

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 561  
5400484

BETWEEN                      BARBARA McCONNELL  
   Applicant  
  
A N D                              BOARD OF TRUSTEES OF  
   MT ROSKILL GRAMMAR  
   SCHOOL  
   Respondent

Member of Authority:      T G Tetitaha  
  
Representatives:              T Oldfield, Counsel for Applicant  
   R Harrison, Counsel for Respondent  
  
Investigation Meeting:      29–30 August 2013  
  
Submissions Received:      29 and 30 August 2013 from Applicant  
   30 August 2013 from Respondent  
  
Date of Determination:      9 December 2013

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**DETERMINATION OF THE AUTHORITY**

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- A. An order is made prohibiting publication of any information or details which may lead to the identification of the affected students at MRGS.**
- B. Mrs McConnell was not suspended but transferred to other duties.**
- C. The MRGS Board could have transferred Mrs McConnell to other duties in the circumstances.**
- D. The MRGS Board could have issued the warning to Mrs McConnell in the circumstances.**
- E. The MRGS Board subcommittee did not act ultra viries in imposing the warning upon Mrs McConnell.**

**F. Costs are reserved. If either party seeks an order for costs a memorandum shall be filed and served 14 days from the date of this determination. The other party shall have 14 days to file and serve a reply.**

### **Employment relationship problem**

[1] Barbara McConnell has been a teacher at Mt Roskill Grammar School (“MRGS”) for the past ten years. She was disciplined following allegations she called students *slag*, *loser* and *prick*, and made other inappropriate comments during class. Mrs McConnell submits she was disadvantaged by being suspended then issued with a warning. She also claims the Board of Trustees of MRGS (MRGS Board) breached its duty of good faith by failing to be responsive and communicative.

[2] The MRGS Board disagrees. It submits Mrs McConnell was not suspended but transferred to other duties. It was justified in imposing a warning and did not breach its duty of good faith.

[3] An order is made prohibiting publication of any information or details which may lead to the identification of the affected students at MRGS.

### **Facts leading to dispute**

[4] Mrs McConnell was covering a music lesson for another teacher on 18 September 2012. The class had 30 Year 9 students with an ethnic mix of Asian, Pacific Island and Maori. Ms McConnell did not know the students and they had not met her before.<sup>1</sup>

[5] During the class, several students alleged Ms McConnell called a female student *slag*, two male students *loser* and *prick*, mocked students names, made derogatory comments about ethnicities, said banding occurred by ethnicity, talked about suicide, suggested a student may be bashed and a teacher may be fired. Mrs McConnell denies any of this occurred.

[6] At the following class the students raised concerns with another teacher, Narida Fell. She asked them to write down what was upsetting them. The children wrote in their English books statements about Mrs McConnell’s behaviour.

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<sup>1</sup> Brief of Evidence (BOE) B McConnell paras 12-15

### *Alleged Suspension*

[7] On Tuesday, 18 September 2012 at 5.50pm the Principal, Mr Greg Watson called. He had received a complaint from a student and parent that she had called students *slag* and *self-centred prick*. Mrs McConnell strongly denied this.

[8] There is a factual dispute whether Mr Watson says he asked her to work from home while he undertook an investigation which she accepted.<sup>2</sup> Ms McConnell says she was suspended by the instruction *to stay away from school on full pay while he carried out an investigation*. She denies she agreed to stay away from school and was not told what duties or assigned work she was to perform from home.<sup>3</sup>

[9] She confronted Mr Watson at his office around 6.20 pm with her husband Keith McConnell. There is some disagreement about the conversation that occurred. The McConnell's wanted to know how many complaints there were, who had made them, stated the instruction to stay home was a suspension and wanted to speak to the employer before suspension took place.<sup>4</sup> They say Mr Watson was hostile and evasive and refused to disclose how many complaints there were and from whom.<sup>5</sup> Mr Watson recalls saying there were several complaints but he did not have the full details, denied Mrs McConnell said she disagreed with working from home, found the McConnell's agitated and aggressive, had another school engagement to attend at 6.30 pm and did not want to engage in depth at that stage.<sup>6</sup>

