

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 327
5417871

BETWEEN

ELGIN EDWARDS
Applicant

A N D

CAROL ANDERSON,
LIMITED STATUTORY
MANAGER OF BAY OF
ISLANDS COLLEGE
Respondent

Member of Authority: James Crichton

Representatives: Richard Harrison and Emily McWatt, Counsel for
Applicant
Kathryn Beck and Tim Oldfield, Counsel for
Respondent

Investigation Meeting: 16 and 17 July 2013 at Whangarei

Date of Determination: 31 July 2013

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Mr Edwards), alleges that he was unjustifiably dismissed from his employment as principal of the Bay of Islands College on 18 April 2013.

[2] The respondent employer is Carol Anderson who became Limited Statutory Manager (LSM) of Bay of Islands College on 25 June 2012. As such, it was Ms Anderson who was, both as a matter of fact and law, Mr Edwards' employer during the employment.

[3] The Ministry of Education had received a request from the Board of Trustees of Bay of Islands College seeking assistance from a suitably qualified person in respect of ongoing issues at Bay of Islands College (the school).

[4] The Minister of Education has the power under the Education Act 1989 to appoint suitably qualified persons to act as either LSMs or as Commissioners. Either way, the process is referred to generically within the education sector as a statutory intervention.

[5] Ms Anderson, by force of her appointment as LSM at the school pursuant to s.78M of the Education Act, became responsible for a variety of functions previously performed by the Board of Trustees. For our purposes, the key function that Ms Anderson was tasked to perform is referred to generically as “employment”. As the Authority noted above, for all practical purposes, Ms Anderson is Mr Edwards’ employer and it follows from that conclusion that it is Ms Anderson’s decision to dismiss Mr Edwards from his employment that is the central focus of this determination.

[6] For the avoidance of doubt, Ms Anderson resists Mr Edwards’ claim that he was unjustifiably dismissed, and contends that, in all the circumstances, the dismissal was a justified one.

[7] Mr Edwards seeks reinstatement as his primary remedy. Indeed, by common consent, the whole focus of the Authority’s investigation was on the possibility that, if Mr Edwards was found to have been unjustifiably dismissed, reinstatement to his former role might be contemplated.

[8] However, the Authority’s investigation also heard some trenchant criticisms of both the practicality and the reasonableness of reinstatement for Mr Edwards, essentially because of the claim that key relationships within the school and amongst the external stakeholders had irretrievably broken down and the return of Mr Edwards to the role would have a deleterious effect on the educational outcomes for the school’s students, on the staff community, and the wider school community as well. However, the Authority, by reason of the process determined with the parties, has not been required to form any view about reinstatement.

[9] That being the position, and again by consent of the parties, the Authority determined that this determination would concern itself exclusively with issues of justification. Having formed its view on whether or not the dismissal was justified, the Authority undertook to put out its determination on that basis alone, and if the

determination found that the dismissal of Mr Edwards was unjustified, then the Authority undertook to engage afresh with counsel.

[10] In particular, it was considered that questions of further evidence around the various remedies that could be in play might be appropriate for the Authority to hear, and there might be some utility in the parties returning to mediation to see if some agreed way forward could be arrived at.

[11] But those considerations are all in the future. The sole purpose of this present determination is to consider the single question of whether or not Mr Edwards was justifiably dismissed.

[12] The Authority pays tribute to the skill and application of both senior and junior counsel involved in this matter. Were it not for their commitment to working collaboratively together to bring the matter on for urgent hearing, the Authority would have had much more difficulty in giving the matter the urgency it deserved.

[13] The contribution of both sets of representatives, throughout the process, was considerable, and the assistance the Authority derived from counsels' astute but courteous questioning of witnesses, together with their persuasive and comprehensive closing submissions, made the Authority's task much easier.

[14] Mr Edwards was appointed principal of the school on 28 January 2010. As is common with secondary school principals employed in State secondary schools, the terms and conditions of Mr Edwards' employment were governed by the Secondary Principals' Collective Agreement.

[15] The Board of Trustees which employed Mr Edwards changed almost completely in the next Board of Trustees election after the appointment and that new Board ultimately sought the assistance of the Ministry of Education by way of a statutory intervention.

[16] The Minister of Education, in pursuance of her statutory powers, initially appointed Ms Beverley Pitkethley as LSM of the school, this appointment being made on 12 January 2012, just two years after Mr Edwards had been appointed principal.

[17] Ms Pitkethley had to resign her position because of the deteriorating health of her husband and she was replaced by Ms Anderson on 25 June 2012.

[18] Before commenting on the immediate circumstances that gave rise to the dismissal of Mr Edwards from his principalship, it is appropriate to refer briefly to the context. Essentially, the evidence the Authority heard was that the Board of Trustees felt they were unable to cope with the deteriorating environment at the school. Two members of the current Board of Trustees, both now coopted members although previously having been elected, gave evidence of their growing anxiety about the relationship breakdown within the wider school community which they attributed to Mr Edwards' approach.

[19] Mr Hooson, who was the chair of the Board of Trustees elected at the Board of Trustee elections in 2010, gave graphic evidence of the deteriorating relationship between his Board and Mr Edwards. He referred to a letter the Board of Trustees sent to Mr Edwards dated 13 April 2011 (about a year after the Board of Trustees election) which set out the Board's concerns about "*the continuation of disharmony and ongoing negativity directly involving Mr Edwards*".

[20] Although the evidence suggested that, in the second half of 2011, there was some improvement in the position, the evidence the Authority heard was that the improvement was sporadic and not sustained and certainly by the end of that school year the Board had decided to seek help by way of a statutory intervention. As the Authority has already noted, that was put in place early in the New Year with the appointment of Ms Pitkethley on 12 January 2012.

[21] The Authority had the benefit of hearing directly from Ms Pitkethley. She is a very experienced educator. In her evidence, she set out what her tasks were and what she saw as the issues.

[22] She told the Authority that in the first few months of her appointment she formed a positive view about Mr Edwards' goals in terms of student achievement but a much more negative view of his methods. She described his style as "*authoritarian and dictatorial*", referred to "*an absence of any meaningful consultation*", a reluctance by the principal to engage personally with the school and its community including his failure to be seen "*out and about*" around the school, and a comprehensive breakdown in the relationship with the local community.

[23] Ms Pitkethley also alluded to the fact that she saw the Board as committed and concerned but was struggling with its role and like staff felt “*marginalised, patronised and disempowered*” by Mr Edwards.

