

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2013] NZERA Wellington 162
5441398

BETWEEN MOARIKURA SANDRIA ANNE
JOHNSON
Applicant

AND THE BOARD OF TRUSTEES
OF TE KURA KAUPAPA
MAORI O NGA MOKOPUNA
Respondent

Member of Authority: G J Wood
Representatives: Richard Harrison for the Applicant
Kiri Rikihana for the Respondent
Investigation Meeting: 18 December 2013 at Wellington
Submissions Received: 18 December 2013
Determination: 19 December 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Ms Johnson, seeks reinstatement to the payroll on an interim basis to her employment with the respondent, The Board of Trustees of Te Kura Kaupapa Maori o Nga Mokopuna (The Kura/The Board) on the basis that her dismissal as Tumuaki (Principal) of The Kura was unjustified, because any issues between her and the Board of Trustees of The Kura for alleged serious misconduct were only issues of performance and should have been dealt with otherwise than for serious misconduct. She has made an appropriate undertaking as to damages and accepts that if unsuccessful may have to pay back remuneration earned during the period she is on the payroll but not at work.

[2] The Kura claims that Ms Johnson was fairly dismissed for summary dismissal and opposes her reinstatement on an interim and permanent basis.

[3] As with any application for interim reinstatement, the following issues must be addressed:

- (a) Does Ms Johnson have an arguable case, including an arguable case for permanent reinstatement?
- (b) If so, are damages an adequate alternative remedy for Ms Johnson?
- (c) If not, where does the balance of convenience lie?
- (d) Where does the overall justice of the case lie?

Factual discussion

[4] This is an interim determination only and thus the evidence provided by way of affidavit has not been tested. Therefore any comments I may make about matters in factual dispute can be no more than preliminary assessments, as required to ensure the interests of both parties are best served at this preliminary stage (*Wellington Free Ambulance Service Inc. v. Adams* [2010] NZ EMPC 59 applied).

[5] The Kura, based in Seatoun, is an area school that operates as a Kura Kaupapa and ascribes to the principle of Te Aho Matua, which equates to whanau led education. As a result of this approach parents and whanau have a lot of involvement in the school and its operation. While the Board appears to be properly constituted, board meetings are run as whanau hui, which whanau of parents and staff are encouraged to attend and contribute.

[6] The Kura has a roll of around 86 pupils and employs a principal, eight teachers and seven support staff. An ERO (Education Review Office) report in 2012 did not identify any areas of concern at the school and noted that the national curriculum was being followed and that staff must have access to specialist professional development.

[7] In May 2012 Ms Johnson was appointed as Principal. This was her first role in the position of Principal, after holding other positions both within state schools and Kura.

[8] Under the collective employment agreement applying to Ms Johnson, the Board is required to ensure that a performance agreement with her is in place, undertake an annual performance review with her and take all reasonable steps to ensure that the Principal is provided with adequate resources to fulfil the responsibilities and duties required of her. Concurrently the Principal is required to honestly and diligently carry out the duties and responsibilities set out in her job description and performance agreement, and to maintain a professional standard of conduct and performance.

[9] Part 4 of the Collective Agreement deals with professional leadership and annual performance reviews. The purpose of the performance agreement process is to *ensure the Principal is aware of the Board's objectives, assist the Principal's professional learning and development and improve/acknowledge performance (i.e. it is about both accountability and development)*. It also needs to take into account professional standards for Principals as prescribed by the Secretary for Education. The performance agreement is then used to review the Principal's performance each year.

[10] Clause 4.3 deals with the working relationship. It states:

Where there is a problem in the working relationship between the Principal and the board (including individual board members) that has not been informally resolved and is to the detriment of the school, the board, in consultation with the Principal, may consider appointing a suitably qualified independent person to mediate or facilitate between the parties and/or undertake an impartial and objective assessment of the concern(s).

[11] First time principals are guaranteed 10 days development release time over an 18 month period, to be used for professional learning opportunities.

[12] Part 6 deals with complaints, discipline and competency. It states:

6.1 General

6.1.1 *Many complaints will be able to be resolved by discussion between the Board and the Principal without the need to take the matter any further. Wherever appropriate the Board should seek to resolve complaints in this manner in the first instance.*

6.1.2 *The Board and the Principal may by mutual agreement adopt the optional complaint process known as the "Nga Korero me nga tikanga" (discussion in a Maori context)...*

[13] Clause 6.2 deals with discipline, although it is said not to prevent instant dismissal without notice in the case of serious misconduct. The disciplinary process provides for the right to representation for the Principal, the right to be advised in writing of the specific matters causing concern and a reasonable opportunity to provide an explanation, the advice of any corrective action required and a reasonable opportunity to do so, that the Principal record and sign the process and any disciplinary action, and that no less than two months' notice be provided in the case of dismissal.

