

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 47  
5392063

BETWEEN REVEREND TEIKI  
MATENGA PAPUNI  
Applicant

A N D TE HUI AMORANGI O TE  
TAIRAWHITI  
First Respondent

A N D TE HUI AMORANGI O TE  
TAIRAWHITI TRUST  
BOARD  
Second Respondent

A N D BISHOP BROWN TUREI  
Proposed Third Respondent

A N D THE MOST REVEREND  
WILLIAM BROWN TUREI,  
MR TEREI POOHATU,  
MR MAUI TANGOHAU,  
MR HEREWINI PARATA,  
MR NGARONGOTOA  
RAROA, REV MONA SCOTT  
AND MR WAYNE  
MCKENZIE personally in their  
capacity as trustees of TE  
HUIAMORANGI O TE  
TAIRAWHITI TRUST  
BOARD  
Proposed Fourth Respondent

Member of Authority: T G Tetitaha

Representatives: T Kennedy, Counsel for Applicant  
L Inger, Counsel for Respondent  
D Mitchell, Counsel for Proposed Respondents

Investigation Meeting: 15 November 2012

Date of Determination: 8 February 2013

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**INTERIM DETERMINATION OF THE AUTHORITY**

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- A. **The employer is the second respondent, Te Hui Amorangi o te Tairawhiti Trust Board.**
- B. **As a consequence of the determination, the first respondent is struck out and the application to join the proposed third and fourth respondents is refused.**
- C. **Costs are reserved**
- D. **A teleconference is to be set down before Member Monaghan. The parties are to consider whether a direction to a two day mediation would assist in resolving the personal grievance.**

### **Employment relationship problem**

[1] Reverend Teiki Matenga Papuni is a Priest of the Church of England also known as the Anglican Church in New Zealand. He is also employed as a Kaiwhakamana (enabler) providing theological education and other services to persons within the Tairawhiti area.

[2] There is a proposed restructure of Kaiwhakamana with the possibility of redundancies. Reverend Papuni has a personal grievance for later hearing arising out of the proposed restructuring. Before that hearing can occur an issue has arisen about who is his employer. The named respondents are his potential employers.

### **The Position of Kaiwhakamana**

[3] The position of Kaiwhakamana was developed by the Maori arm of the Anglican Church, Te Pihopatanga o Aotearoa, to assist implementation of its programme Minita-a-iwi. Minita-a-iwi allowed iwi to identify people to become Ministers and undertake theological training at St John's College. Once ordained, the Minister would return and be nurtured by iwi. Many rural Maori parishes could not financially support Ministers which in turn prohibited ongoing training at St John's College. There were also concerns about the mono-cultural content of the theological education offered by the College.<sup>1</sup>

[4] In response to the financial and mono-cultural theological education concerns, Te Pihopatanga o Aotearoa developed an enabler programme employing

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<sup>1</sup> Applicants Bundle of Documents (ABD) p 69 - 70 Te Pihopatanga o Aotearoa Theological Education Strategic Plan 2009-2013

Kaiwhakamana<sup>2</sup> within regions such as Tairāwhiti. Kaiwhakamana supported Minita-a-iwi by facilitating improvement of skills.<sup>3</sup>

[5] Funding for Kaiwhakamana is applied for annually to St John's College Trust Board. Funding applications for Tairāwhiti were made in the name of "Te Hui Amorangi o Te Tairāwhiti" and set out the projects it is to be applied to within this region. Funding for Kaiwhakamana has been approved to December 2013.

[6] At the end of 2008 to early 2009 Reverend Donald Steven Tamihere and the proposed Third Respondent and Bishop of Tairāwhiti, Reverend William Brown Turei (Bishop Turei), met with Reverend Papuni regarding employment as a Kaiwhakamana. There is a dispute whether Reverend Tamihere gave Reverend Papuni a draft employment agreement and other documentation naming the Second Respondent as the employer.<sup>4</sup> It was accepted Reverend Papuni was provided with a job description although this was later altered. There is a dispute about whether it was agreed to by the parties at all. It is identical in part to the draft produced by Reverend Tamihere. It refers to another employee, Reverend Pane Kawhia,<sup>5</sup> employed after Reverend Papuni on 1 May 2009<sup>6</sup>.