[24] Ms Pitkethley also saw an unwillingness on the part of Mr Edwards to accept that any of the negative consequences were his responsibility and he preferred to analyse things in terms of a conspiracy of negative minded staff.

[25] Ms Pitkethley set out some of the highlights of her work programme in the short period of time that she was able to devote to the affairs of the school. Critically from the perspective of the subsequent dispute between Ms Anderson and Mr Edwards, Ms Pitkethley told the Authority that at the time of her handover to Ms Anderson:

I was gathering the material required to formally complete a change of leadership style letter of warning to the principal. This was based on evidence of his resistance to change experienced in my weekly meetings, his persistence with conspiracy theorising around staff, community and MoE not accepting his leadership and wanting him removed, his unwillingness to accept the recommendations of the 2011 appraisal report, the results of the PPTA workplace survey showing ongoing deteriorating staff relationships and his defiance of the Board chairperson’s request not to speak at a special community meeting over a busing issue.

[26] Moreover, Ms Pitkethley concluded that:

The principal remained in denial that his leadership was a problem. More importantly he had a zealous belief that his way was the right way and as long as he held that belief there could be no significant change. A formal pathway together with substantial one-on-one mentoring by a suitable practitioner was seen as the only way forward.

[27] When Ms Anderson took over as LSM at the school, she, like Ms Pitkethley before her, undertook a careful review of the situation before she commenced to address the issues. Importantly, Ms Anderson essentially chose to continue with the general approach adopted by Ms Pitkethley. Like Ms Pitkethley, Ms Anderson is an experienced educator as well as being a lawyer. In her first communication with Mr Edwards after her appointment, a letter dated 25 September 2012, Ms Anderson strives to emphasise the point that Mr Edwards needs to change his modus operandi. Indeed it would be fair to characterise this first letter as a detailed (4½ page) document with that single purpose. Mr Edwards maintained in his evidence to the Authority that Ms Anderson had developed a negative approach to him immediately

and simply set about “*overwhelming me with complaints, requests and allegations*” and he sought to draw a distinction between that approach and the approach of Ms Anderson’s predecessor.

[28] But that distinction is not borne out by the evidence. The Authority has already referred to Ms Pitkethley very trenchant criticisms of Mr Edwards’ style and her determination to try to change that style through a disciplinary process, albeit that that disciplinary process did not eventuate because Ms Pitkethley’s term was cut short for unrelated personal reasons.

[29] Furthermore, in the letter the Authority has just referred to from Ms Anderson to Mr Edwards, the LSM says:

... you [Mr Edwards] said that you had not been asked to change by the previous LSM. The previous LSM does not agree and says that she had numerous discussions with you to try and get you to change the way that you interact with and manage staff and provide you with advice on how to do so. Since your perception is that you have not been asked to change, I think it is important that I clarify at this point that you are required to change.

[30] The Authority does not accept Mr Edwards’ contention then, that Ms Anderson’s approach was somehow fundamentally different from Ms Pitkethley’s. Indeed, the Authority prefers the view advanced by Ms Anderson that the two LSMs’ work is best seen as a continuum, each having reached very similar conclusions about what needed to happen at the school.

[31] In the balance of the 2012 school year, Ms Anderson developed concerns about the accuracy of information that Mr Edwards was providing either to her or to the Board of Trustees and made the point in her evidence to the Authority that the relationship between a principal and his or her Board of Trustees is one of the utmost trust and confidence. She argued this was because the Board was not in the school on a daily basis, was comprised of lay people, and the only real source of information the Board has is that which it obtains from the principal. If that information is tainted or skewed, then the Board has no way of identifying that fact.

[32] The two aspects that concerned Ms Anderson particularly related to NCEA data concerning the performance of students at the school on a year-by-year basis and material drawn together relating to a survey of staff responses.

[33] An unsuccessful mediation took place between the parties during that period and by letter dated 5 December 2012, Ms Anderson was again making the point that Mr Edwards had never:

... taken ownership of your contribution to the current situation in the school. You have either denied that there is a problem or have laid the blame elsewhere.

[34] This particular letter then goes on at some considerable length to catalogue the history of the various attempts made by the employer to engage with Mr Edwards and get him to change the way that he behaved towards others. The letter concludes with an intimation that, in the writer's opinion, Mr Edwards' competency is still in issue notwithstanding the informal support and guidance that had been provided to that point, and/or that Mr Edwards' behaviour constituted "*material breaches of your employment agreement*". A response was sought but notice given that dismissal on notice was a prospect.

[35] A further mediation took place between the parties in January 2013 and also in that month, Ms Anderson became aware for the first time of Mr Edwards' acceptance of the outcome of his 2012 performance appraisal which was conducted by Ms Gail Thomson. It is fair to characterise Ms Thomson's appraisal as roundly critical of Mr Edwards' performance.

[36] Contemporaneously with the preparation of the Thomson appraisal report, Ms Anderson had been working on her own formal support and guidance action plan for Mr Edwards and it is clear on the evidence that that was implemented by Ms Anderson with effect from 4 February 2013. This was so, notwithstanding that at the time there were a number of concerns raised by Mr Edwards in respect of the plan, so much so that the Authority is satisfied that Ms Anderson was unsure at the time whether or not Mr Edwards would engage with the plan, because of these apparent concerns.

[37] The Authority accepts that Ms Anderson made certain concessions in cross-examination at the Authority's investigation meeting so as to confirm that the plan was implemented with effect 4 February 2013, and to confirm that she, as employer, had the right to impose the plan even if there were objections raised by the employee. Notwithstanding those concessions, the Authority is still satisfied that, at the relevant

time, Ms Anderson was genuinely unsure about what Mr Edwards' position on the matter actually was.

[38] Then, in the context of being still concerned by the NCEA data issue and the staff survey issue, and being still dissatisfied with Mr Edwards' response to those two matters, Ms Anderson received a complaint from a staff member concerning the way that staff member was treated by Mr Edwards. By email dated 15 March 2013, notification was provided of the complaint to Mr Edwards and his response was sought.

[39] While that complaint was in the process of being considered by the protagonists, there was a scheduled meeting between Ms Anderson and Mr Edwards on 21 March 2013 which, amongst other things, was supposed to assist the parties to discuss the complaint from the staff member. Ms Anderson's evidence is that she terminated the meeting with Mr Edwards because the latter became "*heated and vehement*".

[40] Conversely, when Mr Edwards commented on the meeting a day later, he described himself as "*calm, and gentle*", claimed that it was his idea to end the conversation and suggested that the reason he had to that was because Ms Anderson had become:

... agitated and personal. You then stood over me and berated me with personal comments about how I looked.