[14] Clause 6.5 deals with competency:

6.5.1 Where there are matters of competency which are causing concern in respect of the Principal, (for example failing to meet the appropriate professional standards) the Board shall put in place appropriate assistance and personal guidance to assist the Principal, and may seek such appropriate professional advice or medical advice as may be required. When this assistance and guidance has not remedied the situation, the following provisions shall govern the action to be taken:

- (a) The Principal shall be advised in writing of the specific matter(s) causing concern and of the corrective action required, and the timeframe allowed. This timeframe should be determined by the Board and be relevant to the matters causing concern.*
- (b) The process and results of any evaluation are to be recorded in writing and signed by the Principal.*
- (c) A copy of any report made by the Board to the Teachers Council on the matter shall be given to the Principal.*
- (d) No action shall be taken on a report until the Principal has had a reasonable time to comment on the report (in writing or orally or both).*
- (e) If the above steps (a–d) fail to resolve the matter of concern, the Board may, where justified dismiss the Principal on two months notice without the need to follow the provisions of clause 6.2. above.*

[15] On appointment Ms Johnson took part in the Ministry of Education Principals' professional development courses and conferences. However the Board has never put in place a performance agreement or a performance review as required in the parties'

collective agreement. On the other hand, Te Kura's co-chair Mr Rhesa (Jason) Ake, considers that it had been agreed that Ms Johnson would receive mentoring from her predecessor, who was also the chair of Te Runanganui o Nga Kura Kaupapa Maori o Aotearoa, The Kura's national body. However, he considered that she had minimal contact with him, and instead was mentored by a *former Principal of a mainstream school* with no experience in Kura.

[16] With nothing in writing it is therefore clear from the evidence that no formal performance agreement or review process was formally established by the Board, contrary to the parties' collective employment agreement.

[17] It appears that over the course of Ms Johnson's employment there were a number of issues of concern to the Board in relation to the running of the school, including relationships with some staff. There were also concerns about Ms Johnson's failure to obtain the Board's approval before taking any leave.

[18] Matters between the Principal, the Board and others reached the point where the Board wrote to Ms Johnson on 29 August 2013, stating that it was concerned about a number of aspects of her employment, and inviting her to a meeting to discuss these matters, before 13 September 2013. These matters included:

- Attendance at whanau hui, including arriving late and leaving early;
- Bringing external parties (family members) to whanau hui in contravention of a requirement of the Chair;
- Absence without approval during a significant earthquake;
- Staff failing to evacuate pupils to higher ground during the earthquake;
- Lack of planning to support the Years 6, 7 and 8 class;
- Unprofessional conduct after a teacher had not provided reports on time;
- Appointment of a fixed term staff member without consultation with the Board.

[19] Ms Johnson was advised that:

Under the collective agreement we consider the matters above may constitute serious misconduct and/or incompetency and in the event we are satisfied that threshold has been reached you are advised that your employment may be terminated immediately or a performance management plan enforced.

[20] On 20 September Ms Johnson responded, stating (amongst other things):

- She had attended all whanau hui but had left twice after *verbal attacks* on her, and/or late at night;
- Her own family are not external parties and as her whanau she believed they were entitled to attend the hui;
- She was at a dental appointment when the earthquake occurred and staff knew where she was;
- Emergency evacuation procedures in the case of an earthquake were under review at the time, but that evacuation to higher ground would occur in the future, and that the earthquake occurred when Ms Johnson was at the dentist;
- There was a detailed comprehensive teaching plan for the Year 6, 7 and 8 class and a plan to assist the teacher;
- Ms Johnson accepted that there were issues with the staff, but those were not for general discussion but for discussion directly with the Principal;
- She explained how she dealt with a teacher whom she believed inappropriately confronted her. She also noted that the Chairperson did not support the Principal over staff issues; and
- There was a lack of clarity and understanding over staff appointments between the Board and the Principal, despite what appeared to be clear policies.