[10] The following morning Mr Watson instructed Jennifer Anne Barker, Deputy Principal, to go to the affected class. She asked the students for their English books and photocopied the statements they had made yesterday. She then distributed blank refill and invited the students to write a further statement about what happened the previous day. This exercise took approximately twenty minutes.<sup>7</sup>

[11] Ms Barker collated both sets of statements and undertook the below analysis for Mr Watson:

- *18 students wrote that Mrs McConnell called a student a "prick" (some added self centred)*

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<sup>2</sup> BOE G Watson, para 11

<sup>3</sup> BOE B McConnell paras 37-38, Reply BOE B McConnell paras 1-3

<sup>4</sup> BOE B McConnell para 39

<sup>5</sup> BOE K McConnell para 10.

<sup>6</sup> BOE G Watson paras 15-16

<sup>7</sup> BOE J A Barker, paras 11-14

- 16 students wrote that Mrs McConnell called a student a “slag”
- 4 students wrote that Mrs McConnell told a student to “shut up”
- 14 students wrote that Mrs McConnell called a student a “loser”
- 20 students wrote that Mrs McConnell mocked students’ names
- 9 students wrote that Mrs McConnell said that Deputy Principal [name withheld] would soon be fired
- 15 students wrote that Mrs McConnell said things about Asians or Palangi being selfish (hogs)
- 12 students wrote that Mrs McConnell said that classes at MRGS are banded by ethnicity
- 3 students wrote that Mrs McConnell talked about suicide
- 2 students wrote that Mrs McConnell said one of the students would be bashed because of his red tee shirt

[12] At 1.11 pm 19 September Mrs McConnell emailed her response stating *it did not happen and these are false and malicious accusations*.<sup>8</sup> Mr Watson replied to Mrs McConnell at 4.14 pm stating he had *compelling information from students and complaints from parents that confirm my concerns about your professional conduct*. He required her to continue working from home recorded as discretionary leave on pay.<sup>9</sup> Mr Watson sent a report to the MRGS Board setting out the student and parent complaints, Ms Barker’s analysis and his decision to refer this to the Board.<sup>10</sup> Mrs McConnell replied at 4.31 pm seeking a copy of his report.

[13] At 5.57 pm Mrs McConnell’s legal representative, Dzintra King, emailed Mr Watson alleging she had been illegally suspended and MRGS had failed to provide full details of the allegations including the identity of the complainants.<sup>11</sup> Mr Watson replied the following day that Mrs McConnell had agreed to work from home and *the action was taken both for the protection of students and to maintain her [Mrs McConnell’s] emotional safety and wellbeing*. He also referred to a threatening email Mrs McConnell had sent to a colleague.<sup>12</sup>

### ***Final warning***

[14] The MRGS Board through a subcommittee wrote to Mrs McConnell on 20 September enclosing a copy of Mr Watson’s report, advising a committee had been empowered to investigate this matter, asking her to attend a meeting pursuant to cl

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<sup>8</sup> Applicants Bundle of Documents (ABD) p4 Email B McConnell to G Watson 19 September 2012

<sup>9</sup> ABD p 3-4 Emails B McConnell and G Watson 19 September 2012

<sup>10</sup> ABD p114 Report to Board of Trustees

<sup>11</sup> ABD p 6 Letter D King to G Watson Undated

<sup>12</sup> ABD p 8 Letter G Watson to D King 20 September 2012

3.4.3 Secondary Teachers Collective Agreement and provide responses. It also noted *you are currently working from home on full pay and [the MRGS Board] requests that you continue with this arrangement until we have met.*<sup>13</sup> Copies of the students' statements with their names redacted and a statement from their teacher, Narida Fell, were also provided.