[41] Ms Anderson wrote again to Mr Edwards on 27 March 2013 in which she referred first to her 5 December 2012 letter raising the prospect of dismissal, referred to the unsuccessful mediation of 21 January 2013, then referred to the disputed advice and guidance programme and concluded the introduction of the letter with the phrase "*the situation is no longer tenable*". The Authority pauses to note at this juncture that Mr Harrison, for Mr Edwards, invited the Authority to conclude that Ms Anderson had made her decision on Mr Edwards' future by that phrase and others like it. The Authority deals with that allegation later in this determination.

[42] The letter goes on to repeat the concerns that have already been extensively traversed in previous correspondence and concludes with a conclusion that there has been a "*complete and irreconcilable breakdown in trust and confidence*". Again, Mr Harrison invites the Authority to conclude that Ms Anderson had closed her mind

to the issues and had predetermined Mr Edwards' dismissal by this conclusion. Again, the Authority simply notes that that is Mr Harrison's submission and that submission will be dealt with later in this determination.

[43] The letter concludes with a request that Mr Edwards make himself available for "*a final opportunity to respond to the above concerns*". Then, there is a further sentence which Mr Harrison again draws the Authority's attention to in the following terms:

Our current view, subject to your right of response, is that the employment relationship now needs to come to an end.

[44] Then by two letters dated 11 April 2013, Ms Anderson addressed first her considered response to the formal complaint by a staff member, and second her formal response to the survey data and the NCEA data. During the investigation meeting, there was an issue raised as to why the two 11 April letters were not copied to Mr Edwards' counsel, but nothing turns on that; they remain part of the record of the exchanges between these parties.

[45] Mr Edwards, through counsel, responded to the 27 March 2013 letter from Ms Anderson by forwarding, inter alia, a self-review attaching supporting documentation from some staff. The parties met on 16 April 2013 and according to Ms Anderson, Mr Edwards did not take as fulsome an opportunity to defend his position as she would have expected.

[46] By letter dated 18 April 2013, Ms Anderson terminated the employment of Mr Edwards.

Issues

[47] It will be convenient if the Authority considers the following questions:

- (a) Was the LSM biased against Mr Edwards;
- (b) What about the advice and guidance programme;
- (c) What was the basis of the decision to dismiss;
- (d) Is the dismissal a justified one?

Was the LSM biased against Mr Edwards?

[48] The Authority concludes that the evidence does not support Mr Edwards' contention that Ms Anderson formed a negative view of him at an early date and persevered with that view to the exclusion of all else.

[49] Mr Edwards' previous experience as a working principal with a statutory intervention had been a positive one. He worked successfully with a commissioner at Tokoroa High School. The commissionership came to an end because the reasons for the statutory intervention no longer existed and the issues of concern had been remedied, and Mr Edwards then worked with the income Board of Trustees that succeed the commissionership.

[50] The Authority heard from the Commissioner who worked at Tokoroa High School, Mr Dennis Finn. Mr Finn's evidence was compelling. He told the Authority the principal always needed the support of the statutory intervener and that he and Mr Edwards worked together to deal with the issues that arose in the school as a consequence of the statutory intervention. It was apparent that he had a good working relationship with Mr Edwards, that he regarded him positively, and that the pair of them regarded themselves as "*a team*". Mr Finn doubted that there could be a positive outcome in a statutory intervention where the principal and the employer were not working in concert.

[51] Undoubtedly that is true as far as it goes, but it rather begs the question of what happens when the employer identifies that the principal is part of the problem rather than part of the solution. Mr Finn's analysis, based as it was on his experience at Tokoroa High School, suggested that his approach was to begin with an analysis of the situation in the school and then proceed to deal with the work programme that flows out of that.

[52] The Authority is satisfied that both Ms Pitkethley and Ms Anderson adopted precisely the approach mandated by Mr Finn but concluded that Mr Edwards, because of his personal style, was an impediment to progress.

[53] So Ms Anderson was not alone in that assessment. Indeed, all of the elements of the employer grouping at the school were of like mind. The Board of Trustees had, before the statutory intervention, put on record in a lengthy letter to Mr Edwards, its

numerous concerns about his behaviour, concerns which echoed the subsequent assessment made both by Ms Pitkethley and by Ms Anderson.

[54] The Authority heard evidence from two sitting Board members who had been Board members in the period immediately after Mr Edwards' appointment as principal, who had reached a conclusion that Mr Edwards' behaviour was divisive and counterproductive to the successful operation of the school. It was because the Board felt powerless to confront Mr Edwards' righteous certainty about his particular approach that the Board sought the assistance of the statutory intervention.

[55] When Ms Pitkethley was appointed LSM, she, like Mr Finn, reviewed the situation during the early part of her involvement, identified a work programme, and then moved to address the issues that she felt were in need of progressing. After six months of engagement, she told the Authority that she concluded that she would need to engage in a disciplinary process with Mr Edwards because of his behaviour. Her evidence to the Authority speaks of the similar conclusions that she reached to the conclusions of the Board of Trustees on the one hand, and indeed the subsequent conclusions reached by Ms Anderson.

[56] When Ms Anderson replaced Ms Pitkethley, she also undertook a review process and based on the evidence before the Authority, seems to have formed similar views to the views of Ms Pitkethley on the one hand and of the Board of Trustees on the other. Indeed, Ms Anderson effectively chose to simply follow on from Ms Pitkethley by actually adopting Ms Pitkethley's work programme and seeking to complete it.

[57] Accordingly, the Authority is not persuaded that Ms Anderson's attitude to Mr Edwards is activated by bias; to the contrary, the Authority's conclusion is that Ms Anderson's view was activated by the evidence. There is significant common ground between all of the representatives of the employer during the period in question. Each formed a similar view about Mr Edwards' signalled weaknesses as a manager and professional leader and ultimately both Ms Pitkethley and Ms Anderson sought to deal with those weaknesses in a remarkably similar fashion.

[58] Mr Edwards also complains that Ms Anderson overwhelmed him with emails and trivial complaints to such an extent that he accused her of "*micro management*" and of "*being adversarial*". In a letter dated 19 December 2012, Mr Edwards wrote:

It is possibly as a consequence as your training as a lawyer that you adopt an adversarial approach, but I must say that I have not found it at all constructive and as can be seen from the correspondence, an incredible amount of time resource and energy has been taken up in trying to address a range of issues that you have raised which has affected my ability to simply get on and do the job of principal.

[59] Further in his brief of evidence, Mr Edwards complained of having received over 180 emails from Ms Anderson as well as a raft of what he called “*please explain*” letters.

