the Ministry of Education intends to make language teaching, particularly Maori, at intermediate schools compulsory, it is not so at the moment, although it is an important part of the curriculum. It is up to each school whether such teaching was provided by a local expert, language teachers or existing general teachers. However, the Ministry does expect, (given the unprecedented level of materials provided by it, its expectation that teachers can learn along with the students and that the teacher only needs to be *a page ahead of the class*) that if required to do so teachers will teach classes even if they have little or no experience in the subject.

[20] The term was due to begin on Monday, 8 February, with boarding school students arriving the day before. On Saturday, 6 February, Mrs Wood put a letter addressed to the principal and the BOT under the principal's door, which gave notice of her resignation to take effect immediately.

[21] The resignation letter stated (amongst other things):

I find that I am now teaching in three subject areas with which I am unfamiliar, under a new curriculum structure in which I have had minimal professional development offered to me, governed by the new National Standards for Year 8. I understand from colleagues in other schools that professional development has been undertaken over the past three years in the new curriculum and more recently in the National Standards. Such support has been noticeably absent during this period for me at Woodford House.

In an attempt to make the pending task more manageable I have approached the principal on three occasions to advise her that I am completely unqualified and unskilled to teach a language, and on each occasion my plea has been rejected. I offered to personally fund the cost of a school teacher myself, of whom there are three on the staff willing and able to fulfil this role, to ensure that my students are receiving the best possible tuition in a subject which is completely outside my area of expertise. I am a dedicated professional who has taken pride in the quality of my teaching to date. I now find myself in a position where I cannot in all honesty face a class and purport to be a teacher in an area where I am totally unskilled. My conscience does not allow me to be a charlatan and hence I write to be released from my duties forthwith.

To summarise, it has been made impossible for me to perform in my position to the standard which I have set for myself and this decision has only been reached after careful consideration. As a teacher who has dedicated herself to her profession and her pupils, I have reached this decision with great sorrow.

[22] Accompanying the letter was a lesson plan for the next three weeks' work for all her classes except the language class.

[23] If a staff member has a complaint against the principal, the school's complaints policy provides that a formal written complaint must be made to the chairman of the board of trustees. Mrs Wood claimed to be unaware of that policy. Similarly, Mrs Wood had not investigated the provisions in her employment agreement for the resolution of employment relationship problems. I note also that two months is the appropriate period of notice under the agreement.

[24] The principal's response was to urgently get the director of staff to get a reliever for the next week at least. She then rang Mrs Wood and accepted her resignation, *with regret* and thanked her for the lessons she had left. The principal was not aware that, in actual fact, Mrs Wood's employer was the BOT and she thought it best, given the absolute nature of the resignation and the absence of notice, that she should accept the resignation so that she *could get someone in to take her*

place. In her opinion, Mrs Wood had left Woodford House *in a really, really difficult position* at the worst possible time.

[25] The principal followed this up with a letter confirming the same on 15 February. It was not until later that week that she discovered that the BOT was Mrs Wood's employer. On 26 February, the BOT conveyed that it had accepted Mrs Wood's resignation at its meeting on 24 February. It noted that:

The issues you raised in your letter of resignation could probably have been addressed through the complaints procedure.

[26] Mrs Wood responded on 9 March noting that she was unaware of the complaints procedure (which is surprising as she, or at least her representative, had been informed of it in previous years) and noted her concern about the *indecent haste with which my resignation was received*.

[27] On 17 March, Mrs Wood raised a grievance for constructive dismissal.

[28] There have been numerous efforts by the parties, including mediation, to resolve the matters between them but this has not been possible. It therefore falls to the Authority to make a determination.

Determination

[29] For Mrs Wood to succeed in her claim the Authority must be satisfied of either one of two things. First, that Woodford House followed a course of conduct with the deliberate and dominant purpose of coercing Mrs Wood's resignation. Second (in addition or in the alternative), that her resignation was caused by a serious breach of duty by Woodford House to her of sufficient seriousness to make it reasonably foreseeable to it that Mrs Wood would not be prepared to work under the conditions prevailing.

[30] I am satisfied from the principal's evidence that she had no intention of coercing Mrs Wood to resign. Her evidence that she expected Mrs Wood to continue in her role as an experienced head of department was not subjected to serious challenge, and I accept it. While it was not necessarily the principal's role to accept Mrs Wood's resignation immediately, in fact it had been given to the principal and the BOT. In breach of the parties' agreement it was effectively without notice. It was done on the weekend, two days before school started and one day before the boarders

arrived. Thus even if it was not the principal's role to accept the resignation (which would depend on the Board's delegations), the fact is that Mrs Wood had resigned with immediate effect and the principal had to react with equal immediate effect. Furthermore, I am satisfied that the principal wanted to retain her experienced head of department, even though she had not worked with her before, whereas Mrs Wood (as she accepted in evidence) had made her mind up on day one that she was not going to teach the language subjects required of her, and had not even accessed the resources made available to her until the very last minute, if at all.

[31] Furthermore, Mrs Wood did not raise with the principal or the BOT (through its complaint policy or otherwise) her severe degree of concern about her treatment to the point of considering resignation. Thus the principal was unable to recognise the clear decision that Mrs Wood had made, because that possibility was never communicated to her until it was too late. In any event, I am satisfied that Mrs Wood was well enough versed in the running of schools to lay a complaint against the principal, whether or not she knew about the Board's policy, and could have escalated the matter to the Board had she considered that this would have borne any fruit.