[15] On 21 September Ms King wrote to MRGS Board denying Mrs McConnell had agreed to work from home. She was able to return to work and intended doing so on 24 September 2012.<sup>14</sup>

[16] The MRGS Board denied she had been suspended and issued an instruction she was transferred to other duties under clause 3.4.3(c)(ii) undertaken at home on full pay.<sup>15</sup> Ms King replied that her client would remain at home without prejudice to her rights to *contest the legality of the instruction in the letter* and asked for information on which statements were written by which students and a copy of the personnel file.<sup>16</sup> The MRGS Board replied stating it had intentionally withheld the names of the students upon advice and the information would not be made available and provided a copy of the personnel file.<sup>17</sup>

[17] Ms King sought a seating diagram of the classroom showing where pupils sat when the comments were allegedly made and a match between the first statements and second statements to assess consistency.<sup>18</sup> The MRGS Board agreed to provide the information. It also raised concerns Mrs McConnell had been emailing and texting staff setting out her version of events and blaming a student whose parents she believed had complained.<sup>19</sup> The seating diagram and a schedule matching statements were later provided.<sup>20</sup>

[18] The first disciplinary meeting occurred on 26 September 2012. Substantial written submissions and character references were provided shortly before the hearing.<sup>21</sup> Mrs McConnell attended with several support people. She and Ms King made oral submissions. There is a dispute about whether the MRGS Board genuinely

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<sup>13</sup> ABD p 10 Letter MRGS Board to B McConnell 20 September 2012

<sup>14</sup> ABD p 186 Letter D King to MRGS Board 21 September 2012

<sup>15</sup> ABD p 187 Letter MRGS Board to D King 21 September 2012

<sup>16</sup> ABD p 188 Letter D King to MRGS Board 24 September 2012

<sup>17</sup> ABD p 189 Letter MRGS Board to D King 25 September 2012

<sup>18</sup> ABD p 224 Letter D King to MRGS Board 25 September 2012

<sup>19</sup> ABD p 225 MRGS Board to D King 26 September 2012

<sup>20</sup> ABD pp 250-251

<sup>21</sup> ABD pp228 to 248; BOE B McConnell para 67

considered the submissions. Mrs McConnell says they did not because of the lack of questioning and confused looks when her representative referred to her submissions in detail. The meeting was adjourned to 10 October for further information.

[19] A second disciplinary meeting occurred on 10 October 2012. Mrs McConnell attended with Ms King. After some discussion, the Board advised it had decided to issue a written warning. Further submissions were made by Ms King regarding the basis for the issue of a written warning and its duration.

[20] On 12 October 2012 a final written warning for 12 months was issued stating the Board found on balance of probabilities that she did use the language complained of.<sup>22</sup>

[21] On 22 November 2012 Mrs McConnell raised a personal grievance.<sup>23</sup>

### **Issues**

[22] The following issues arise:

- (a) Was Mrs McConnell suspended or transferred to alternative duties?  
Was Mrs McConnell unjustifiably disadvantaged in her employment by this action?
- (b) Was Mrs McConnell unjustifiably disadvantaged in her employment by the written warning? Did the MRGS Board breach its duty of good faith by failing to be responsive and communicative?
- (c) Was the MRGS Board subcommittee acting ultra vires?
- (d) What remedies (if any) should be awarded?

### **Legal Framework**

[23] The fact Mrs McConnell was subject to certain actions by her employer is accepted. The onus falls upon the employer to justify whether its actions *were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred* s103A(2). In applying this test, the Authority must consider the matters set out in s.103A.

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<sup>22</sup> ABD p 269

<sup>23</sup> ABD p274

[24] The Authority must not determine the dismissal unjustifiable if the procedural defects were minor or did not result in the employee being treated unfairly (s103A(5)). A failure to meet any of the s.103A(3) tests is likely to result in a dismissal being found to be unjustified.<sup>24</sup>

[25] There is a substantial conflict of evidence between the parties. This requires express findings of credibility<sup>25</sup> upon evidence given by brief (signed and unsigned) and orally at hearing.

