

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2021] NZERA 427
3111892

BETWEEN STANLEY MARTIN GOOD
Applicant

AND THE BOARD OF TRUSTEES
OF THE PUKEKOHE HIGH
SCHOOL
Respondent

Member of Authority: Leon Robinson

Representatives: David Gray, advocate for the Applicant
Paul Pa'u, advocate for the Respondent

Investigation Meeting: 9, 10, 11 June 2021 at Auckland

Submissions received: 18 June 2021 from Applicant
2 July 2021 from Respondent

Determination: 01 October 2021

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mr Stanley Martin Good (Mr Good) had been employed at Pukekohe High School (the School) since 1985 and from 1987 he was the School's IT Manager. The School's Board of Trustees HR committee decided to summarily dismiss Mr Good on Tuesday 15 September 2020 for serious misconduct. The HR committee had concluded that because of concerns about Mr Good's honesty and integrity and damage and loss suffered by the Board and the School because of his actions, the relationship of trust and confidence had been irreparably damaged.

[2] Mr Good claims the summary dismissal was unjustifiable. He also claims he was unjustifiably disadvantaged in his employment. The Board denies Mr Good has personal grievances. It says that he is out of time to raise certain of his disadvantage

claims and that other aspects of his claims arise out of an allied independent contractor agreement and therefore are outside the jurisdiction of the Authority. The Board withdrew its counter-claim against Mr Good for breach of the duty of good faith but says that his blameworthy conduct is so significant as to disentitle him entirely from any remedies he might otherwise be granted.

[3] The parties were unable to resolve the employment relationship problem themselves by mediation. Mr Good asks the Authority to investigate and find that he has personal grievances that should be settled by the grant of formal orders in his favour including reinstatement, reimbursement, compensation and costs.

The Authority's investigation

[4] The Board confirmed its summary termination of Mr Good's employment by letter to his representative dated 16 September 2020 which materially stated:-

2. Summary termination was appropriate in all the circumstances because of the seriousness of the offending by Mr Good, his complete lack of remorse, and his steadfast refusal to accept he had done anything wrong, despite the overwhelming evidence against him.

3. Mr Good breached a clear written instruction issued to him on 10 December 2019 following the deeply concerning disclosures he made about his company Tech FX on 2 December 2019. He provided no evidence that the Board knew about this significant commercial arrangement even though Tech FX had been paid almost \$1million dollars of Crown funds in the period 2012-2019. He breached the instructions to undertake work reasonably required of an IT Manager. He acted against the interests of his employer, and when the Principal sought explanations for his actions, made highly unprofessional and untrue allegations against the Principal. He also misled the Committee regarding the substantial commercial contract he alleged his company had with the Board.

4. The relationship of trust and confidence that the Board should have with Mr Good, has been irreparably damaged by Mr Good's actions, the lack of insight by him into the inappropriateness of his actions and the absence of any remorse on his part. We have serious concerns about Mr Good's honesty and integrity and the damage and loss suffered by the Board and the school because of his actions.

[5] It is not the Authority's role to prove or disprove whether or not Mr Good had as a matter of fact committed serious misconduct. Rather, it is the Authority's role to review the Board's decisions and the manner in which it acted, to satisfy itself that there was a full and fair investigation carried out that disclosed conduct capable of being regarded as serious misconduct. The Authority assesses the Board's decisions and the manner in which it acted in accordance with the statutory test of justification prescribed by section 103A of the Employment Relations Act 2000 (the Act).

[6] The Authority establishes the facts of this employment relationship principally through an investigation meeting held at Auckland over three meeting days. The parties and their witnesses lodged written statements of evidence and were examined under oath or affirmation by the Authority and the representatives. Certain witnesses gave their evidence from a distance. The Authority also received documentary evidence and submissions from counsel on the evidence taken and relevant matters of law. The Authority thanks the representatives for their very careful and comprehensive submissions.