[60] But those complaints are hardly fair. First, they ignore the fact that Mr Edwards himself sent Ms Anderson 299 emails but still managed to ignore many of her requests for critical information, particularly in respect of allegations of his own personal failings. Furthermore, one of Mr Edwards’ responses was a 55 page letter so it is hardly equitable for him to complain that Ms Anderson was peppering him with email and other traffic when he is doing the same.

[61] In any event, Ms Anderson was the employer and was entitled to have matters addressed in a businesslike fashion. The reality was that Ms Anderson was performing the role of employer in particularly challenging circumstances. She was acutely conscious of the funding constraints and in particular the requirement that the school meet the costs of the intervention from its operations grant. That meant that every single decision that she made to expend money ultimately impacted on the school’s bottom line and potentially affected the education of the students who her role was supposed to enhance.

[62] In consequence, Ms Anderson spent very little time at the school and had to deal with much of her engagement with Mr Edwards by electronic correspondence. No doubt it would have been preferable if they could have met more often face-to-face, as for instance Mr Finn recommended, but the financial budget precluded that, as did the time budget. Ms Anderson was also constrained by the requirement that her services were only supposed to be provided for 20 hours per month although apparently some modest excess over that arbitrary limit was allowed.

[63] In the Authority’s opinion, the arbitrary nature of the time budget and the constraints placed on Ms Anderson because of the need to fund all of the costs of the intervention from the school’s own resources meant that she had to do the best she could with very limited resources. Given that the test the Authority must apply in

respect of justification requires the Authority to consider the particular circumstances the employer was in, the Authority declares that it will consider the time and finance constraints as part of the justification matrix.

[64] In conclusion then relating to this question, the Authority's considered view is that Ms Anderson formed a view about Mr Edwards which was based on the evidence and not on bias or predetermination, that that view was a reasonable one, it being the view also formed by first the Board of Trustees and second the first LSM, Ms Pitkethley, and accordingly there can be no suggestion in the Authority's mind that Ms Anderson has failed in her duty to consider Mr Edwards' circumstances with an open mind.

What about the advice and guidance programme?

[65] It is common ground that, during the 2012 school year with the statutory intervention in place, both LSMs sought to provide support and guidance to Mr Edwards through what might best be described as informal channels. The reason the Authority refers to these channels as informal is to contrast that situation with the specific requirements of the collective employment agreement which, by clause 6.2, creates a specific provision for the support and guidance of employees covered by the document.

[66] Clause 6.2 is set within the context of Part 6 of the agreement which is entitled *Disciplinary Provisions*. The provisions in clause 6.2 relating to what is called *competency* are to be contrasted with the provisions of clause 6.3 which relate to *discipline*. While competency (or presumably the lack of it) is not defined in the document, clause 6.3 include a definition of misconduct which it is appropriate to set out in full:

6.3.1 For the purposes of this Part, the term misconduct includes:

- (a) any material breach of the terms of this agreement;
or*
- (b) any continued non-observance or non-performance
of any of the terms of this agreement; or*
- (c) any offence to which the principal may be proceeded
against by way of indictment; or*
- (d) any conduct by the principal (whether within the
principal's professional capacity or otherwise) that is*

unbecoming of the principal or which demonstrates that the principal is unfit to remain in the position of principal.

[67] As the Authority has already noted in an earlier section of this determination, the 2012 school year concluded with the completion of the Gail Thomson performance appraisal of the principal and, contemporaneously with that although not informed by it, Ms Anderson was gathering together her thinking on the elements of a formal advice and guidance programme in terms of clause 6.2 of the collective employment agreement.

[68] In fact, when the Thomson performance appraisal finally issued in January 2013, duly accepted by Mr Edwards, it is fair to say that its conclusions were broadly similar to Ms Anderson's own conclusions and, with one significant exception, its proposals for remedial action were also on a par with Ms Anderson's own conclusions.

[69] In late January 2013, Ms Anderson was presented with the intelligence that Mr Edwards accepted the conclusions of the performance appraisal, notwithstanding that those conclusions were significantly unflattering to him. Ms Anderson proceeded to formalise the advice and guidance programme and the Authority is satisfied that she communicated that decision (which, by common consent, was hers to make as employer) to Mr Edwards by 4 February 2013.

[70] Again, as the Authority has already noted, the Authority accepts that Ms Anderson was genuinely confused about whether Mr Edwards was accepting of the formal advice and guidance programme or not because there was an exchange of correspondence between Ms Anderson and Mr Edwards and his professional adviser which suggested that Mr Edwards was not happy with some aspects of Ms Anderson's plan. Ms Anderson invited clarification on that and for whatever reason none was received. As the Authority has already made clear, while it accepts that Ms Anderson was genuinely puzzled about whether Mr Edwards had accepted the plan or not and was intent upon implementing it collaboratively, legally the plan was in place because she had determined that, as it was within her remit so to do.

[71] It is the essence of Mr Edwards' claim on this aspect that Ms Anderson ought to have persevered with the advice and guidance programme which she had so carefully developed rather than suddenly change tack and re-engage with him in a

disciplinary context. It will be remembered that in correspondence at the end of the 2012 school year, Ms Anderson had foreshadowed the prospect of disciplinary action. Further, she had made clear in that correspondence that she remained dissatisfied with Mr Edwards' responses to the two areas of specific complaint which she had raised with him, namely the provision of information in respect of the staff survey and the provision of information in respect of the NCEA results. Those complaints made by the employer were clearly disciplinary; they did not go so much to questions of competence as to allegations that there had been breaches (whether material or otherwise) of the principal's contractual obligations under the collective employment agreement.

[72] Mr Edwards' evidence is that those disciplinary matters should have been subsumed under the wide umbrella of the advice and guidance plan and that it was reasonable for him to assume that that was what had happened. Whether that assumption is appropriate or not is beside the point; it is clear on the evidence that Ms Anderson remained dissatisfied with the responses that she had received from Mr Edwards in respect of both those disciplinary matters so, in a practical sense, those matters remained unresolved and thus could ultimately sound in disciplinary consequences unless and until they became resolved.

[73] As part of the advice and guidance programme, Mr Edwards acquired a mentor in Mr Bryan Smith, a very senior and experienced former high school principal. Mr Smith gave evidence to the Authority.

[74] His first engagement with Mr Edwards was in March and at the time of the dismissal of Mr Edwards on 18 April 2013, a further face-to-face session between Mr Smith and Mr Edwards was in prospect. Mr Smith told the Authority that he considered he was making progress with Mr Edwards and could continue to do so.

