

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 271
3237559

BETWEEN	BEN TIMOTHY Applicant
AND	NORTH NEW ZEALAND CONFERENCE OF THE SEVENTH-DAY ADVENTIST CHURCH Respondent

Member of Authority:	Marija Urlich
Representatives:	Simon Greening, counsel for the Applicant DeAnne Brabant and Tony Sung, counsel for the Respondent
Investigation Meeting:	30 – 31 July and 22 November 2024
Submissions and information received:	13 December 2024 and 14 February 2025 from the Applicant 13 December 2024 and 24 January 2025 from the Respondent
Determination:	15 May 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ben Timothy says he was unjustifiably disadvantaged in his employment by the actions of his then employer the North New Zealand Conference of the Seventh-Day Adventist Church (NNZC) in issuing him with a final written warning. He says the actions of NNZC breached the duty of good faith and the duty to follow a fair and

reasonable performance management process.¹ He seeks remedies to compensate injury to feelings and a contribution to costs.

[2] NNZC says Pr Timothy's unjustified disadvantage personal grievance was fully resolved and as a consequence he cannot bring this matter before the Authority. In the alternative, NNZC denies Pr Timothy was unjustifiably disadvantaged and that its actions were not in compliance with the obligation of good faith. It says it engaged in a fair process with Pr Timothy, that its actions were necessary and reasonable given the factual findings made through the investigation process supported the conclusions reached and the written warning was fair and proportionate.

The Authority's investigation

[3] The Authority received evidence from Pr Timothy and for NNZC from Pr Eddie Tupa'i, Rosalie McFarlane, Pr Arnold Larsen, Graeme Drinkall and Pr Adrian Webster.

[4] As permitted by s 174E of the Employment Relations Act 2000 (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. In determining this matter, the Authority has carefully considered all the material before it, including all information received from the parties and the submissions of their representatives.

Non-publication

[5] NNZC seeks extensive suppression and non-publication orders to protect third party and commercial interests including the names and identifying details of persons who did not give evidence in this matter but who had some involvement in events which gave rise to Pr Timothy's personal grievance. Pr Timothy opposes the orders sought.

[6] Given the outcome of this employment relationship problem, it is not necessary for the Authority to record in this determination the background

¹ Statement of problem 27 June 2023.

information which engages NNZC's concerns. The non-publication orders are not required and are declined.

[7] That said, there is information before the Authority which is confidential in nature and such confidentiality is not disturbed because it has been filed in or referred to in evidence in this matter.

Issues

[8] The issues requiring investigation and determination are whether:

- (i) Matters are fully and finally settled between the parties?
- (ii) If not, was Pr Timothy unjustifiably disadvantaged in his employment by way of disciplinary process conducted and subsequent written warning issued in April 2020?
- (iii) If so, is Pr Timothy entitled to a consideration of remedies sought including:
 - i. Compensation under s 123(1)(c)(i) of the Act.
- (iv) Should any remedy awarded be reduced (under section 124 of the Act) for blameworthy conduct by Pr Timothy which contributed to the circumstances which gave rise to her grievance?
- (v) Is either party entitled to an award of costs?

Are matters fully and finally settled between the parties?

[9] In July 2020 Pr Timothy raised with NNZC a personal grievance for unjustified disadvantage arising from a final written warning he had been issued in April of that year. The parties' initial attempts at resolution of this employment relationship problem were unsuccessful. Following the election and appointment of Pr Larsen to the president role, the role Pr Timothy had held, Pr Timothy brought to Pr Larsen's attention his grievance. Over a period of some months they, along with other members of the executive committee, sought to resolve matters within the employment relationship. The following narration shows those discussions are deeply

informed by the context of the parties' employment relationship in particular that they are all senior and active members of the NNZC and the future of Pr Timothy's employment given the term of his role had ended but his employment remained afoot.

[10] I find the parties started on a process, in good faith to attempt to reconcile Pr Timothy's deep sense of grievance with the fact of and issuing of the written warning and the circumstances which had given rise to the executive committee taking that disciplinary step. It is clear to me Pr Timothy sought by way of this reconciliation process some form of acknowledgement of the harm caused to him by, in his view, the unfair and unjustified actions of the executive committee and as this process came to an end he recognised his employment with NNZC would too, come to an end. It is also clear to me that the executive members who took part in this negotiation sincerely tried to reach an agreement which balanced both Pr Timothy's wish for recognition and resolution of his grievance and NNZC's wish to resolve all matters between the parties including his ongoing employment.

[11] This is not a situation where the parties entered a settlement agreement which was signed and certified by a mediator.² NNZC says by way of the doctrine of accord and satisfaction the parties entered a binding settlement and Pr Timothy is estopped from bringing before the Authority an action relating to his unjustified disadvantage personal grievance.

[12] The employer bears the onus to establish accord and satisfaction.³ In *Graham v Crestline Pty Ltd* the Employment Court stated for accord and satisfaction to be achieved:⁴

There must first be a genuine dispute between the parties. Secondly, whether accord and satisfaction has been made is a question of fact requiring a finding of a meeting of the parties' minds or that one of them must act in such a way as to induce the other to think that money (or other consideration) is taken in satisfaction of the claim.