[7] As permitted by section 174E of the Act, this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

The issues to be decided

[8] The issues requiring investigation and determination include:

- (a) was the Board's decision of 15 September 2020 to summarily dismiss Mr Good, and how that decision was made and carried out, what a fair and reasonable employer could have done in all the circumstances at the time?
- (b) was Mr Good's employment, or 1 or more conditions of his employment with the Board, affected to his disadvantage by some unjustifiable action by the Board?
- (c) if the Board is found to have acted unjustifiably (by disadvantaging and/or dismissing Mr Good), what remedies should be provided to Mr Good:-
 - (i) reinstatement to his position as IT Manager?
 - (ii) reimbursement of lost wages (subject to evidence of reasonable endeavours to mitigate his loss) following his dismissal?
 - (ii) compensation under s123(1)(c)(i) of the Act?
- (d) if any remedies are provided, should they be reduced (under section 124 of the Act) for blameworthy conduct by Mr Good that contributed to the situation giving rise to his personal grievances?
- (e) should either party contribute to the costs of representation of the other party?

The factual background

Mr Good is engaged in two capacities – employee and contractor

[9] Mr Good was employed by the School in 1985 as a mathematics teacher. After two weeks he became the Teacher in Charge of Computing. He ended up by default as the school's computer network expert. The school soon needed someone to look after the network on a full-time basis. Mr Good's IT responsibilities had begun to impinge on his responsibilities as a teacher.

[10] In 1997, the then-Principal of the school, Mr Ian McKinnon (Principal McKinnon), asked Mr Good to become the school's full-time Computer Network Manager. Principal McKinnon and Mr Good agreed that there would be two separate and distinct parts to Mr Good's role in relation to the school's network. Firstly, he would continue to be paid as a teacher under the prevailing collective employment agreement and, in this capacity, would be responsible for all of the day-to-day requirements of network management. Secondly, he would be engaged as an independent contractor to do additional network development work that would otherwise have to be contracted out to external parties, and would be paid an annual fee of \$20,000 (invoiced quarterly) for this work.

[11] The arrangement functioned successfully for the next two years. The Authority accepts that it is likely that in 1999 the Finance Committee of the Board turned its attention to the arrangement for legal and accounting assurance. Accordingly, further negotiations took place between Mr McKinnon, the then Board Chairperson Mr Gollan and Mr Good apparently observed by Ms Margaret Grace-Dare (Ms Grace-Dare) and the then deputy Board chairperson Mr Noel Surrey. The outcome of the review was that that dual status arrangement was confirmed but additionally, that a limited-liability company would be incorporated to be the vehicle which contracted independently with the school. Tech FX Limited was incorporated as that vehicle. Later two other corporate entities Focus Media and App FX were similarly incorporated.

[12] While Tech FX Limited worked primarily on the School's computer network the second contract involved the management of the School's website. Mr Good states that on 21 June 2016 Principal McKinnon established a communications committee for the School which briefed Tech FX Limited to set up a new website for the School. From that time until recently Mr Good says Tech FX Limited focused on managing the School's website.

[13] Mr Good impressed the Authority as a meticulous record keeper. Although he and Principal McKinnon state the arrangements were recorded in a written contract

signed in 1999, there is no explanation for why the contract is not produced to the Authority. Mr Good calls on the evidence of Mr Mathias, Ms Grace-Dare, and the former business manager Ms Paulene Bond to corroborate the negotiations surrounding the dual status arrangement.

[14] The dual status arrangement continued to operate for many years. As testament to the value of the arrangement to the school, Mr Good tells the Authority that Pukekohe High School is used as a reference site by the Ministry of Education and by some equipment vendors. In subsequent years, the cost of the contract increased to \$25,000 per annum and then in about 2009 to \$30,000. Principal McKinnon had served as the School's principal since January 1996. He retired in June 2018. The new principal, Mr Richard Barnett (Principal Barnett) took over as the School's principal from July 2018.

[15] Mr Good's dual status is problematic for a number of reasons. Apparently the arrangement was not common knowledge and the documentary evidence of it almost non-existent. It was a significant departure from the terms of the Collective too. The Collective does not permit employees covered by it to also be engaged as contractors. It is the Board of Trustees which is the employer. The Board did not make the arrangements with Mr Good and says there is no evidence of Principal McKinnon having the delegated authority to make the dual status arrangements with Mr Good.