[26] Credibility can be assessed on two bases – the witness personally<sup>26</sup> and the story the witness tells. Some factors relevant to personal credibility are:

- (a) Demeanour<sup>27</sup>;
- (b) Inconsistencies and contradictions of all kinds<sup>28</sup>;
- (c) Prevarication<sup>29</sup>;
- (d) Reasons to lie<sup>30</sup>
- (e) Concessions made where due, despite any perception by the witness of a risk to credibility in giving that evidence<sup>31</sup>.

[27] Credibility of the story is an assessment of it within the context of other evidence, such as undisputed facts or facts unknown to the witness. Is this evidence absurd or is there other evidence making the conclusion inevitable?<sup>32</sup>

[28] The Authority may draw inferences and fill gaps in evidence by application of common sense, knowledge of human affairs and the state of the industry and any

<sup>24</sup> *Angus v. Ports of Auckland Limited* [2011] NZEmpC 160 at [26]

<sup>25</sup> *RNZAF Museum Trust Board v Hunter* Employment Court Wellington WC11/00, 1 March 2000 at p6

<sup>26</sup> *Kelly v Accident Rehabilitation & Compensation Insurance Corporation* EMC Wellington WC 13/99, 24 March 1999 at p69

<sup>27</sup> *Hakaraia v Foodstuffs (Wellington) Co-operative Society Ltd* Employment Court, Wellington WC6/01, 22 February 2001 at [14]; *T v SAR Ltd* ERA Christchurch CA126/05, 23 September 2005; *Young v Venables t/a Mt Eden Bakery & Delicatessen* Employment Court Auckland AC88/00, 7 November 2000 at p 6

<sup>28</sup> *Taiapa v Te Runanga O Turanganui A Kiwa t/a Turanga Ararau Private Training Establishment* [2012] NZERA Auckland 252

<sup>29</sup> *Griffith v Sunbeam Corporation Ltd* EMC Wellington WC13/06, 28 July 2006 at [108]

<sup>30</sup> See above at [109]

<sup>31</sup> See above at [110]

<sup>32</sup> See above at [111]; *Corbett v National Mutual Finance Ltd* (CA 172/91, 10 February 1992, p10

matter that seems capable of being taken into account as indicating the probabilities of the situation.<sup>33</sup>

[29] Part of this dispute is about interpretation and application of a collective agreement. The necessary inquiry is what a reasonable and properly informed third party would consider the parties intended the words of their contract to mean. To be properly informed the Authority must be aware of the commercial or other context in which the contract was made and of all the facts and circumstances known to and likely to be operating on the parties' minds. The objective in a contract interpretation dispute is to establish the meaning the parties intended their words to bear.<sup>34</sup>

[30] Where the contractual intention is clear from the words used, the Authority must give effect to it.<sup>35</sup> The first and often the last port of call will be the language that the parties chose to adopt. Such language must be read and understood in the context of the collective agreement as a whole.<sup>36</sup>

**Was Mrs McConnell suspended or transferred to alternative duties? Was Mrs McConnell unjustifiably disadvantaged in her employment by this action?**

[31] Mrs McConnell submits she was suspended and there was no transfer of duties. There was no agreement to work from home, she was excluded from the workplace, was recorded as discretionary leave on full pay and given no work to undertake whilst at home.

[32] The MRGS Board denies she was suspended. It submits the employer has the power to suspend or transfer a teacher to other duties. It was unrealistic to have Mrs McConnell remain at school and continue teaching in the circumstances. Initially it thought Mrs McConnell did not oppose staying at home but later exercised the discretion to transfer her to other duties which was justified in the circumstances. There was opportunity for Mrs McConnell to undertake duties but she elected not to. Even if the action was unjustified, there are no grounds for awarding compensation.