[75] Mr Smith also told the Authority that he had been given the clear understanding (although perhaps not an explicit instruction) that costs of his work were to be kept to a minimum and that as a consequence, travel to and from the school in Northland (Mr Smith was based in Auckland) was to be kept to a minimum.

[76] Despite Mr Smith's conviction that he had a very limited budget to play with and Mr Edwards' evidence that Mr Smith was not allowed to attend at the school for reasons of cost, the Authority is satisfied that Ms Anderson was simply trying to be

prudent with her very scarce resources and that she at no stage precluded Mr Smith from attending on Mr Edwards at the school; what she did was ask him to exercise his judgment about what was absolutely necessary so as to keep costs down.

[77] Mr Smith also told the Authority that he thought Ms Anderson's requirements were quite onerous on Mr Edwards and that he thought that Ms Anderson was using email communication more extensively than he would have thought was appropriate. The Authority accepts those views of Mr Smith at face value but has already made all of the observations it desires to in respect of Ms Anderson's means of communication. The Authority is satisfied also that Mr Smith may not perhaps have seen the totality of the issue as in the nature of things, as a mentor of Mr Edwards, he would be expected to take Mr Edwards' side in any matters where there was disagreement.

[78] The short point is that Mr Edwards maintains that because an advice and guidance plan had been implemented effective 4 February 2013, Ms Anderson was not able to continue with her disciplinary process or at least that a good and fair employer would not behave in such a way.

[79] The Authority observes that there is nothing in the collective employment agreement which precludes an employer from persevering with a disciplinary initiative notwithstanding that the competency provisions of the document have been invoked. Ms Anderson gave no undertaking that that was the position and there is nothing in the collective agreement which requires her to give any such commitment. Nor is the Authority satisfied that a good and fair employer must somehow "park" its disciplinary concerns because it is trying to address wider performance issues. In the Authority's judgment, a good and fair employer is obligated to deal plainly and unequivocally with issues of concern to it. Indeed, there is good reason to conclude that an employer who is not explicit about its concerns fails to meet the "good faith" test.

[80] Section 4 of the Employment Relations Act 2000 (the Act) requires parties to an employment agreement to be "*active and constructive.*" but also "*open and communicative*" the one with the other and the Authority is satisfied that that is precisely what Ms Anderson did in maintaining her concern about matters where her position is that she has not been provided with a satisfactory response.

[81] Mr Edwards contends that the two matters which occurred after the initiation of the advice and guidance plan (an unpleasant meeting between the two protagonists on 21 March 2013 and a complaint from a staff member about abusive treatment), did not justify the abrogation of the advice and guidance plan. It is said that these matters could have been addressed within the context of the competency plan.

[82] But it is apparent on the evidence that Ms Anderson had reached the end of her tether within six weeks of the advice and guidance plan being implemented because in her letter of 27 March 2013, Ms Anderson talked about an irreconcilable breakdown in trust and confidence having concluded that "*the situation is no longer tenable*".

[83] Mr Edwards complains that this letter is not only written in such shrill language as to indicate that the employer has prejudged the disciplinary issues and already made a decision to dismiss, but also the letter has deprived him of an opportunity that he was taking, to improve his professional practice under the advice and guidance plan.

[84] For the purposes of this section of the determination, it suffices to observe that this letter constitutes an extremely detailed analysis of the history of the extensive efforts made to manage Mr Edwards' behaviour.

[85] Ms Anderson freely conceded that there had been some improvement, particularly in the performance of the senior management team, but against that there had been a further serious complaint by a teacher about the way that teacher had been dealt with by Mr Edwards and the extraordinary 21 March 2013 meeting where Ms Anderson was plainly transfixed by Mr Edwards' representation of his behaviour at that meeting which was so diametrically different from her impressions of the meeting.

[86] The Authority is not satisfied that there is anything to preclude Ms Anderson from bringing the advice and guidance plan to an early conclusion. The employer must be free to respond appropriately to disciplinary matters and it is a matter for the employer to make a judgment as to whether fresh matters (as in the case here) are dealt with within the context of the advice and guidance plan or by returning to a disciplinary approach. The Authority is satisfied that a fair and reasonable employer could conclude that the advice and guidance plan ought to be abrogated and replaced with a disciplinary process in the particular circumstances of this case. Those

particular circumstances include in particular the finding of fault by Mr Edwards in respect of his dealing with a particular teacher and the extraordinary difference between the two principal protagonists about the 21 March 2013 meeting.

[87] While a good and fair employer could have reached other conclusions, the Authority is satisfied that one of the conclusions that a good and fair employer could have reached in the particular circumstances that Ms Anderson was in, was to bring the advice and guidance programme to an end and concentrate on a disciplinary process because of her growing conviction that Mr Edwards was simply not getting the message that he must change his way of doing things.

What was the basis of the decision to dismiss?

[88] The decision to dismiss Mr Edwards, as that decision is conveyed in Ms Anderson's letter of 18 April 2013, relies on four matters. These are the allegedly fabricated staff survey data, the allegedly false claims about the NCEA results, Mr Edwards' allegedly unprofessional behaviour towards Ms Anderson in the meeting of 21 March 2013, together with his allegedly inaccurate representation of his own behaviour at that meeting, and lastly the behaviour of the principal in dealing with a staff matter which resulted in a formal complaint.

[89] All of those issues are adjudged by Ms Anderson to constitute serious misconduct. All were open for discussion at the final meeting between the parties on 16 April 2013, although it appears on the evidence that Mr Edwards did not take as full an opportunity as Ms Anderson certainly expected to justify his position on all of those matters.

[90] Of the matters which led to Ms Anderson's conclusion that Mr Edwards had committed serious misconduct and therefore must be dismissed from his position, the first two are historical matters in the sense that they have been consistently raised by Ms Anderson in correspondence.

[91] Both of these historical matters were crystallised as complaints in a single letter written by Ms Anderson to Mr Edwards dated 11 April 2013. That letter makes it painfully clear that Ms Anderson does not accept the various explanations provided by Mr Edwards in respect of each of those separate allegations.

[92] It was of course available to Mr Edwards to explain himself at the disciplinary meeting on 16 April 2013 but he did not do that to Ms Anderson's satisfaction and so those allegations remain as findings of fault against him.

[93] The other matters justifying the termination of the employment are fresh and were first substantively traversed in Ms Anderson's detailed letter of 27 March 2013. In respect of the complaint about Mr Edwards' behaviour at the 21 March 2013 meeting and his subsequent alleged misrepresentation of that behaviour after the meeting, Ms Anderson's assessment of that whole issue is that it goes to her ability to have trust and confidence in Mr Edwards going forward.