[16] It is extremely perplexing that the School and the Board can find no records or references corroborating the dual status arrangement. As curious as that may be, it is clear however, that the Tech FX Limited invoices when rendered were approved for payment every time and then paid every time over a very considerable period of time. The company invoices were initially approved by Mr Good in his capacity as HOD Computing and then approved for payment by the Associate Principal Mr Peter Mathias (Mr Mathias). It is clear too and the Authority accepts, Principal McKinnon's adamant evidence endorsing Mr Good's dual status as employee and contractor through the limited liability company Tech FX Limited. Principal McKinnon confirmed to the Authority unequivocally that he agreed 100% with Mr Good's description of the dual status arrangement. The Authority accepts too that the arrangements Principal McKinnon made with Mr Good were highly irregular.

[17] Certain documents cast doubt on the Principal McKinnon and Mr Good version of the dual status arrangement. There are different dates cited for commencement of arrangements and it is said to be verbal and in writing though no written contract has

ever been produced. In the end, the best evidence of the dual status arrangement is the fact that it was performed by both parties without issue over many many years.

[18] Principal Barnett says that neither Principal McKinnon, Mr Mathias or Mr Good himself mentioned the dual status arrangement during the transition period when he took over from Principal McKinnon. He says that it was not until a meeting with Mr Good on 2 December 2019 that he learned of it.

[19] I am inclined to accept Mr Good's recall of the occasions where he mentioned his dual status to Principal Barnett. Mr Good says that in the holidays mid-2018 he bumped into Principal Barnett on three or four occasions and when he was asked why he was at school continuously during the holiday Mr Good explained to Principal Barnett the dual status arrangement.

[20] Mr Good says that on 1 February 2019, immediately after a staff meeting, he met one-on-one with Principal Barnett to go over the 2019 network budget request. During this meeting, Mr Good explained to Principal Barnett the dual status nature of his relationship with the school. That must have been a reminder after the previous disclosure. Mr Good refers to his actual markings on a budget request he took Principal Barnett through. Mr Good recalls he particularly explained that line 44500 was the amount paid to his company, Tech FX Limited, for his contractual services to the school. Mr Good says Principal Barnett appeared to understand his explanation and certainly raised no objection to it. The budget request was subsequently approved by Principal Barnett and adopted by the Board.

[21] Mr Good recalls a discussion with Principal Barnett in February 2020 over unpaid invoices which had been issued by Tech FX Limited in the latter part of 2019. Mr Good says he reminded the Principal about the contractual relationship between the school and Tech FX Limited. Principal Barnett said he had instructed the accounts department not to pay the invoices.

[22] Mr Good attests to other occasions on which he explained his dual status to the Principal, but because he is less certain of the timing of those occasions he has chosen not to describe them to the Authority.

A complaint of fraud against Mr Good

[23] The School's new property manager wrote a complaint to the Board alleging that the IT Manager (Mr Good) had established a business that was contracted by the School to provide IT services. She stated it was a direct conflict of interest and the work the school was being charged for was being undertaken during the IT Manager's normal hours of work as an employee.

[24] The Board Trustee Rani Amaranathan wrote to Mr Good by letter dated 27 November 2019 putting an allegation to him that he "may have invoiced the school for IT services provided by your company, and that the invoice(s) was for work carried out during work hours or that school would have otherwise expected you to carry out in the normal course of your employment as IT manager". He was invited to attend a meeting to discuss the allegation on Monday 2 December 2019.

[25] Mr Good explained the dual status arrangement to the Human Resources Committee on 2 December 2019. He explained it was formed as a verbal contract with the Board of Trustees in 1997 following an increasing demand for IT services and connectivity which led to him becoming the School's IT manager retaining teacher's pay and conditions (including management units) and charging separately for IT 'consultancy' services by way of contractor. He explained that in 1999 he formed a company to provide the IT contractor services to the School after being requested to do so by the then Board (he did not say Principal McKinnon). He said the company was paid an annual fee for 'general' IT support with project work was billed separately. Mr Good also explained that a document from 1997 outlined the split but emphasised that there was no 'hard and fast' job description and the purpose was to provide flexibility. He told the committee he did not have or recollect a written contract being signed. He also explained that between 1999 and 2019 the annual fee for the consultancy/company services increased from \$20,000 to \$25,000 per annum and was currently \$30,000 per annum paid quarterly. He further told the committee the contract was 'rolled over' annually and he did not recollect being reviewed against other providers. He told the committee the contract (including increases to pricing) was managed through his manager Mr Mathias through the annual employee appraisal process. He explained too that extra projects required Principal McKinnon's approval and that he did undertake company work during normal work hours but said that would be unusual.