[21] In her summary, Ms Johnson noted that she had offered to work with the Board and others in a common forum, but that offer had been ignored. She also

believed that there was a lack of clarity over roles and responsibilities, together with a lack of clarity between matters of governance and management, and that whanau could be involved in the running of the school without making the Principal feel unsafe. She also noted that she did not believe there were any issues of serious misconduct or incompetency, but rather that a rebuilding of relationships was required.

[22] At the meeting these issues were raised in some detail, without apparently resolving any of them. There was evidence from Ms Johnson's union representative that at the end of the meeting it had been agreed that first there would be a letter from Ms Johnson outlining recommendations as to the way forward, second the Board would respond, and third there would be another meeting involving the union's Maori Field Officer. The minutes of the hui certainly note that the union representative made those comments, but they do not state whether or not the Board agreed to them.

[23] On 2 October 2013 Ms Johnson's union wrote to the Board stating:

As suggested by the hui of 23 September NZEIT Riu and Maori Kura would like to provide recommendations on a way forward.

As if often the way, the specific issues have given rise to more systemic issues that we believe need addressing. These wider issues we have identified, in which the Board Chairs also partly acknowledge include [a number of problems as identified above].

[24] In order to resolve the problems the following suggestions were made:

- Mediated hui to discuss the above issues where specific actions would include:
- Communication skills, or conflict resolution training;
- Written policy on the decision making process – detail about who decides what, and who is ultimately responsible for what;
- Job description for Principal made clearer;
- More professional support for a first time Principal – more mentoring time and whanau support acknowledging a new and difficult role;

- Hui could address Principal's feelings of isolation and exclusion and how to build and re-build relationships;
- Revise complaints policy and a flow chart on how to deal with this;
- School policies are well documented, accessible and regularly reviewed;
- Clear guidelines on who can attend what meetings and in what role;
- Ms Johnson prepared to offer acknowledgement of where she could improve.

[25] It was also noted that Ms Johnson would supply supporting documents about the plans for the teaching of the Year 6, 7 and 8 class.

[26] There was no response to this letter. When the union questioned why a response was not forthcoming the only response was about Ms Johnson's absences and her alleged failure to obtain a medical clearance before she had returned to work.

[27] Nothing more happened until Mr Aki provided Ms Johnson with a letter of summary dismissal some 47 days later, on 18 November 2013. While Ms Johnson was away for much of that period, that does not absolve the Kura from needing to correspond with her in the interim.

[28] The letter of dismissal simply states:

You are advised that you have lost the confidence of Ohu Kaihautu (the Board) to professionally maintain the position of Tumuaki (Principal) at Te Kura Kaupapa Maori o Nga Mokopuna.

On 29.08.2013 you were sent a letter outlining the nature and extent of a number of serious concerns the Board had with your performance. We entered into a process to allow you the opportunity to respond to these issues. Despite this, your performance has not changed. We believe your behaviour meets the threshold of serious misconduct.

Therefore under Part 6 of the current Area Schools Principals Collective Agreement (specifically 6.4.1) we advise you that your employment contract with Te Kura Kaupapa Maori o Nga Mokopuna is now terminated.

We ask that you remove your personal belongings from Te Kura immediately. Please return any Te Kura property within the next 48 hours.

We will also be writing to the Teachers Council advising them of our decision and our reasons for making this decision.

[29] There has been no explanation by the Board, despite affidavits from both co-Chairs and supporting affidavits by concerned staff and parents, about how the Board came to dismiss Ms Johnson. Rather the affidavits concentrate on alleged failures on Ms Johnson's behalf said to constitute serious misconduct, despite the absence of any further meetings with her, nor any reasons being given for her dismissal. In its affidavits, the Board and teachers in The Kura, who also have children at The Kura, provided affidavits which provided more detail about the issues of concern, but also raised ancillary issues about Board access to the Principal's office and a wider range of disputes with The Kura's staff.

[30] Ms Johnson provided (on the day of the investigation meeting – as they had only just come into her possession) minutes of a hui held by the Board to explain why she was dismissed. It appears clear from the minutes and attached material that the decision to dismiss was made by the co-Chairs and the head of the staff sub-committee. There was no evidence that the Board had authorised this group to make such a decision and it was clear that this matter had not come before a full Board meeting (held as whanau hui), where the Principal was a member and all staff and pupils' whanau were encouraged to attend.

[31] The timeline attached also clearly showed that issues that arose both before the 29 August disciplinary letter (but not mentioned in them) and many that took place afterward, were taken into account in the decision to dismiss. Ms Johnson denied knowing of the existence of many of these issues (let alone in a disciplinary context) and there was no evidence to contradict that. Ms Johnson was also accused of inappropriate discussions with the Ministry of Education, but it is to be expected that a new Principal would have regular discussions with the Ministry.