[7] On 6 April 2009 Reverend Papuni and Bishop Turei signed an employment agreement appointing him as a Kaiwhakamana.<sup>7</sup> The employer named was "Te Hui Amorangi o te Tairāwhiti". This agreement was prepared by Reverend Papuni's partner, Linda Papuni, the personal assistant to Bishop Turei. There is a dispute regarding Bishop Turei's authority in signing the agreement.

### **Who is Te Hui Amorangi o Te Tairāwhiti?**

[8] Witnesses at hearing agreed "Te Hui Amorangi o te Tairāwhiti" was a term used to describe many things including:<sup>8</sup>

- The geographical area of the Diocese of Tairāwhiti;

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<sup>2</sup> ABD p 70 - 71

<sup>3</sup> ABD p72; p95 St John's College Trust Board Funding Application 2009-2013; pp 20-22 Individual Employment Agreement dated 6 April 2009.

<sup>4</sup> Respondents Bundle of Documents (RBD) p126 - 160

<sup>5</sup> ABD p 19 Job Description under heading Financial Administration refers to a Business VISA card in the name of Pane Kawhia

<sup>6</sup> RBD p 206 IEA commencement date 1 May 2009.

<sup>7</sup> ABD pp 3 - 17

<sup>8</sup> Brief of Evidence (BOE) Rev DS Tamihere at paragraph 19.

- The constituent parishes (churches) within the Diocese of Tairawhiti;
- The collective membership of the parishes of the Diocese of Tairawhiti;
- The Ecclesiastical position (or Role) of the Bishop of Tairawhiti;
- The Synod (annual general meeting) of the Diocese of Tairawhiti;
- The Office (building, staff and operation) of the Bishop of Tairawhiti;
- The trustees and the operations of the Te Hui Amorangi o Te Tairawhiti Trust Board.

[9] Te Hui Amorangi o Te Tairawhiti Trust Board (Trust Board) is an authorised trust board pursuant to the Anglican Church Trusts Act 1981. The Act endowed the Trust Board with greater powers to deal with real and personal property of the Church held for religious or charitable purposes.<sup>9</sup> This included the power to enter contracts<sup>10</sup> and to employ.<sup>11</sup> The Trust Board comprises up to ten members. The current members are the proposed third and fourth respondents.

[10] During his employment, Reverend Papuni met with and reported to a variety of groups including Bishop Turei, the Synod of the Diocese of Tairawhiti and a group known as “Amorangi Whaiti.” The Diocese of Tairawhiti comprises parishes within an area covering the East Cape to the Wairarapa. The Synod of the Diocese of Tairawhiti held an annual general meeting. Amorangi Whaiti is a smaller group of representatives from the parishes within this area which meet 4 times per year.

[11] At no stage did Reverend Papuni report directly to the Trust Board. Other than the above reporting there does not appear to be any other control by any of the named respondents over Reverend Papuni’s activities.

[12] Reverend Papuni says his employer is not the Trust Board. He asserts he is employed by the following:

- Te Hui Amorangi o Te Tairawhiti through its committee Amorangi Whaiti

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<sup>9</sup> Preamble to Anglican Church Trusts Act 1981

<sup>10</sup> Clause 17, Schedule 2 Anglican Church Trusts Act 1981

<sup>11</sup> RBD p 88 Clause 5.3, Trust Board Deed

- Bishop Turei either through the Office of the Bishop of Tairāwhiti or personally
- A combination of the above

[13] The Respondents disagree. They submit the Trust Board (inclusive of Bishop Turei) is Reverend Papuni's employer.

### **Determination**

[14] There is no evidence the proposed fourth respondents employed Reverend Papuni at all. The application to join these respondents is refused.