[26] At the end of this meeting Mr Good was asked if he had anything else to add. The notes record that he stated *“some years ago” they had drafted a discussion document that they shared with previous Principal to start formalising the relationship. The Respondent (Mr Good) stated that the Principal (sic) and said that they “did not want a hard and fast job description” preferring the flexibility provided by the current arrangements. The Respondent (Mr Good) did not know if they had records of this conversation still in their possession.”*

[27] Principal Barnett was not at all happy with what Mr Good had disclosed. He says Mr Good had never once mentioned the arrangement to him despite there being ample opportunity for him to do so. He also considered the arrangement significantly breached Ministry of Education (Ministry) and Office of the Auditor-General (OAG) guidelines on Procurement. Principal Barnett refers to the OAG 2008 publication Procurement Guidance for Public Entities and laments the arrangements with Mr Good are contrary to the Accountability, Openness, Value for money, Lawfulness, Fairness and Integrity principles. Principal Barnett is equally concerned the arrangement breaches the Teachers’ Code of Ethics and is not in the best interest of the Board or a justified use of Crown/public funds. He also considered the arrangement to constitute a breach of Ministry and OAG guidelines on conflict of interest and contrary to Sensitive Expenditure guidelines.

[28] Of considerable concern too, was the absence of any paperwork regarding the arrangement. Principal Barnett tells the Authority that he and his PA and Business Manager have carried out a thorough record search including reviewing all Board Minutes from the early 1990s through to 2019, all Board Committee Minutes including Finance Committee Minutes from early 1990s to 2019, all Computer Committee Minutes from early 1990s to 2019, all written reports received from the Board including Principal’s reports from Mr McKinnon, reports from Mr Mathias and reports from Mr Good, all correspondence to and from the Board up to 2019 from Mr Good and relating to IT work.

[29] Principal Barnett confirms the School has not located any agreement between the Board and Mr Good or the Board and the corporate entities controlled by Mr Good. He can find no record of any discussions by the Board and previous Boards of the arrangements. Consequently he has a view that if there was nothing untoward or

inappropriate about the arrangement why was it not recorded anywhere in the school paperwork. He asks why the arrangement is not transparent.

[30] Produced to the Authority is a memorandum from Mr Good to Principal McKinnon dated 10 September 1997. Mr Good asks to be appointed as LAN – IT Manager and to use a local technician or service people from the Hardware Supply Company employed on a casual basis.

[31] Also produced is a letter from Mr Good dated 25 February 2000 to the Network Manager Appointment Committee. The members of the committee were apparently Principal McKinnon, Neil Gollan and Noel Surrey. It appears that Mr Good proposes he be appointed as contactor through his company at \$25,000 or \$20,000 per annum. There is no further documentation confirming the proposal was approved by the Board or any of its committees.

[32] There is also an email from Mr Good to Principal McKinnon dated 13 September 2000 where he writes “Have Neil and Noel given their approval for the contract? I need the money!”.

[33] Principal Barnett produces to the Authority the very considerable sums of money paid to Tech FX Limited between 2008 and 2019 which he considers excessive for a school of Pukekohe High School’s size. He asks why none of the invoices refer to Mr Good or the arrangements. He states too that nothing in the paperwork that would have put trustees or auditors on notice that the invoices were from a company that Mr Good controlled.

[34] Principal Barnett formed a view that the invoices for services appeared unjustified because the School was paying for services that Mr Good was already being remunerated for as the School’s Network Manager. He also had a view some of the invoices were excessive and the mark up improper. Principal Barnett had a view that Mr Good’s connection with Tech FX Limited was not overtly disclosed because the arrangement was improper. The arrangement appeared unjustified to him because he considered the School was paying for services that Mr Good was already being remunerated for as the School’s Network Manager. He also considered the amount spent on IT products and services was too much for a school of less than 2,000 students.

[35] The Trustees decided that they would contact the OAG for guidance on the way forward. They agreed that Mr Good would be issued with an instruction to cease any

further work with any entities in which he or his family had an interest. As well, Mr Good was required to disclose in writing any conflict of interest regarding any invoices or contracts received by the school. The letter recording these instructions dated 10 December 2019 was provided to Mr Good personally by Principal Barnett. Mr Good did not return the written acknowledgement of the letter. Nor did he object to the instructions.