[13] Turning now to the narration. On 13 July 2020 then counsel for Pr Timothy wrote to NNZC formally raising a personal grievance for unjustified disadvantage and breach of good faith in respect of a first and final warning issued to him on 15 April

² Employment Relations Act 2000, s 149.

³ *McHale v Open Polytechnic* [1993] 1 ERNZ 186.

⁴ *Graham v Crestline Pty Ltd* [2006] NZEmpC.

2020. The letter set out in detail the grounds for the personal grievance which were broadly that the warning had been issued without due process or substantive justification. The letter detailed the remedies sought including the removal of the warning and that if the matter could not be resolved as sought Pr Timothy would bring a claim to the Authority. A response was requested within seven days.

[14] By letter dated 24 July NNZC replied by counsel that it was not accepted Pr Timothy had a valid personal grievance for unjustified disadvantage, denied any obligations owed to him had been breached and considered no remedy was available.

[15] On 6 August counsel for Pr Timothy responded in detail including he had a clear basis for an unjustified disadvantage claim and proposed the parties attend mediation. The parties attended mediation in September but were unable to resolve the employment relationship problem.

[16] On 17 October Pr Larsen was elected and appointed to the role of president of the NNZC. Pr Larsen had not been involved in any of the decision-making in relation to Pr Timothy including the decision to issue him with a final written warning or the circumstances which gave rise to that decision.

[17] Following his election and immediate appointment, on 19 October Pr Larsen spoke to Pr Timothy about his next role and what he wished to do. He said Pr Timothy indicated he needed a break from pastoral work. There is no question Pr Timothy cooperated fully with Pr Larsen's move to the role of president including sharing files and information necessary to support that transition.

[18] On 20 October Pr Timothy wrote to Pr Webster and another pastor raising his concerns with them about the actions of the executive committee of the NNZC towards him in April and May of that year. In the email he stated the reason he was raising this with them was because of their possible ongoing association in the NNZC and he "...want[ed] [them] to understand the reasons if and when a spotlight goes onto the former Executive Committee with its particular actions and decisions".

[19] Pr Webster responded on 28 October by email including that he wished to reply in more detail but was reluctant to do so because Pr Timothy's email had

indicated “...some kind of process...yet to unfold, which I can only assume will be some variety of legal process”. He ended the email expressing a hope of future reconciliation. Pr Webster’s apprehension was reasonable – Pr Timothy had raised a personal grievance and though the parties had attended a dispute resolution process outside those available within NNZC, the matter remained unresolved.

[20] As part of the transition process on 23 December Pr Larsen met again with Pr Timothy. In addition to sharing information regarding the president role, Pr Timothy told Pr Larsen about his personal grievance and its background. This was the first Pr Larsen had heard of Pr Timothy’s personal grievance.

[21] On 22 January 2021 Pr Timothy wrote to Pr Larson subject “Grievance” including:

As previously mentioned I have been arranging progress of my grievance against NNZC with my lawyer.

...

On reflection I wish to bring it back to the [NNZC] in the hope of a resolution that will avoid the employment court.

Because the new Conference officers have had minor involvement in what has led to the situation I am in, I am hopeful you and I could look more objectively at the matter and see a way forward. It calls for courage and a perspective that others could not/would not see but I believe it is possible with God’s guidance.

Hopefully you are willing to do this. I would like to meet with the officers and bring at least one fellow pastor to participate.

Thank you for considering my request.

[22] On 26 January Pr Larsen replied copying in Ms McFarlane and another office holder of the Executive Committee. Pr Larsen apologised for the late reply, confirmed the officer holders were happy to meet with him and listen to his concerns and expressed a belief that the parties could together work out a way forward. Pr Timothy was asked to suggest a time to meet and advised he was welcome to bring a pastor with him. The email ended acknowledging with appreciation the work he had done for NNZC in the past.

[23] The time to meet and who would be present was agreed and went ahead on 2 February.

[24] On 3 February Pr Timothy wrote to Pr Larsen, Ms McFarlane, an office holder of the executive committee who was present at the meeting and his support person. In the email he thanked them for the meeting regarding his grievance and expressed his confidence in their leadership of the executive committee. The email went on to describe some of the difficulties he had faced during his time in the president's role including conflict with leadership with the hope this provided sufficient context for them to understand why the actions he had been subject to including the disciplinary action was in his view unjustified. The email acknowledged the warning could not be changed "...but now for me to work through and perhaps make a new start". Pr Timothy provided his new phone number for them to contact him on and expressed his support of and respect for the addressees.

[25] Pr Larsen replied that day thanking Pr Timothy for the meeting, for sharing his experience and for the further information provided in the email. The email ended "We want to continue our dialog with you and help you as best we can".