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<sup>33</sup> *New Zealand Merchant Service Guild IUOW Inc v New Zealand Rail Ltd* [1991] 2 ERNZ 587 (LC), at 603

<sup>34</sup> *Vector Gas Ltd v Bay of Plenty Energy Ltd* [2010] NZSC 5; [2010] 2 NZLR 444; (2010) 9 NZBLC 102,874 (SCNZ) at [19]

<sup>35</sup> *Lowe Walker Paeroa Ltd v Bennett* [1998] 2 ERNZ 558 (CA) at 566 -567

<sup>36</sup> *Secretary for Education v New Zealand Educational Institute Te Riu Roa* [2002] 2 ERNZ 470 (EmpC) at [26]

[33] The employer may suspend or transfer a teacher to other duties where “... *satisfied that the welfare and interests of any student attending the school or of any teacher at the school so requires ...*”<sup>37</sup> A pre-condition of the exercise and application of the clause is the welfare and interests of students or teachers.

[34] There is no direct evidence Mrs McConnell was suspended. Mr Watson gave evidence of welfare concerns for the affected students and Mrs McConnell. Mr Watson initially believed she had agreed to stay away. He then required her to stay away on discretionary leave. Later correspondence from the MRGS Board clarified this meant transferring her to other duties under clause 3.4.3 due to welfare concerns.<sup>38</sup> The transfer to other duties was used to avoid the disciplinary connotation of suspension while the matter was being investigated.

[35] Mrs McConnell made submissions to Mr Watson and the MRGS Board about this action directly and through Ms King. In short she denied the allegations and alleged she had been suspended. She did not address any welfare concerns.

[36] There was evidence Mrs McConnell was agitated and it was affecting her and student welfare. She had been prescribed diazepam<sup>39</sup> used to treat anxiety disorders. She sent staff emails and texts blaming a student and his father for the complaints and inviting staff to share this with anyone.<sup>40</sup> Neither the student nor his father had made any complaint. Mrs McConnell admitted she had made this assumption based upon “*school gossip ... passed to [her] by at least two people.*”<sup>41</sup>

[37] A colleague covering her classes asked Mrs McConnell to send work for the classes.<sup>42</sup> Mr Watson alleged she refused to do any work.<sup>43</sup> She did not ask for work to do. It is more probable than not she was offered work but refused to do it, motivated by her upset over the allegations and belief she had been suspended.

[38] If teachers are transferred to other duties, the collective agreement is silent on where the duties are to occur. The purpose of clause 3.4.3 is protection of the welfare and interests of students and teachers. The exercise of the discretion must take into

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<sup>37</sup> ABD p 20 cl 3.4.3 Secondary Teachers Collective Agreement, 2011– 2013

<sup>38</sup> ABD p 3 Email G Watson to B McConnell 19 September 2012

<sup>39</sup> BOE B McConnell para 66.

<sup>40</sup> ABD p 331 Email B McConnell to R Small 19 September 2012

<sup>41</sup> BOE B McConnell para 75

<sup>42</sup> ABD p 331 Email R Allen to B McConnell 19 September 2012

<sup>43</sup> BOE G Watson para. 13

account those welfare and interest concerns. This may logically include the transfer to duties at a place other than the school.

[39] This matter involved the welfare and interests of 30 MRGS students, the majority of whom had made complaints about Mrs McConnell's behaviour. It would have been difficult, if not impossible for her to avoid interaction with the affected students if required to work at MRGS. She was being treated for anxiety and had falsely blamed a student and his parent for the complaints. Requiring Mrs McConnell to work from home during the investigation was a reasonable exercise of the discretion in the circumstances having regard to the students and her welfare.

[40] The Authority determines Mrs McConnell was not suspended but transferred to other duties. The MRGS Board could have transferred Mrs McConnell to other duties in the circumstances.