[36] The Board wrote to Mr Good by letter dated 11 December 2019 advising it had resolved to initiate two independent investigations to be undertaken by external reviewers in relation to financial processes and staff relations and welfare. The review was advised not to be disciplinary process but rather an investigation to determine facts as well as review wider practices. Mr Good was advised he would be interviewed and the Board could not discount the possibility of a subsequent disciplinary process. The letter concluded by advising Mr Good that the Board would contact him again as to notification of the reviewer/investigator, terms of reference and timeframe for the process.

[37] On 2 June 2020 Deputy Principal Cornu emailed Mr Good to action a request from a web designer. When there was no response she emailed Mr Good again on 4 June 2020. That afternoon she encountered Mr Good in the pigeonhole area. When she relayed her request to him Mr Good told her of outstanding invoices. Deputy Principal Cornu understood Mr Good expected to have the invoices paid before enabling work on the new website. Deputy Principal Cornu enquired of the invoices and Mr Good told her Principal Barnett had them. Deputy Principal Cornu then emailed Principal Barnett about the invoices and asked whether he could authorise payment of them. Principal Barnett replied that any invoices needed to be shown to him before being authorised for payment.

[38] It is at this point of events that Mr Good gives rather remarkable evidence. In his representative's letter of 15 June 2020 Mr Good recounted that on 5 June 2020 Principal Barnett came to his office, pen in hand, and said, "I'm here and I can sign the accounts". Mr Good tells the Authority he understood the Principal to be offering to approve for payment "all of the outstanding invoices from the company pertaining to work done by the company – but not invoiced, in compliance with the Principal's instruction – since the Principal's letter of 10 December 2019".

[39] Principal Barnett responded to later questions from the Board that he had not gone to see Mr Good to sign outstanding invoices. He said he had asked Mr Good for the outstanding invoices and that they were presented to him a short time later. He wrote that Mr Good would have seen he was shocked to see them. Mr Good says that because he did not have the invoices on him at the time, he left them on the Principal's desk the following Monday.

[40] Principal Barnett wrote another letter to Mr Good dated 15 June 2020. He posed additional questions for Mr Good to answer about his connection to Tech FX Limited and Focus Media. He also recorded that the recent invoices Mr Good had left for him were for considerable amounts. He asked too, why had Mr Good kept engaging the entities when he had been told to stop.

[41] The meeting scheduled for 18 June 2020 was rescheduled to Wednesday 24 June 2020 to allow Mr Good to take professional advice. It was further rescheduled to 6 July 2020. At that meeting Mr Good attended with his representative Mr David Gray (Mr Gray"). At the commencement of the meeting Mr Gray presented the Principal with a 15-page letter. The letter outlined Mr Good's response to the allegations against him. It also notified the School that Mr Good was pursuing a Disputes Tribunal claim against the school in respect of outstanding invoices. It also informed the School that Mr Good was applying to the Employment Court to obtain a declaration that in respect of the contractor work he was in law actually an employee. The letter also made inflammatory and derogatory comments about Principal Barnett. It accused of him of 'brazen duplicity', 'calculated malice', 'wrongdoing', 'appalling lack of good faith', 'malfeasance', and being responsible for a tsunami of disadvantageous actions that were 'reprehensible and unlawful' leading Mr Good to fear for his job and his health and financial security leaving him confused, humiliated and frightened.

[42] Mr Gray wrote a further letter dated 6 July 2020. The purpose of the letter was to reiterate why Mr Good had taken the stance he had at the meeting, to again ask the School to answer Mr Good's clarifying questions, and to urge Principal Barnett to reconsider his decision to suspend Mr Good. The letter further notified a strong objection to the decision to suspend.

[43] By letter dated 9 July 2020 Principal Barnett wrote to Mr Good confirming the verbal advice that the matter would be referred to the Board. It also informed Mr Good of the reasons for his decision to suspend.

[44] By letter dated 20 August 2020 the Board wrote to Mr Good advising of matters it was interested in. It wanted to know whether he received the 10 December 2019 instruction from the Principal, whether the instruction was unclear, whether he agreed that he had not challenged the instruction, that it appeared he had acted contrary to the instruction, whether he was refusing to update the website, what was his connection to the companies, whether he performed any of the contracting work during his employment, and whether there was a likelihood that the School might have been charged twice for services. Finally he was advised the Board was interested to know why he had continued to engage the companies when he had been directed to cease.