[32] In her affidavit evidence Ms Johnson accepted responsibility for some of the issues raised, particularly around staff management, but also considered that she was unsupported by the Board. She also noted that she needed assistance as a first time Principal and deserved support, not to be summarily dismissed out of the blue. Ms

Johnson noted in particular that there was correspondence to support proper teaching plans and processes for the Year 6, 7 and 8 class and that she was absent during the earthquake, when staff should have ensured that they and the students evacuated to higher ground.

[33] Ms Johnson noted that she is without income as a result of her dismissal and wishes to have that income restored. She has not even received her holiday pay (although this appears to be a Novopay issue rather than a Kura issue).

[34] Ms Johnson filed promptly for interim reinstatement on 28 November 2013. A conference call could not be confirmed with the Kura until 4 December 2013. On the call a preliminary investigation meeting was set down for 18 December 2013, to suit the parties following mediation. The substantive investigation meeting was set down for 21 and 22 January 2014.

The law

[35] The test for justification for dismissal is whether the employer's actions and how the employer acted were what a fair and reasonable employer could have done in all the circumstances at the time of dismissal. The Authority must consider whether, having regard to the resources available to the employer, it sufficiently investigated the allegations against the employee before dismissing them, whether the employer raised the concerns the employer had with the employee before dismissing them, whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissal, and whether the employer had genuinely considered the employee's explanation (if any) in relation to the allegations against the employee, before dismissal. The Authority may also consider any other factors it considers appropriate and must not determine a dismissal to be unjustifiable solely because of defects in the process if they were minor and did not result in the employee being treated unfairly.

[36] Reinstatement may be ordered if it is practicable and reasonable to do so. Interim reinstatement may be ordered by the Authority subject to any conditions that the Authority thinks fit.

[37] In *Lewis v. Howick College Board of Trustees* [2010] NZEmpC 4, the Employment Court dealt with the issue of the consequences of dismissal on professionals such as teachers:

- [4] *...I will make some general remarks about the employment of professional persons for whom occupational licensing requirements provide a need for special care by employers.*
- [5] *As in the cases of other professional employees whose very livelihoods are affected by a dismissal from employment, the consequences for a school teacher of dismissal for misconduct or incompetence and especially, as in this case, a summary dismissal for serious misconduct, affect not only that employment relationship. Whereas many other dismissed employees have opportunities to seek alternative employment within their fields of experience and for which they are qualified, teachers (and others) must also be professionally registered to practice. Dismissal of teachers (and a range of lesser sanctions in employment) trigger automatically a vocational or professional registration investigation. As with many other professions there is little, if any, opportunity for employment in New Zealand without registration. An employer dismissing a teacher is bound by law to advise the Teacher Registration Council. As in this case, it can be expected that there will be a level of inquiry into the teacher's fitness to be registered in light of the circumstances of the dismissal and other relevant considerations. So the effect of the dismissal of a teacher is especially significant. Put simply, allegations of misconduct or incompetence place teachers (and other similarly registered occupations) in double jeopardy of their livelihoods.*
- [6] *Accordingly, employers of teachers must act to a high standard when their decisions can have these consequences. So, too, independent courts and tribunals considering the justification for dismissals of teachers must be conscious of that consequence and the corresponding need to examine such cases with great care. It is an onerous responsibility that the legislation has placed on boards of trustees as employers who are very much part-time, nominally remunerated, and, for many board members, without appropriate expertise either in the teaching profession or employment relations. It is important, in these circumstances, that boards of trustees as employers take and follow correct professional advice and that they are advised independently and dispassionately on education matters by the school's professional leader, its principal, who must be ex officio a member of the board.*

[38] These provisions naturally extend just as strongly, if not more so, to principals themselves.

Determination

[39] It is clear that Ms Johnson has more than an arguable case of unjustifiable dismissal. While the Board of The Kura clearly had concerns that it wished to raise with Ms Johnson, there was a disciplinary process under way, which, it appears, an unauthorised sub-committee of the Board effectively undercut, by failing to respond to the suggestions for ways forward put by the NZEI on Ms Johnson's behalf. This group must have had meetings of which Ms Johnson was unaware (and therefore unable to influence in any way) that led to her dismissal, despite her understanding that further meetings were to be held. Such an approach is more than what the Board's advisor Ms Walker describes as not following *employment law exactly as required*, but constituted a fundamental breach of the clear provisions in s.103A of the Act summarised above. No fair and reasonable employer could justify the dismissal of any employee when simply curtailing its processes, which required the involvement of Ms Johnson. There is no evidence that Ms Johnson was ever informed that the Board was continuing to consider dismissal and there was no proper response to the suggestion for a hui and other initiatives.

