

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 20  
3000159

BETWEEN                      PAUL YEN  
Applicant

AND                              BOARD OF TRUSTEES OF  
WESTLAKE GIRLS HIGH  
SCHOOL  
Respondent

Member of Authority:        Vicki Campbell

Representatives:             Mr Yen in person  
Richard Harrison for Respondent

Investigation Meeting:      On the papers

Additional information  
Received:                      17 January 2017 from Applicant

Determination:                23 January 2017

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**DETERMINATION OF THE  
EMPLOYMENT RELATIONS AUTHORITY**

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- A.        There has been no breach of the Record of Settlement dated 20 April 2016.**
- B.        Costs are reserved.**

**Employment relationship problem**

[1]        On 21 November 2016 Mr Yen lodged an application in the Authority claiming the Board of Trustees of Westlake Girls High School (Westlake) had breached a Record of Settlement (ROS) entered into between himself and Westlake on 20 April 2016. To remedy the alleged breach Mr Yen seeks a compliance order. Westlake says it has complied with the ROS and no compliance order is necessary.

[2] During a case management call on 14 December 2016 the parties agreed for this matter to be dealt with on the papers before the Authority.

[3] Mr Yen and Westlake attended mediation on 20 April 2016 and entered into a final, binding and enforceable ROS which was signed by a Mediator employed by the Ministry of Business, Innovation and Employment that same day.

[4] Mr Yen has asked the Authority to stop Westlake from terminating his employment and to continue to employ him from Term 1 of 2017. He disputes Westlake's interpretation of the ROS and claims he is entitled to paid leave until 2916.

### **The relevant terms of the record of settlement**

[5] The relevant terms of the ROS are:

2. Paul Yen will be on paid leave until the end of term three (Sunday 9<sup>th</sup> of October 2016)
- ...
4. Paul Yen will resign with effect from that Sunday 9<sup>th</sup> of October.
- ...
6. The principal will provide a good written reference within the next few weeks. Mr Yen is able to seek a reference from other senior teachers and will not be blocked from doing so. An agreed public statement in the terms as appended will be made to staff and both parties will use this statement to communicate with any interested parties.
7. The school will hold an appropriate farewell for Mr Yen in the last week of tem (sic) three. Mr Yen will also be given the opportunity to say farewell to students.
8. Both parties undertake not to speak ill of each other either in writing or in any on line media or any publication.

### **Alleged breaches**

[6] Mr Yen claims Westlake has breached clauses 4, 6 and 7 of the ROS.

#### ***Clause 4***

[7] Mr Yen claims that the wording in clause 4 provides to him the free will and right to decide which year to hand in his resignation letter and resign.

[8] For the reasons that follow I disagree with Mr Yen's interpretation of clause 4. While the year has been left out of the clause the only logical interpretation is that it was intended by both Mr Yen and Westlake that the reference to "...that Sunday 9 October" can only be a reference to the same date as set out in earlier clause. To suggest otherwise would make the word "...that..." redundant.

[9] Further, in his statement of problem Mr Yen states that he and Westlake agreed that he would receive two terms paid leave. The ROS was agreed on 20 April 2016 which is before the commencement of Term 2 which started on 2 May 2016. Accordingly, I have concluded the paid leave of two terms was for Terms 2 and 3 of the 2016 school year. Term 4 started on 10 October 2016, making 9 October 2016 the logical end date.

[10] I find that the wording in the agreement must be interpreted as an agreement for Mr Yen to continue to be paid for two terms and that at the end of that period (being 9 October 2016) he would resign and his employment would end on that date.

#### ***Clause 6***

[11] Mr Yen claims that the principal, Ms Roz Mexted (Ms Mexted has since left Westlake), failed to provide an oral reference which was consistent with the written reference. In support of his claim Mr Yen says Ms Mexted confirmed to Mr Yen that when she spoke with a prospective employer she advised him that she could add nothing to the written reference.

[12] Mr Yen's claim overlooks the fact that there was no agreement in the ROS that the principal would provide an oral reference at all. The principal agreed, and has provided Mr Yen with a good written reference.

[13] I am not satisfied that when Ms Mexted advised a potential employer she could add nothing more to the reference she did not breach the terms of the ROS.

#### ***Clause 7***

[14] Mr Yen claims he was not provided with an appropriate farewell or an opportunity to say farewell to the students.

[15] Mr Yen attended the school on 21 September 2016 and attended a staff meeting where he was invited to address the staff which he did. Mr Yen was also provided with an opportunity to pop into his class to farewell his students. I am satisfied Westlake has not breached the terms of the ROS in respect of clause 7.

### ***Conclusion***

[16] I am satisfied Westlake has not breached the terms of the ROS and accordingly no compliance order is necessary.

### **Costs**

[17] Costs are reserved. The parties are invited to resolve the matter. If they are unable to do so Westlake shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. Mr Yen shall have a further 14 days in which to file and serve a memorandum in reply. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[18] The parties could expect the Authority to determine costs, if asked to do so, on its usual 'daily tariff' basis unless particular circumstances or factors require an adjustment upwards or downwards. That this matter was dealt with on the papers will be given consideration as to any award of costs.

Vicki Campbell  
Member of the Employment Relations Authority