[45] Mr Gray provided written advice to the Board by letter dated 26 August 2020.

[46] The HR Committee met with Mr Gray and Mr Good on 4 September 2020. Mr Gray tabled a document with submissions and attachments. The meeting lasted over 2 hours. Mr Good was unable to support the personal allegations he was making about the Principal. He was unable to verify his position to the Board with any documentary corroboration. He could not produce written contracts between the School and Tech FX Limited or Focus Media. The matter was the subject of correspondence between the parties on 8 and 9 September 2020. There had been inconsistent responses on the existence of written contracts throughout the investigation.

[47] Mr Good provided a statement to the committee outlining the same matters he had previously presented to the Principal. The Committee desired certainty in relation to the Principal's involvement in matters and the Principal provided responses to the committee by letter dated 6 September 2020. He vehemently denied approaching Mr Good on 5 July 2020 stating that he was there to sign invoices. In answer to the question about why he had suspended Mr Good, Principal Barnett disclosed that he had regarded Mr Good to be disobeying a lawful and reasonable instruction over the website.

[48] The HR Committee also sought additional clarity from Deputy Principal Cornu.

[49] The HR Committee issued its preliminary findings on 10 September 2020. Mr Good was asked to provide his written responses by 11 September 2020 which he did.

[50] The HR Committee made its conclusion clear that it had learned of the dual status arrangement for the first time on 2 December 2019.

An unjustifiable dismissal?

[51] Mr Good was summarily dismissed because the Board concluded that because of concerns about his honesty and integrity and damage and loss suffered by the Board and the School because of his actions, the relationship of trust and confidence had been irreparably damaged.

[52] The declaration of loss of trust and confidence must be objectively sustainable.

[53] The impugning of a person's honesty and integrity is a very serious on the dignity of the person. There must be compelling evidence entitling an employer to reach such a devastating conclusion.

[54] The Board did not interview McKinnon. It interviewed former Board chairs no longer connected with it. Those persons were not able to confirm Mr Good's explanation. But the Board decided it would not speak with Mr McKinnon. An inference of a confirmation bias arises.

[55] Principal McKinnon and Mr Good had negotiated in good faith and concluded a dual status arrangement in which Mr Good was both an employee of the Board and contractor to it initially personally but latterly through limited liability companies he controlled. Whether or not as a matter of fact Principal McKinnon had been delegated his Board's authority to conclude such contracts with Mr Good - was not Mr Good's lookout. I find he was entitled to rely on Principal McKinnon holding himself out as having that authority. It was for Principal McKinnon to take care of necessary administrative matters with his Board. It was not for Mr Good to remind the Board every time of what its Principal had bound it to.

[56] Principal Barnett gives evidence he doubts whether Principal McKinnon made any disclosure to the auditors of Mr Good's dual status. He also invites the Authority to note Principal McKinnon's position on the dual status in an email of 8 July 2020 is different from the evidence the Principal gives at investigation meeting.

[57] I find that from 1997 until he was dismissed, Mr Good had a dual relationship with the School both as an employee and (primarily through Tech FX Limited) as a contractor. That dual status arrangement was problematic for it did not comply with relevant policies, procedures, guidelines, regulations and the Collective. However, the Authority finds it was a genuine arrangement that had been lawfully negotiated in good

faith, and was in fact conducted and performed by the parties without incident for a very considerable of time over 20 years.

[58] The Authority further finds that the Board and Principal Barnett did not believe it to be legitimate. Principal McKinnon in noting that successive boards had no knowledge of the dual status arrangements continues to doubt it. He also suggests Principal McKinnon has different positions on the point. He states his position unequivocally:-

The Board did not know that Tech FX and App FX were Martin Good's entities. The Board approved payments to these entities without any disclosure from those with oversight of this expenditure. They withheld critical information from their employer. They have acted against the interests of their employer and the Crown, and the Board seeks judgement against all three of them jointly and severally for the significant losses suffered by the school as a result of their scheme.

[59] A conflict of interest must be disclosed so that it can then be managed. Conflicts of Interest registers permit the required transparency in such situations. Some conflicts of interest are managed by having persons report to a different manager. Others are acknowledged but none-the-less they are accepted because it may be the only arrangement available. For example, in non-urban environments, the contractor may be the only option available. In the present case, the dual status arrangement was clearly known by Principal McKinnon and was expressly adopted. It is likely that the dual status arrangement being in place for so long, was simply taken granted and approved every time without question for payment whilst the finer details forgotten over time.