[32] Furthermore, the principal did make some alterations to Mrs Wood's timetable, which is inconsistent with an approach designed to get her to resign. In all these circumstances, it is not possible to conclude that either the principal or the BOT had any purpose of coercing Mrs Wood to resign, let alone a dominant one.

[33] The key issue is whether it was reasonable for Woodford House to expect Mrs Wood to teach languages to students at the Year 7 and 8 level, given that she had had no experience. I accept that the task facing Mrs Wood, who had previously had a year off teaching, was daunting, given the changes in the curriculum and the requirement to teach two new subjects, both being languages other than English.

[34] The issue of teaching subject scope was addressed in principle by the Employment Court in *McKean v. Board of Trustees of Wakaaranga School* AC1/07, 26 January 2007, where it held:

[64] *I am not satisfied that the defendant's allocation to a level 4 teaching position for the 2003 school year disadvantaged the plaintiff in his employment. Mr McKean was qualified to teach at this level and it was a recognised expectation among teachers generally that they might be called upon to teach*

classes at different levels from year to year. Although such a change may have provided Mr McKean with some challenges as it would have for any teacher in his circumstances, that is not the same as disadvantaging a teacher in his employment.

[65] *... Primary school teachers are trained to teach at all levels in such schools. It is a common expectation, and therefore unremarkable, that teachers will, for a variety of reasons, be allocated to different class levels at different times so Mr McKean's claim to have been unjustifiably disadvantaged by his reallocation of teaching level for the 2003 year fails because this was not a disadvantage in employment.*

[35] The change there was held not to be a disadvantage to his employment as there was no breach of any of the terms or conditions of his employment. It therefore follows there will usually have been no breach of duty to a teacher if a teacher who is employed as a general teacher is required to teach new areas of work.

[36] I accept that Mrs Wood was required to up skill to Year 9 science and this imposed additional requirements on her. As it was not the cause for her resigning (as accepted by her in evidence), however, then it does not need to be addressed further, except in the context of why she would not undertake her expected responsibilities in language teaching.

[37] Mrs Wood's dominant reason for resigning was the requirement on her to teach Maori language that term. This is the same expectation as with any teacher at Year 7 and 8 levels, in terms of their need to be able to teach the breadth of the curriculum. In this respect, I note that in many rural schools covering Year 7 and 8 there may be only one or two teachers to cover the whole of the curriculum, whether or not they have any expertise or experience in any or all subjects that have to be taught.

[38] While no doubt, particularly for someone like Mrs Wood having just had a year off, having to teach new subjects must have been very daunting, given that she had no experience in them, the evidence from the Ministry of Education was clear that this was within the general expectation of a teacher like Mrs Wood, particularly given the resources and other assistance available. Furthermore, Mrs Wood was only expected to be *one page ahead* of the students.

[39] Having reviewed the material myself, I can find no reason to disagree with the Ministry of Education's view and accept that an experienced teacher, using all the general skills available to teachers, would have been able to cope with such work. In

fact, Mrs Wood never even tried, at least before 4 February (less than one week before the term started) to look at the materials. On the other hand, she found time to prepare three weeks' work of general classes to cover her forthcoming absence. This showed quite how closed minded she was towards the challenge of teaching a new subject. I accept that the main reason for that was not any lack of ability, but rather her own view (which has some attraction, but is inconsistent with the legitimate professional expectations of her employer and the Ministry) that teachers should not be expected to teach by learning along with the class, even if *one page ahead* of them. I accept entirely that Mrs Wood did so for the best of the students, but that is not the same thing as saying she has grounds for a claim of constructive dismissal. The reasons were her own personal reasons. The key question is whether or not they resulted from a breach of duty.

[40] Given that the teaching challenge was not outside the bounds of what a fair and reasonable employer could expect from an experienced teacher, I conclude that there was no breach of duty towards her. In particular, I accept that the principal was entitled, following board approval, to change the recommendations and implement changes that were consistent with the move to more of a home room approach, as they within the range of options open to a principal running a school. No doubt there were other alternatives open to the principal than imposing this requirement on Mrs Wood, and it may be that the school is worse off by not having specialist language teachers at intermediate level. That is, however, a matter for the principal and the BOT, not the Authority. Woodford House was within the bounds of its powers when deciding exactly how it would respond to the Ministry of Education's expectation of the greater provision of language teaching at the intermediate level, as it implemented a programme that was within Ministry guidelines. Furthermore, I accept that Mrs Wood's suggested alternatives were either impractical, unreasonable or unnecessarily exposed Woodford House to additional fiscal cost. In particular, it would be entirely inappropriate for a full time teacher like Mrs Wood to pay another teacher to fulfil her own duties.

[41] I also accept that while it may have been the BOT and not the principal who should have accepted Mrs Wood's resignation, in the circumstances, the principal's response was a reasonable one. Mrs Wood had given her or the BOT no other way out, given her resignation one day before pupils arrived.

[42] For all the above reasons, I therefore dismiss Mrs Wood's application of constructive dismissal.

Costs

[43] Costs are reserved.

G J Wood
Member of the Employment Relations Authority