**Was Mrs McConnell unjustifiably disadvantaged in her employment by the written warning? Did the MRGS Board breach its duty of good faith by failing to be responsive and communicative?**

[41] Mrs McConnell submits the warning was unjustified because Mr Watson did not share details of the allegations as required by clause 3.4 and withheld information. This was a breach of the duty of good faith to be communicative and responsive. The MRGS Board was influenced by Mr Watson's pre-determined view. The failure to give the names of the students or parents who had made the complaints was a breach of natural justice. It failed to properly investigate her initial responses made on 26 September 2012 by not putting them to the students for comment. There was no genuine consideration because no MRGS Board member engaged with her or asked questions during the disciplinary process. The MRGS Board acted ultra vires because the subcommittee had been authorised to only investigate the incident but not to impose the final warning.

[42] The MRGS Board denies there was any breach of good faith or predetermination. Mrs McConnell received all the information the Board subcommittee had prior to making the decision. The withholding of names did not affect her ability to answer the allegations. The MRGS Board sub-committee had the delegated power to investigate and conclude the disciplinary process.

[43] Clause 3.4.1 provides the employer with the discretion where *appropriate it shall make initial enquiries to establish whether the disciplinary procedures shall be initiated*. The Principal, Greg Watson, had the delegated authority to exercise this discretion on behalf of the MRGS Board.<sup>44</sup>

[44] At the time of the initial telephone conversation with Mrs McConnell on 18 September 2012, he had little information other than the bare allegations Mrs McConnell called students “slag” and “prick”. He told about her this and sought her response.

[45] On 19 September 2012 following receipt of Mrs McConnell’s response and further enquiries, he determined to refer the matter to the MRGS Board and drafted a report. He informed Mrs McConnell by email at 4.14 pm. Mrs McConnell sought a copy of his report to the MRGS Board which was provided the following day with the names of the students redacted.

[46] The report did not express a view on outcome. It detailed serious concerns and notes this was an issue of trust and confidence. The number of students whom had given statements about her alleged behaviour was substantial. The concerns, if accepted, would have affected the trust and confidence an employer had in its teaching staff. The report does not evidence predetermination. The fact it was received by the MRGS Board prior to Mrs McConnell does not evidence predetermination. It evidences investigation and the basis for initiating disciplinary procedures.

[47] Any delay in her receipt of Mr Watson’s report was minimal. If there was a defect it was minor, and did not result in Mrs McConnell being treated unfairly.

[48] Mrs McConnell was supplied with the identities of the students in a seating plan and the statements. She did not know these students. The students did not know her. Their names would have provided little assistance to her response.

[49] Mrs McConnell made detailed submissions naming the students alleged to have called “slag”, “prick” and “loser”. In summary her submissions were the students allegations were misinterpretation and misconstruction, lacked independence,

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<sup>44</sup> ABD p 324 Delegation from MRGS Board 20 February 2012 for the Principal to *undertake initial inquiries and investigations into conduct and discipline matters, including the authority to transfer the employee to other duties*.

contained discrepancies and the students were motivated to complain by her discipline manifesting into false allegations. These submissions did not require the students' names.

[50] The need for names of students appears based upon the erroneous belief a particular student and his father had generated the complaints. They had not. This student did not make a statement at all because he was absent from class when they were made.<sup>45</sup>

[51] There was little point in continuing to withhold the student names given partial disclosure had already occurred in the seating plan and statements. If redaction of names was a defect it was minor having regard to the submissions and statements themselves, and did not result in Mrs McConnell being treated unfairly.