[15] An "employer" is "a person employing any employee or employees".<sup>12</sup> An "employee" is "any person of any age employed by an employer to do any work for hire or reward under a contract of service".<sup>13</sup> To decide whether someone is employed by another person, the Authority "must determine the real nature of the relationship between them".<sup>14</sup> The Authority must consider "all relevant matters, including any matters that indicate the intention of the person" and "is not to treat as a determining matter" any statement by the parties describing the "nature of their relationship" in making this assessment.<sup>15</sup>

[16] The onus is upon Reverend Papuni to establish the identity of his employer.<sup>16</sup>

[17] It is possible to have more than one or joint employers. Common control is a feature of joint employment. The essential question is who would an independent but knowledgeable observer have said was the employer?<sup>17</sup>

[18] Reverend Papuni's salary was not paid by any of the named respondents. He had arranged for his former employer, the Diocese of Waiapu, to invoice the office of Te Pihopātanga o Aotearoa who controlled the funding received. Te Pihopātanga o Aotearoa paid the Diocese who then paid Reverend Papuni. The Diocese of Waiapu paid PAYE on his behalf. Other than payment of wages and payment of PAYE they

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<sup>12</sup> Section 5 Employment Relations Act 2000 (the Act)

<sup>13</sup> Section 6(1)(a) of the Act

<sup>14</sup> Section 6(2)

<sup>15</sup> Section 6(3)

<sup>16</sup> *Taylor v von Tunzelman* EmpC Auckland AC8B/08, 15 October 2008

<sup>17</sup> *Hutton & Ors v Provencocadmus Ltd (in receivership) & Anor* [2012] NZEmpC 207 at [79]; *Mawley v Jorgensen t/a Barista the Espresso Bar* ERA Wellington WA120/09, 28 August 2009

were not involved with his employment. His evidence was this was for administrative convenience.

[19] The payment of wages or PAYE by a particular entity is not conclusive of existence in an employment relationship especially where they occur for administrative convenience.<sup>18</sup> Where payroll arrangements predate the employment agreement between the parties, the payroll function, and who performed it may be unrelated to the identity of the employer.<sup>19</sup> This is the situation here. Neither the Diocese nor Te Pihopatanga o Aotearoa were intended to be employers.

[20] Documentation evidencing the alleged agreement between parties is a useful indication of their intentions.<sup>20</sup> The employment agreement dated 6 April 2009 names “Te Hui Amorangi o te Tairawhiti” as the employer. This is a generic term used to encompass many bodies including each of the first to third respondents.

[21] Bishop Turei signed the employment agreement on behalf of Te Hui Amorangi Ki Te Tairawhiti. There is no indication whom this refers to.

[22] The job description is produced by Reverend Papuni is equivocal. It does not name any particular employer. It does not appear from the evidence Reverend Papuni reported to the bodies named therein with the exception of Bishop Turei.

[23] The daily tasks as Kaiwhakamana were self-determined. Reverend Papuni’s would prepare a schedule of works for the year and take the schedule to different groups to discuss, such the Synod AGM or Amorangi Whaiti. No pre-approval was required for the schedule to be implemented. Reverend Papuni’s evidence was he often started the schedule of works prior to meeting with these groups because they met infrequently.

[24] No employment matters were not included in the reports nor discussed at these meetings. This evidence is consistent with Reverend Tamihere’s evidence that the purpose of the reports and meetings was information sharing and consultative,<sup>21</sup> not related to any employment relationship.

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<sup>18</sup> See above at [97] *Golden Plains Fodder Australia Pty Ltd v Millard* [2007] SASC 391, (2007) 99 SASR 461 at [35] and [69].

<sup>19</sup> See above at [94]

<sup>20</sup> *Hutton & Ors v Provencocadmus Ltd (in receivership) & Anor* [2012] NZEmpC 207 at [80]

<sup>21</sup> BOE Reverend D Tamihere at p5 paragraph 30.

[25] Reverend Papuni provided a printout of unverified charitable status and the copies of bank accounts in the name of Te Hui Amorangi o Te Tairawhiti to show it had legal status. The printout of unverified charitable status relates to a different body<sup>22</sup> who was not named as an employer in these proceedings. There was no evidence of who owned the bank accounts. The bank account was operated by Reverend Papuni for his Kaiwhakamana expenses. Neither document greatly assisted determination of the employer.