[60] Principal Barnett suspected that Mr Good was charging for work that was already within the scope of his employment to perform. I am not persuaded that was a fair conclusion because I fail to appreciate any foundation for it. While it is very crudely put that Mr Good and his corporate entities had received over one million dollars of crown funds, it may be that a considerable proportion of that funding was capital expenditure held as assets by the School and amortised over time. It is probable that the expenditure had been approved by finance committees in budgets and on each occasion when invoices presented for payment, those invoices were approved each time as appropriate for payment. I conclude the Board was more inclined to conclude that Mr Good was dishonest and fraudulent because they did not believe in the veracity of the dual status arrangement and consequently attributed to Mr Good the most insidious and nefarious of motives and intent.

[61] Mr Good through his representative was moved to launch quite a malicious attack on Principal's Barnett's integrity.

[62] The Board made a finding that Mr Good had disobeyed the instruction in the letter of 10 December 2019 that company entities he was connected with were not to provide goods or services to the School. I find that the Board was entitled to accept that the company invoices Mr Good produced to Principal Barnett on 8 June 2020 evidenced the breach of that instruction. The Board was entitled to reject Mr Good's assertion that the School had continued to engage Tech FX Limited after 10 December 2019. The Principal had not sent texts instructed Tech FX Limited to perform any work. Mr Good had no authority to contract Tech FX Limited after 10 December 2019.

[63] The Board found that Mr Good was not going to update the School website until his company invoices were paid. The Board was entitled to find that Mr Good had refused to carry out a legitimate work instruction without any good reason.

[64] The Board found that 8 of the invoices Mr Good produced to Principal Barnett on 8 June 2020 were in respect of services performed after the 10 December 2019 instruction. Such services had been prohibited and accordingly the Board was entitled to find that those invoices were not outstanding. The submission of these invoices for payment on 8 June 2020 was improper.

[65] The Board was entitled to reject Mr Good's assertion that on 5 June 2020 he understood Principal Barnett to have authorised both the performance of the work and the payment of such invoices. Mr Good had no legitimate or reasonable foundation for having that understanding. The Board was entitled to reject that assertion because it accepted that it was inherently unlikely for the Principal to have acted wholly contrary to the direction he had given Mr Good in writing by the instruction of 10 December 2019.

[66] The Board made a finding that Mr Good had acted contrary to the interests of his employer and put his own personal and financial interests ahead of those of his employer. Mr Good acted wholly contrary to the duty of fidelity that he owed his employer when he took the liberty of producing to Principal invoices in respect of work that he was directed not to perform and which had not been authorised for payment.

[67] Having reached the conclusions that it did in relation to the invoices presented to Principal Barnett on 8 June 2020 and in the absence of any foundation for them, the

Board was entitled to regard Mr Good's malicious personal statements and comments about Principal Barnett as being unfounded, improper and unacceptable.

[68] The Board made a finding that the response contained in a letter dated 20 September 2020 that the School's failure to demand valid documentation was not Mr Good's concern, was troubling. It found deeply concerning too, that Mr Good was unable to clearly answer whether the Board knew about Tech FX Limited and his connection with Tech FX Limited. The Board had an expectation that a senior employer such as Mr Good who had been in receipt of considerable sums of money by way of payment from it, would know if the Board in fact knew about the arrangements and would inform or make it known to the Board if did not know. The Board expected someone such as Mr Good to be concerned to make the Board aware and be able to provide evidence that it was so aware.

[69] Finally the Board concluded that Mr Good had misled it about the dual status arrangement and its terms in order to justify the over \$1million he had received by way of payment under it. It also believed that Mr Good had misled it over the allegations he had made about Principal Barnett.

Unjustifiable dismissal?