[52] Parts of Mrs McConnell's submission appears to corroborate student allegations she mocked names, banding occurring by ethnicity and certain ethnicities were poor. In referring to a MRGS student called [name redacted], she comments *it would be easy if everyone was called [name redacted]*.<sup>46</sup> This could logically give rise to students belief she was mocking his name. She made comments to the class that *"people felt that poor people did not have a fair shot at education"* and *"evidence suggested that when students were sorted by attainment such sorting could have a cultural and ethnic bias and increase inequalities"* and gave an example of a Pacific Island child sorted into a level below her ability. A student asked *"was it because they were poor"* she said *"yes"*.<sup>47</sup> This could logically give rise to the impression she was inferring banding occurred by ethnicity and ethnicities such as Pacific Islanders were poor.

[53] Mrs McConnell denied the most serious allegations she called students "slag", "self-centred prick" and "loser". She did not ask for her responses to be put to students for comment during the disciplinary process. It is speculative what assistance, if any, it would have given in any event. She simply denied the allegations.

[54] The MRGS Board members involved in the disciplinary meetings deny they did not respond and had a predetermined agenda. The disciplinary meetings were run

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<sup>45</sup> Oral evidence G Watson 29 August 2013

<sup>46</sup> BOE B McConnell, paras 31-35

<sup>47</sup> BOE B McConnell, paras 23-30

by the School Trustees Association representative, Gary Parkinson. It was well attended by a number of supporters. It was tense. The first meeting lasted two hours. The second meeting was shorter. There was evidence all of the Board members understood and considered her responses alongside the allegations prior to issuing the warning.<sup>48</sup>

[55] Her denials were weighed against the significant number of allegations. 18 students alleged she said “prick”; 16 “slag” and 14 “loser”. The allegations were made almost immediately after Mrs McConnell’s class. The second statements were written the next day. The students were unaware this was to occur. There was little opportunity for collusion. There are some variances but overall the allegations are consistently made by these students.

[56] Ms Narida Fell, the teacher whom taught the students immediately after Mrs McConnell’s class provided corroborating evidence.<sup>49</sup> Applicant Counsel suggested her statement evidenced collusion because the students were speaking to her and one another about these allegations. This was speculative and Ms Fell was not called to give evidence about collusion.

[57] The issue of a written warning was one of several possible outcomes including dismissal available to the MRGS Board in the circumstances. The MRGS Board subcommittee determined she would be issued with a final written warning on 12 October 2012<sup>50</sup>. No report to the Teachers’ Council was made.

[58] The MRGS Board subcommittee acted under a delegation they *investigate the incident concerning a staff member [Mrs McConnell] on behalf of the Board*.<sup>51</sup> The Chairperson, Marjet Pot, gave evidence it was understood the subcommittee would undertake the investigation in accordance with clause 3.4.3 to its conclusion.

[59] A Board of Trustees may delegate any of its functions or powers *either generally or specifically* to a committee of two or more persons including one trustee (s66(1)(c) Education Act 1989). Unless the delegation provides otherwise, the delegate may *perform the function or exercise the power in the same manner, subject*

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<sup>48</sup> BOE PM Pot; BOE EL Lim; BOE S Mulrennan

<sup>49</sup> ABD p185 statement N Fell

<sup>50</sup> ABD p269

<sup>51</sup> ABD p 329

*to the same restrictions, and with the same effect as if the delegate were the Board* (s66(4)).

[60] The delegation to the MRGS Board subcommittee was general not specific. There was no restriction on the subcommittee undertaking the investigation to conclusion. The subcommittee as the Board's delegate was empowered to do so by s66(4).

[61] Mrs McConnell was not unjustifiably disadvantaged in her employment by the written warning. There was no breach of duty of good faith to Mrs McConnell. The MRGS Board could have issued the warning to Mrs McConnell in the circumstances. The MRGS Board subcommittee did not act ultra vires in imposing the final warning. The personal grievance is dismissed.

[62] Costs are reserved. If either party seeks an order for costs a memorandum shall be filed and served 14 days from the date of this determination. The other party shall have 14 days to file and serve a reply.

**T G Tetitaha**  
**Member of the Employment Relations Authority**