[94] Her reasoning in this regard need not be deduced by the Authority; it is apparent on the face of Ms Anderson's correspondence that if Mr Edwards is capable of treating her in this way (dismissive, abusive and aggressive), then that makes it increasingly unlikely that they can have any working relationship and it gives the lie to Mr Edwards' complaints that he does not treat other people, including staff, in a similar way.

[95] Furthermore, Ms Anderson reasons that the fact that, in her terms, Mr Edwards grossly misrepresented his own behaviour at the 21 March 2013 meeting also supports her thesis that she cannot have trust and confidence in him.

[96] The final matter is the complaint by the staff member. This matter was also the subject of a letter dated 11 April 2013. That letter sets out Ms Anderson's conclusions. She had received a complaint from the staff member, she investigated that matter thoroughly, including by obtaining information from Mr Edwards, and she had reached certain conclusions of which the most important is a finding that Mr Edwards had failed in his obligation to be a good employer to the particular staff member concerned.

[97] Understandably, Ms Anderson then goes on to point up the fact that this behaviour is precisely the sort of behaviour which the various informal and formal advice and guidance programmes has been designed to remove from Mr Edwards' behaviour patterns and she makes the understandable observation that the reappearance of this proscribed behaviour:

... would suggest that there is little value in continuing with support programmes. If you do not actually believe there is any problem in

the way you respond in these situations (as your two written responses on this matter indicate) it is unreasonable for the Board to hope for sustainable improvement in your management of staff.

[98] Arguably, that puts the employer's concern in a trenchant and straightforward fashion. Mr Edwards was getting a very clear message in that communication about what he needed to do.

[99] In relation to the two historical complaints, Ms Anderson's conclusion was that they constituted serious misconduct because they were in breach of the fundamental duty that the principal has to provide accurate and timely reports to his Board of Trustees. Because the Board of Trustees are lay people who are not in the school regularly, their only source of information in fact is the principal and the prospect that he has "dressed up" factual material for the Board to make that material more attractive (which is essentially Ms Anderson's finding) goes to the root of trust and confidence between employer and employee.

[100] The next allegation relating to the extraordinary meeting on 21 March 2013 is in a different category. There, clearly Ms Anderson is simply reflecting her growing unease about being able to deal with Mr Edwards at all and her conclusion about his behaviour at that meeting and his subsequent misrepresentation of it seems to have forced on her the conclusion that she simply could not deal appropriately in a trust and confidence environment with Mr Edwards.

[101] The final issue, the complaint from the staff member, is of course significant because it evidences precisely the sort of proscribed behaviour that the advice and guidance formal process was trying to circumscribe as was the earlier informal action to try to get Mr Edwards to change his way of behaving.

[102] The Authority now wishes to address the contention advanced by Mr Edwards that the nature of the language used by Ms Anderson was so strong (particularly the letter of 27 March 2013 was relied upon in this connection) as to question what the purpose of the disciplinary meeting that followed might be.

[103] Mr Edwards refers to phrases such as "*the situation is no longer tenable*" and "*the employment relationship now needs to come to an end*" as evidence for the view that Ms Anderson has closed her mind to anything that Mr Edwards might say in his own defence and that therefore she has in effect prejudged the matter.

[104] The Authority does not agree. It does think the language used is strong and perhaps could have been more judiciously worded, particularly to make clear that the conclusions advanced were preliminary rather than final, but the fact that Ms Anderson had reached the provisional conclusions that she had could not be held back from Mr Edwards and it would have been wrong for her to do that.

[105] The fact of the matter is that the two principal protagonists had been engaged in an increasingly direct correspondence with each other over some months and the language from both of them is direct in its terms. Furthermore, there is nothing new in the allegations in the broadest sense even although the staff complaint is fresh and the effect of the 21 March 2013 meeting is new, but only to the extent that it tends to confirm complaints that have been made to Ms Anderson by others about Mr Edwards' behaviour.

[106] The fact that Mr Edwards' correspondence to Ms Anderson is equally firm in tone gives the lie to any suggestion he might make that he is the less powerful of the parties in this exchange. Furthermore, Ms Anderson had at a very early stage in the engagement made clear to Mr Edwards that the matters were very serious and that he needed to get advice, and he did so. He has been advised by eminent counsel in this field throughout the employment relationship dispute with Ms Anderson.

[107] That being the position, it is a little difficult to accept Mr Edwards' contention that he did not quite know how to respond at the disciplinary meeting on 16 April 2013. He says that he thought he was confronting a claim of "*irreconcilable breakdown*" when in fact he was confronting an allegation of serious misconduct, or more accurately a series of allegations of serious misconduct.

[108] But in the Authority's view, these two are aspects of the same thing. The Authority does not accept Mr Edwards' contention that irreconcilable breakdown is somehow a different beast from misconduct allegations. The allegations of irreconcilable breakdown are part and parcel of the deteriorating employment relationship between these parties; Mr Edwards has been on notice for a very long time that his behaviour was inappropriate and needed to change and despite all of the assistance and guidance to make those changes, he simply was not able to do that and the examples of serious misconduct from the 21 March 2013 meeting and Mr Edwards' behaviour directed at the complaining staff member show that failure to change.

[109] The two historical allegations are also, as well as being examples of serious misconduct, examples in the continuum of a behaviour pattern, which contributed to an erosion in the necessary trust and confidence that must exist between employer and employee.

[110] For those reasons then, the Authority is satisfied that the reasons advanced by Ms Anderson for dismissal of Mr Edwards are clear and the complaints that Mr Edwards makes about the way in which she expresses her provisional conclusions are not made out. In the end, Mr Edwards had an opportunity at the disciplinary meeting to respond to all the allegations which were clearly before him. The fact that he was not able to satisfy the employer about any of the matters complained of is not of itself a criticism of the process.

Is the dismissal justified?

[111] The test for justification is set out in s.103A of the Act. That test requires the Authority to assess whether the employer could have reached the decision it did in the particular circumstances of the case.

[112] It is important to emphasise that the decision the employer reaches need not be the only decision that an employer in those circumstances might have reached. It is enough that the response this employer made in the particular circumstances of the case, is one of the responses that a fair and reasonable employer could have made in those circumstances.

[113] In addition, it is plain on the interpretation made of the test for justification by recent decisions of the Employment Court that the law continues to preclude the Authority from assessing the matter on the basis of considering what the Authority would have done in the circumstances. So, as well as precluding the approach of putting the Authority in the shoes of the employer, the law also avoids a council of perfection.