[26] There is no evidence Amorangi Whaiti authorised or had any involvement in concluding the employment agreement with Reverend Papuni. It is not named within the employment agreement as the employer. It was not named as a party in these proceedings. The Minutes from a meeting of Amorangi Whaiti produced after hearing are incomplete, equivocal and do not greatly assist this determination.<sup>23</sup>

[27] There is a paucity of evidence any of the respondent's exercised any control over Reverend Papuni. Other than receiving reports and work schedules, the Synod and Bishop Turei took no other part in controlling Reverend Papuni's employment. Bishop Turei's evidence indicated he did not control Reverend Papuni's activities. He stated "*when a Priest is appointed to do a job, I trust him to do the job*" in effect leaving Reverend Papuni to get on with his work.

[28] Bishop Turei conceded in evidence he would often get involved in personally assisting resolution of disputes for Priests generally but was never required to be involved in employment matters. His evidence was "*if there were employment issues, I would have relied upon advice from the Trust Board.*"<sup>24</sup>

[29] If the term of the contract in dispute is unclear on its face, the Authority is entitled to have regard to the matrix of fact surrounding the agreement.<sup>25</sup> A part of the factual matrix of this case is an application for funding dated June 2011 in the name of Te Hui Amorangi o Te Tairawhiti. The 2012 funding for Kaiwhakamana was approved upon the basis set out therein. The personal grievance arose in July 2012, the period covered by this funding application.

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<sup>22</sup> ABD p 98 Charity Summary not verified by the Charities Commission for Bishopric of Aotearoa Ki Te Tairawhiti other name Te Hui Amorangi Ki Te Tairawhiti.

<sup>23</sup> The first two pages of the Minutes of Tairawhiti Amorangi Whaiti dated 13 October 2012 were produced after the hearing had concluded by way of an attachment to the Applicants submissions.

<sup>24</sup> Oral evidence at hearing of Bishop Turei

<sup>25</sup> *Northern Distribution Union (Inc) v 3 Guys Ltd* [1992] 3 ERNZ 903 *Quainoo v NZ Breweries Ltd* [1991] 1 NZLR 161

[30] The application appends a compliance certificate which includes the following statement:<sup>26</sup>

*Executive Summary*

*The Hui Amorangi Kaiwhakamana programme is an initiative directed by Te Pihopa o Te Tairawhiti through the Tairawhiti Trust Board and its Governance and management structures.*

[31] It also appends an Individual Project Form noting the Kaiwhakamana position would be “based in Hui Amorangi, working under the direction of Te Pihopatanga Amorangi (Tairawhiti Trust Board) ...”<sup>27</sup>

[32] The reference to Tairawhiti Trust Board is to the second respondent Trust Board. Te Pihopa o Te Tairawhiti is Bishop Turei. Bishop Turei is a member of the Trust Board. The evidence of Reverend Papuni reporting to Bishop Turei and Bishop Turei’s evidence he would refer employment matters to the Trust Board is consistent with the funding structure for Kaiwhakamana set out in the above funding application for 2012.

[33] The fact Reverend Papuni may have apprehended a different group was his employer is not determinative of who the employer was. The Authority “is not to treat as a determining matter any statement by the persons that describes the nature of their relationship.”<sup>28</sup> It must give effect to the intentions of the parties “including what would have been the intention of hypothetical reasonable parties placed in the same positions as the actual parties and contracting in the words used by them.”<sup>29</sup>

[34] Standing back and considering the evidence objectively, the Authority determines an independent but knowledgeable observer would have said Reverend Papuni’s employer is the Trust Board.

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<sup>26</sup> RBD p165 St Johns Trust Board Funding Application 2012 Compliance Certificate

<sup>27</sup> RBD p166 St Johns Trust Board Funding Application 2012 Part B

<sup>28</sup> S6(3)(b)

<sup>29</sup> *Dwyer v Air New Zealand Ltd* [1996] 2 ERNZ 146

[35] Given the above finding the following determination/orders are made:

- A. The employer is the second respondent, Te Hui Amorangi o te Tairawhiti Trust Board.
- B. As a consequence of the determination, the first respondent is struck out and the application to join the proposed third and fourth respondents is refused.
- C. Costs are reserved
- D. A teleconference is to be set down before Member Monaghan. The parties are to consider whether a direction to two day mediation would assist in resolving the personal grievance.

T G Tetitaha  
Member of the Employment Relations Authority