[40] There is also no evidence of why the Board decided that Ms Johnson would be dismissed after a six to seven week hiatus. Furthermore, in the letter of dismissal, it was stated that Ms Johnson's performance had not changed, so presumably it had not improved. This demonstrates that she never had any opportunity to comment on this conclusion in these circumstances. It is thus clear that no fair and reasonable employer could have dismissed an employee in these circumstances. These are not minor failures by The Kura but rather fundamental ones.

[41] Even more fundamental is that it appears that the de-facto sub-committee of the Board decided to dismiss Ms Johnson in the absence of clear delegated authority from the Board to do so. A dismissal in such circumstances is unfair and unjustifiable (see *NZEI v ANI School Trustees* [1992] 3 ERNZ 243, although these circumstances do not mandate reinstatement as Mr Harrison argued).

[42] The evidence provided for this hearing focused on alleged failings by Ms Johnson that would preclude her reinstatement either on an interim or permanent basis. These are not matters on which, given the untested evidence, I can come to any decisive conclusion. However, it is a fact that despite the Board's concerns, a number

of the issues formally raised are more in the nature of performance concerns, rather than serious misconduct. In this regard:

- leaving a whanau hui/Board meeting at 10pm does not seem to be particularly serious;
- Ms Johnson's own whanau should have been able to attend whanau hui under the Kura's own protocols;
- while the Chair may consider it necessary for Ms Johnson to get approval from him for every absence by her from school, it cannot be said that absence to attend a dental appointment, when the staff knew where she was, and were still available to carry on the business for the school, was serious misconduct, even though it was unfortunate that this occurred at the same time as a significant Seddon-centred earthquake;
- while I accept that the Board and parents had every right to be concerned about the failure of students to be taken to higher ground during the earthquake, this was not a deliberate error by Ms Johnson, who was not even at school at the time, while staff at school at the time were not disciplined for this failure;
- support for the teacher of the year 6-7-8 class appears to be a performance issue;
- staff management issues are performance issues unless the behaviour constitutes serious bullying and/or harassment (which cannot be ascertained at this stage); and
- appointment processes are normally performance issues.

[43] I therefore conclude that none of those matters actually raised with Ms Johnson in the disciplinary letter of 29 August appear to involve serious misconduct by her. I discount other issues raised in evidence and/or relied on by the Kura at this stage because they were never properly raised with her and cannot be accurately assessed by me, although I do assess them in terms of the prospects for permanent reinstatement.

[44] Relationships with some staff are clearly fraught, as evidenced by many staff signing a letter post-dismissal of no confidence in her, but I note that in most cases involving personal relationships there are two sides to every story. Again, relationships between the Principal and staff will have to be improved, but these can still be seen as much as development issues as ones of serious misconduct. Furthermore, there was no evidence that any particular staff member would resign if Ms Johnson were to be reinstated.

[45] The collective agreement applies to both parties and focuses on professional leadership and development for the Principal. Clause 4.3.1 appears to have been overlooked by the Board. This involves the potential appointment of a suitably qualified independent person to mediate and facilitate between the parties and/or undertake an impartial and objective assessment of any concerns. This could have been of great assistance for these parties.

[46] The provisions in clause 6.5 of the contract on competency are also relevant. In these circumstances, the onus is on the Board to put in place appropriate assistance and guidance to help the Principal do her job. There is no evidence that the Board ever did this or even considered the competency procedures. Such a process would have given the Principal an opportunity to take corrective action within a reasonable timeframe. By failing to do so, the Board seems to have demonstrated that it was not prepared to apply the terms of the contract. That means that Ms Johnson clearly has an arguable case for permanent as well as interim reinstatement.

[47] Instead, this Board seems to have catapulted immediately into summary dismissal, again without properly attempting to resolve issues, particularly with outside assistance. Such assistance is readily available within the education sector, of which this Kura is part. The taking of any of these steps need not jeopardise the principles and processes of Te Aho Matua.