[114] Indeed, if there are defects in the process adopted by the employer, the dismissal cannot be held unjustified solely for that reason, provided that the defects are minor and did not result in the employee being treated unfairly.

[115] Further, in terms of the particulars of the case, the Authority must consider whether there has been sufficient investigation of the matter, whether the employer

has properly raised its concerns, whether the employee has been given a reasonable opportunity to respond to the concerns so raised and whether the explanations offered have been properly considered by the employer.

[116] Looking then at the detail of the considerations the Authority must turn its mind to, it is difficult to be critical of Ms Anderson in respect of the efforts she made to investigate the various matters of concern to her. Indeed, as perhaps the most fundamental concern of the employer was Mr Edwards' attitude and his apparent unwillingness to change that attitude, the Authority's conclusion is that Ms Anderson has been extraordinarily patient. Despite Mr Edwards' attempts to persuade the Authority otherwise, the Authority is satisfied that it was not until his evidence before the Authority's investigation meeting that he finally acknowledged that he could have done better, that he could have changed, that he might have been naïve, that he lacked insight, and most fundamentally, that his behaviour needed to change if he was going to continue in the role. The Authority is satisfied that none of that was clear to Ms Anderson during the employment and that no such message was ever conveyed to her by Mr Edwards directly.

[117] Indeed, quite the reverse is the case because the messages that Mr Edwards habitually conveyed to Ms Anderson was that there was no fault with him and that the fault always lay elsewhere.

[118] Even more striking from the Authority's perspective is the fact that although Mr Edwards consistently maintained that his problem was a problem with Ms Anderson, in fact all of the employer entities that he dealt with during the employment at the school had the same difficulties with him, difficulties which, in their essence, revolved around his abject failure to build sustaining wholesome relationships with those around him. That was the case with Ms Pitkethley and it was also the case with the Board of Trustees.

[119] A graphic example of Mr Edwards' approach, long before Ms Anderson was on the scene, was his response to the Board of Trustees when they wrote to him by letter dated 13 April 2011 setting out a significant number of concerns, all of which boiled down to relationship failures between Mr Edwards and some other person or persons. His response, quite simply, was to blame the Board and others. There was nothing that he could have done better. It was not his fault.

[120] On the specific aspects of the misconduct allegations pure and simple, Ms Anderson investigated, sought responses from Mr Edwards and made her decisions accordingly. The Authority is satisfied that those investigations were each of them thorough and satisfactory and that the fact that Mr Edwards was found wanting in each case was a function of his failure to adequately answer his employer's concerns.

[121] The next consideration is whether Ms Anderson adequately put her concerns to Mr Edwards. Again, the Authority is satisfied that Ms Anderson has fulfilled her obligations. There was an extensive communication between the parties which four months before the dismissal foreshadowed the ultimate disciplinary sanction so Mr Edwards was on the plainest of notice as early December 2012 that he was skating on thin ice. Had he taken that message on board and immediately undertaken steps to remedy his defaults, the dismissal might well have been avoided.

[122] But in fact, while there was some improvement in one aspect anyway of the performance of Mr Edwards (the relationship with the senior management team) during the first quarter of 2013, there was little evidence of progress elsewhere from the employer's standpoint and accordingly, immediately prior to the final disciplinary meeting on 16 April 2013, Ms Anderson wrote three letters to Mr Edwards which set out the matters of concern to her, both in great detail and with considerable clarity. Mr Edwards can have been in no doubt about the matters that he had to address, despite his evidence that he was confused about what Ms Anderson was driving at.

[123] Two of the allegations were historical and had been consistently raised by Ms Anderson since the end of 2012. Those matters she had consistently said had never been dealt with to her satisfaction. It is difficult to read her correspondence and not be absolutely clear that she is dissatisfied with the information she has been given in those particular matters and is seeking further and better particulars in order to avoid reaching the conclusion that she has provisionally reached.

[124] In respect of the other more current matters, these are only fully traversed in the correspondence immediately prior to the final disciplinary meeting but nonetheless are traversed in considerable detail such that no reasonable person could be in any doubt about what was required.

[125] The Authority is satisfied that Mr Edwards had ample opportunity to address all of the matters of concern to the employer at the disciplinary meeting on 16 April 2013 and therefore that he had a reasonable opportunity to be heard and this is the Authority's conclusion despite Mr Edwards endeavouring to interest the Authority in the proposition that he was somehow confused about precisely what it was that he was facing. The Authority notes that Ms Anderson's evidence is that Mr Edwards did not make as full or effective a use of the disciplinary meeting as she had expected, but in the end that is a matter for him; the opportunity was there and as Ms Anderson amply demonstrated at the investigation meeting, she was able to be persuaded by logical and reasonable explanations because she had the good grace to withdraw one of the conclusions that she reached during the disciplinary process once Mr Edwards provided a rational explanation for his behaviour, which he did at the investigation meeting of the Authority.

[126] The final disciplinary meeting was on 16 April 2013 and the evidence is that Ms Anderson went away to consider what she had heard and to determine what steps she should take. On the face of it, the decision to reach the conclusion that she did does not seem to have been rushed or informed by improper motives.

[127] In his evidence to the Authority, Mr Edwards placed great reliance on his conviction that Ms Anderson's letter of 27 March 2013 exhibited predetermination; that by her language which was pointed and direct, and by her choice of words and phrases, she disclosed the fact that she had in fact decided to dismiss Mr Edwards and the disciplinary meeting was simply a matter of going through the motions. For reasons advanced earlier, the Authority does not accept that view of matters and considers that, looked at in its totality, the procedure adopted by Ms Anderson was the procedure that fair and reasonable employer could adopt in dealing with this relatively complex mixture of relationship issues together with disciplinary matters.

[128] The Authority turns finally to consider the question whether Ms Anderson has properly concluded that each of the matters relied upon does in fact constitute serious misconduct.

[129] Turning first to the two historical matters, Mr Edwards' explanation in respect of the staff survey data is that he simply made a mistake and transposed a set of figures which emanated from the wrong year. He says that a simple mistake cannot ground a dismissal.

[130] But what Ms Anderson says is that first she was never ever provided during the disciplinary process with any explanation about how the error actually happened and had she been, she would have been inclined to accept that a simple error was involved. In fact, once she was provided with an explanation about how the error was arrived at at the investigation meeting when Mr Edwards explained how he got the numbers transposed, she readily conceded that had she been told that at the time of the disciplinary meeting, she would not have reached the conclusion that she did.

