

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2018] NZERA Auckland 230  
3009871

BETWEEN            AVONDALE COLLEGE  
                              BOARD OF TRUSTEES  
                              Applicant

A N D                CHRISTOPHER MADAY  
                              First Respondent

A N D                CATRIONA MADAY  
                              Second Respondent

Member of Authority:    James Crichton

Representatives:        Paul Pa'u, Advocate for Applicant  
                              Rebecca White, Counsel for Respondents

Investigation Meeting:    On the papers

Submissions received:    14 June 2018 from applicant  
                                      20 June 2018 from respondent

Date of Determination:    24 July 2018

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**DETERMINATION OF THE  
EMPLOYMENT RELATIONS AUTHORITY**

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**Employment Relationship Problem**

[1]     This matter is a claim by the applicant college against the respondents, a husband and wife, the husband being a former member of the College's Board of Trustees and the wife being a former member of the College's teaching staff. There are allegations of impropriety by the College against both Mr and Mrs Maday. These allegations arise out of but are separate from a claim in personal grievance

made by Mrs Maday against the College which was substantively determined by me in the Authority decision [2018] NZERA 131 Auckland.

[2] That determination I have just referred to is now subject to a de novo challenge in the Employment Court.

[3] The present matter has been rather overshadowed by the claim by Mrs Maday against the College but now that the substantive determination has issued after the Authority's lengthy investigation, the present matter is now firmly on foot.

[4] There are some procedural challenges with the current matter, one of which is the question whether a sitting Member of Parliament, and in fact a member of the Executive Council, can be summonsed to give evidence.

[5] To progress the matter, I convened a telephone conference on 27 June 2018 and in anticipation of that telephone conference the parties' representatives helpfully filed brief submissions.

[6] The thrust of those submissions in each case was that the matter could usefully be removed to the Employment Court without the Authority having investigated the matter, in order that the Court could deal with the matter by its formal trial process.

[7] While the College's representative has tried to interest me in the proposition that there are important questions of law that arise in this matter other than incidentally (s.178(2)(a) of the Employment Relations Act 2000), I have not been attracted by that argument. However, I am persuaded that this is a case which falls within the terms of s.178(2)(d) of the Act. That subsection gives the Authority power to remove to the Court matters where it considers "*...that in all the circumstances the court should determine the matter.*"

[8] In that regard, I have been referred to helpful dicta of Her Honour Chief Judge Inglis in the case of *Johnston v Fletcher Construction Limited* [2017] NZEmpC 270:

s.178(2)(d) leaves open the possibility there will be some cases, not clearly falling within (a) – (c), which might otherwise appropriately be removed to the Court where the Authority considers it appropriate to do so. Section 178(2)(d) is to be interpreted in light of its text and its purpose. The overarching point will be whether a particular case is

best suited for resolution by the Authority's investigative processes or by the more formal adversarial processes of the Court.

[9] This is, I fancy, just such a case where the more formal adversarial processes of the Court will better suit the nature of the case.

**Determination**

[10] Accordingly, I have decided that in the particular circumstances of this case, the matter should be removed to the Employment Court for trial and ultimate disposition without the matter being subject to an investigation in the Employment Relations Authority.

**Costs**

[11] Costs are reserved.

**James Crichton**  
**Member of the Employment Relations Authority**