[48] The Board and other staff have their part to play as well as Ms Johnson in the development of a successful board/principal/staff relationship. By dismissing Ms Johnson out of the blue, the sub-committee of the Board appears to have ignored alternative methods of resolution provided for in the parties' collective employment agreement. In this regard, it may be reasonable and practicable for Ms Johnson to be permanently reinstated and the Board, Ms Johnson and perhaps the staff be involved in processes to repair relationships, as envisaged in the collective agreement. It

cannot thus be said with any degree of assurance that if reinstated, the problems between Ms Johnson, the staff and the Board, which cannot at this stage be attributed to any fault by any particular party, would necessarily result in irreconcilable conflict (see for example *Hobday v Timaru Girls' High Trustees* [1994] 1 ERNZ 724).

[49] In any event it cannot be good law that an employer can act apparently unreasonably and in breach of the parties' agreement and then rely on such behaviour, and entrenched attitudes by it, to support a claim that permanent reinstatement would be impracticable and unreasonable (see *NDU v BP Oil* [1992] 3 ERNZ 483 at 488).

[50] In my preliminary assessment there are four major factors that give hope that the relationship between the Board and Ms Johnson may be successfully revived. First, Ms Johnson has undertaken to take all steps to do so, even though the Board has not. Second, Ms Johnson is a new Principal and allowance and support for her in that position should be given by the Kura. Third, the Board, Ms Johnson, the Kura and the staff are all bound by the Education Act 1989, which provides that the Board has complete discretion to control the management of the school, but that the Principal has the complete discretion to manage the school's day to day administration. No doubt this difficult delineation of roles has contributed to some of the problems between Ms Johnson and the Board and some of the staff, but this is not unusual in schools and can be remedied. Fourth, external assistance is available from any one (or a combination) of three sources – the Ministry, the union and the Kura's national body – and it is appropriate for the parties to access such assistance, especially to assist with setting and administering the boundaries between the Board's and the Principal's respective roles. Further mediation may also assist. I therefore determine that Ms Johnson does have a strong arguable case for permanent reinstatement, even although the Board and many staff oppose that.

[51] While I accept that Ms Johnson would not normally be working for the bulk of the period between this determination and the substantive determination (and particularly if Ms Johnson were to receive her holiday pay, which might take her effective period of pay up until 27 January 2014) damages by way of lost remuneration could be seen as a suitable remedy, that would not address the effects on Ms Johnson's career and reputation, as highlighted in *Lewis*. In these circumstances, I conclude that damages are not a sufficient remedy.

[52] The balance of convenience involves an assessment of the relative hardship between the parties and questions of moral justice: see *Melville v. Chatham Islands Council* [1999] 2 ERNZ 76 at 100, where it was also stated:

Where an employee has been dismissed from gainful employment, it is not often that the employer can convincingly assert that the hardship of being required to take the unwanted employee back for a short term is greater to it than the hardship of keeping out an employee who has been unjustifiably dismissed. The hardship from the employer's point of view is simply that it has been prevented from doing what it wants. Any injunction is unwelcome and in that sense inconvenient. However, in terms of concept, that is rarely a greater hardship than that suffered by the employer of having something done to the employee that the employee does not want because the consequences for the employee are more drastic.

[53] There are no issues of moral justice in this case, at least that can be determined before a substantive investigation meeting. What does exist though, are relationship issues that have to be addressed. In this regard, the period from now until after the investigation meeting would be better utilised by the parties if Ms Johnson is reinstated, even to the payroll. More importantly, for reasons given above, the reputation of Ms Johnson can only be effectively addressed by an order for interim reinstatement. There will be minimal inconvenience to the Kura if Ms Johnson were to be reinstated solely to the payroll. The balance of convenience, therefore, clearly favours Ms Johnson.

[54] I turn now to the issue of overall justice. The key factor here is the relative strengths of the parties' cases. I have already dealt with that issue in some detail above. It appears clear on the face of it that Ms Johnson was most likely unjustifiably dismissed. Given the conditions in the parties' agreement, and the way Ms Johnson was dismissed (rather than ongoing efforts being made to resolve issues), I conclude that she has a strong arguable case for permanent reinstatement. The overall justice of the case therefore also favours Ms Johnson.

[55] I therefore order the interim reinstatement of the applicant, Ms Moarikura Sandria Anne Johnson to the employment of the respondent, the Board of Trustees of Te Kura Kaupapa Maori O Na Mokopuna, to her position as Principal, but only to the payroll, to take place with effect from Friday, 20 December 2013, until the substantive determination of this employment relationship problem.

G J Wood
Member of the Employment Relations Authority