[131] Because Ms Anderson did not have an accurate idea of how the mistake was made, she was left with the lurking suspicion that Mr Edwards was manipulating the figures to make his tenure as principal look better than it actually was in terms of the staff's responses to it. Critically, Ms Anderson judged that the information which Mr Edwards was supplying to the employer (and particularly to his lay Board) needed to be above reproach, that the relationship between a lay Board of Trustees and its principal must be one of the utmost good faith and that where, as in this case, it was impossible to rely on the information provided to the Board by the principal, that utmost good faith had been called into question. The Authority is satisfied that a good and fair employer could conclude that that was a reasonable decision to make.

[132] The decision Ms Anderson made in respect of the NCEA results is also contested by Mr Edwards who claims that the decision is "*approaching the bizarre*". Again, Ms Anderson relies on the principal's obligation to provide honest, reliable data to his Board of Trustees and that data which was not in that category could not be seen as fulfilling the principal's obligations to engage with his lay Board in the spirit of utmost good faith.

[133] This was a situation where the principal made what amounted to a boast that the school's NCEA results for 2011 were "*the best ever*".

[134] Ms Anderson's view of matters is perhaps best identified by a brief quotation from her letter on the subject dated 11 April 2013:

While it is accepted that a school will wish to put a positive spin on results in order to encourage students it is equally important that the Board is not misled by inflated claims that give it and the school a false sense of security or complacency. Inflated claims also put the school at risk of being challenged in public as the data is available to all who wish to check.

[135] Ms Anderson's conclusion in the matter was somewhat supported by Mr Edwards making a further claim that in any event the data was not verifiable (and therefore presumably nobody else could check to make sure that the school's numbers were, or were not, correct). In fact that latter claim by Mr Edwards is also wrong (the data is verifiable), and so in effect Ms Anderson's objection is first to the unsubstantiated boast and second to the claim that no one could prove that the boast was inaccurate.

[136] Mr Edwards makes light of this matter while Ms Anderson regards it as a serious issue. Again, she relies on the principal's obligation to provide faithful advice to his lay Board of Trustees and the fact that certainly in respect of this set of figures, that faithful advice would have been less than adequate.

[137] Again, while this is not as serious a mistake, particularly as the evidence is that the material that was eventually provided to the Board was actually accurate, the fact that Mr Edwards should think it appropriate to make claims about the school's performance which are not actually verifiable and should then think it appropriate to claim that in any event no one else could check the veracity of those claims, is in the Authority's opinion reasonable grounds for an employer in Ms Anderson's position to conclude that such behaviour constitutes serious misconduct.

[138] The third finding of serious misconduct related to the difficult meeting of 21 March 2013 where Ms Anderson says in effect that Mr Edwards became hostile and aggressive toward her and she had to abort the meeting. When she explained subsequently that that was the reason she had brought the meeting to a close, Mr Edwards denied that he had behaved badly and indeed claimed to have been "*calm and gentle*".

[139] Ms Anderson's view of the meeting and its aftermath was effectively driven by two considerations; the first was her conviction that she could no longer have any significant conversation with Mr Edwards without a third person present or without an electronic record of the meeting being taken and the second was the conviction that if Mr Edwards was capable of remembering the meeting in such a dramatically different from the way she did, and particularly relevant to his own behaviour, then that raised even more concern in her mind about his ability to manage and have insight into his own behaviour pattern.

[140] Mr Edwards on the other hand maintains his view of the meeting, so denies Ms Anderson's view in its entirety. He also alleges that she is not being fair in relying on the meeting as a basis for dismissal because she is the only source of her view about what happened.

[141] But that is in the nature of things. An employer must be able to rely on their impressions of a meeting or an exchange with an employee and the Authority is not persuaded by Mr Edwards' complaints that Ms Anderson cannot prosecute this matter in the way that she has. In the Authority's judgment, a good and fair employer could conclude that Mr Edwards' behaviour to Ms Anderson and in effect his subsequent denial of misbehaviour, does constitute serious misconduct. Mr Edwards also complains about Ms Anderson even relying on the matter in a disciplinary context, but she signalled that very clearly in correspondence prior to the disciplinary meeting so he had ample warning that the matter was in issue and that he would need to deal with it.

[142] Finally, the issue about the complaint from the staff member needs to be addressed. Ms Anderson decided that Mr Edwards had not treated the staff member as a good employer would. She sets out the nature of the process that she used in the correspondence that was made available first to Mr Edwards and subsequently to the Authority. The process seems to be fair and straightforward and it is difficult to see why she is to be criticised for reaching the conclusion that she does. That conclusion is available to her to make, even if it is possible to contemplate that there may have been other possible conclusions that could have been reached. Again, the Authority's considered view is that a good and fair employer conducting the investigation that Ms Anderson did in the circumstances in which she conducted that investigation could have concluded that Mr Edwards was not behaving as a good employer should and, having heard his explanation finally at the disciplinary meeting on 16 April 2013, the same good and fair employer could have concluded that Mr Edwards had been guilty of serious misconduct.

[143] In the particular circumstances of this case, because the legal test requires the Authority to consider all of the circumstances at the time that the dismissal took place, it is appropriate to emphasise that the dismissal occurred in the context of a very long running dispute between Mr Edwards and a succession of employer parties about his

behaviour in this particular workplace and in particular about his inability to build wholesome relationships with the people around him.

[144] That particular facet of the disputation had been a constant factor from the very beginning. One has to only look at the evidence from members of the original Board of Trustees, the Board's letter to Mr Edwards in the middle of 2011, and then the exchanges between Mr Edwards on the one hand and two succeeding LSMs on the other to identify that a constant theme was Mr Edwards' apparent inability to build enduring relationships with other stakeholders in the school community and his explicit refusal until the Authority's investigation meeting to accept that he had ever done anything wrong. This abrupt righteousness which seems characteristic of his behaviour in his time at the school has done him little service.

[145] Another aspect of the particular circumstances of the case is the limited financial and time resources available to the LSM. Those constraints have affected the ability of the LSM to manage her affairs at the school and the Authority must judge her conduct in that context and not by some perfect standard which postulates unlimited time and money resources.

[146] Taking all these matters into account then, the Authority's considered view is that it was available to Ms Anderson to reach conclusions that under each of the heads she considered, Mr Edwards had been guilty of serious misconduct and that the only sanction appropriate in all the circumstances was dismissal on notice.

Determination

[147] It follows that the Authority has concluded that Mr Edwards has been justifiably dismissed from his employment, and therefore that the issue of remedies does not arise.

Costs

[148] Costs are reserved.

James Crichton
Member of the Employment Relations Authority