[70] Mr Good points out that the Principal came to see him on 5 June 2020 and said he was there to sign invoices. It is then noted that Principal Barnett then six days later initiates disciplinary against Mr Good. Mr Good through his representative says the Principal's conduct in doing so was brazen duplicity, and calculated malice. There is an inference too that the Principal enticed Mr Good and trapped him by giving him the impression he was asking for all the invoices for work performed after 10 December 2019 and would approve them. That is in the Authority's view a fanciful suggestion and very unlikely given the Principal's instruction in writing. The Principal was not impressed with the level of payments being made to Mr Good's companies. He would have loathed approving payment of the invoices presented to him. But Mr Good believes it. He believes Principal Barnett conducted himself in this most underhanded way. It is of course convenient for him to believe it. It suits him to have the invoices paid of course. It suits him too, to have the events of early June discredited. Were it not for the engagement he had with Deputy Principal Cornu and the Principal on 4 and 5 June 2020 the termination of his employment might not have occurred.

[71] The fortuitous momentary encounter with Deputy Principal Cornu on 4 June 2020 led to very significant devastating consequences. It is the Authority's view that it was the central event in this entire matter. It was the catalyst for serious outcomes and it was also the most telling. In the Authority's view it very amply demonstrated a most regrettable and sorry shift of allegiance. What was Mr Good seeking to do when he let Deputy Principal Carolyn Cornu know there were invoices that required payment as his immediate response to her request of him that he attend to enabling the transition of the School's worksite maintenance to an alternative provider?.

[72] It is the Authority's view that Mr Good had lost his way. He had given 35 years of service to the School. Every work day over those 35 years, he had turned up to work at the School to make his contribution to the success of it. He was loyal, he was dedicated. But in that one fleeting exchange, he positioned himself not as his employer's faithful advocate. What he did instead, was to make known to the School he was advocating the position for another entity. He was pursuing the interests of that other entity and the School's interests were secondary. Mr Good was the controller of that other entity. He also obtained personal benefits and had personal interests in that other entity. It was those interests that he was serving when he in effected presented Deputy Principal Cornu with the vulgar ultimatum he did at the pigeonhole. This momentary interaction had the effect of ending a long standing relationship.

[73] It is the Authority's view that it was entirely Mr Good's very serious lapse of judgment and self-interest that led to the end of his long relationship with the School. He ought not have behaved the way that he did in the circumstances for in doing so he acted contrary to the duty of fidelity that he owed his employer. He was obliged to serve his employer faithfully and at all times act only to pursue his employer's interest and never his own personal ones in priority over those of his employer. His behaviour evidenced a shift in allegiance that was incompatible with the faithful service to his employer.

[74] The Authority finds that the Board's findings were open to the Board as a fair and reasonable employer. The Board was justified in concluding Mr Good had breached a lawful and reasonable instruction communicated to him in a letter dated 10 December 2019 that he was not to allow companies associated with him or his family to provide goods and services to the School. The Board was justified in finding that Mr

Good was refusing to perform part of his role until his own company invoices were paid.

[75] The ultimate cumulative effect of the Board's findings led it to the conclusion that it could no longer repose the necessary trust and confidence in Mr Good to continue to serve it faithfully. The Board was entitled to reach the conclusions that it did. They were the conclusions that a fair and reasonable employer could reach in all the circumstances at the time. **Mr Good does not have a personal grievance for unjustifiable dismissal. The Authority will not make any formal orders.**

Unjustifiable disadvantage

[76] Mr Good pursues an unjustifiable disadvantage grievance arising out of his claim that the employer suspended him without first providing him an opportunity to have input into that decision before it was taken. The Authority is unable to accept this. Mr Good was informed in writing that the Principal wished to hear from him on this very point. Mr Good's advocate wrote a 15 page letter. The meeting itself was the opportunity for Mr Good to be heard to say why he should not be suspended. Mr Good and his advocate did not take up the opportunity to be heard on the matter. But the opportunity was provided to them to do so. They did not. The letter too was another opportunity. They did not take that opportunity to be heard on the point either. But the opportunity was provided by the employer. **Mr Good does not have a personal grievance for unjustifiable disadvantage. There will be no formal orders.**

The result

[77] I find that Mr Good does not have personal grievances for unjustifiable disadvantage or unjustifiable dismissal.

[78] It is not appropriate to make any formal orders for remedies in Mr Good's favour.

Costs

[79] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves. If they are not able to do so and an Authority determination on costs is needed the Respondent may lodge, and then should serve, a memorandum on costs within 14 days of the date of issue of the written determination in this matter. From the date of service of that memorandum the Applicant would then have 14 days

to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

Leon Robinson
Member of the Employment Relations Authority