[26] The next communication between the parties was 12 April when Pr Larsen wrote to Pr Timothy asking to meet later that week. The purpose of the meeting was described as "We want to continue our discussion with you on how to solve the grievance you have with the [NNZC]".

[27] The parties met on 15 April as proposed. Pr Timothy attended with his support person, another pastor. Pr Larsen and Ms McFarlane raised at the meeting developing a settlement agreement with Pr Timothy.

[28] On 16 April Pr Timothy emailed Pr Larsen thanking him for the meeting and asking what his view of the matter was and what knowledge Pr Tupa'i had of his February email, described as "my grievance documents", and what input Pr Tupa'i may have in "the decisions and desired outcomes you mentioned yesterday". By reply email Pr Larsen suggested they meet the following week, he confirmed Pr Tupa'i had not read the February grievance documents and ended "As we said yesterday, we don't want this to go on endlessly. I'm open to what would work best for you".

[29] On 18 May Ms McFarlane wrote to Pr Timothy subject line “Grievance Matter”:

Please find enclosed a copy of the organisational agreement we are offering as part of dealing with your grievance with [NNZC]. A hardcopy was shared with you at our last meeting.

As noted in that meeting what we need to know is how we could support you in healing from the hurt that has occurred and begin to move forward.

I also want to inform you that we have already applied the months stress leave as outlined in the document. While you have not agreed to our proposed response as a way forward, at this point we believe the leave should have been applied early in the process and so are doing this regardless of the outcome.

Your leave including the stress leave, sick leave and long service leave will end in mid June. We would like therefore to meet shortly to discuss your needs and future.

[30] Pr Timothy replied on 21 May with the same subject heading attaching his response dated 20 May which sets out, I find, terms of a counteroffer. He asked that the grievance response letter include and emphasise an identified principle in the NNZC employment policy which includes an acknowledgment of and commitment to the principles of natural justice in decision making which involves an employee and in so doing uphold “the Church’s mission and values, and by their Christian conduct preserve the character and unity of the Church”.⁵ He also asked that the two documents he had emailed to Pr Larsen on 8 February and his 6 April letter to the NNZC be attached to his record of service.

[31] In his letter Pr Timothy recorded the offer for contribution to legal costs had not changed and no offer in acknowledgement of the harm to his welfare and reputation had been made.

[32] On 10 June Ms McFarlane replied, subject “Grievance Matter”, enclosing what the email described as a “final response which has been amended” and confirming the attached grievance response letter had been amended to include matters about values alignment and employment which Pr Timothy had sought. The email continues:

⁵ Principle 2 of employment policy 15.16.

I want to confirm the following as we move toward the end of your paid leave.

1. In your response you acknowledge our offer of stress leave. We have already applied the months stress leave. This takes you till 10th July 2021 as a paid employee.
2. In your response you acknowledge our offer of [a sum] towards legal expenses. Unless directed otherwise by yourself, we will pay this amount to you in full on 10th July 2021.
3. You have approached... and requested a change of ownership for your Conference vehicle to be registered in your name. We are happy to support this. The car will be transferred at the notebook value plus GST on the market value upon receipt of the agreed selling price.
4. You have requested the purchase of the laptop belonging to the Conference which you have been using. We are happy to do this. Given it is full[y] depreciated we will transfer ownership - on the payment of \$100.

Further to the above we want to clarify the following in regards to your employment with [NNZC]

1. We have indicated each time you have met with us that we are not in a position to offer you ongoing employment. This has not changed.
2. We continue to be willing to support you in finding employment within the church should you wish to do so...
3. We want to offer you the opportunity of providing a letter of reference for employment purposes.
4. While your response can be read as acceptance of our response and therefore the end of your grievance it does not overtly state this. We do seek clarity from you in regard to this.

I am happy to discuss with you further the matter of employment moving forward.

If you are happy with the matters as they are set out here, you[r] response in writing would be appreciated. As always should there be any concerns or lack of clarity I am happy to discuss these matters with you.

[33] On 14 June Pr Timothy replied to Ms McFarlane's email. The email follows in order the points made in her email. It does not contain, as she had requested a direct acceptance that his grievance was settled nor does it communicate that he did not agree to settle or disputed the matter was resolved. In the email he accepts his employment would end on 10 July, that he had come to understand that while he had a grievance, he would not be offered another position, expresses that his attempts to have his grievance heard by the new NNZC administration had not been successful and that he was not confident he would receive a fair hearing if he escalated the matter further. The offer of a reference was accepted. The penultimate sentence of the email ends:

It is an ignominious end to my dedicated service in the Church and certainly not how I expected it to play out.

[34] On 17 June NNZC made a payment to Pr Timothy's bank account which included the sum for legal costs which was described by the NNZC on the bank statement as "reimbursement". Pr Timothy did not acknowledge or otherwise communicate with NNZC about the payment which he accepted he had received.

[35] Ms McFarlane said the payment was made in good faith. The car and laptop were transferred to Pr Timothy on the terms described in Ms McFarlane's 10 June email. Pr Timothy's employment ended on 10 July, and he received all payments due under his employment agreement.

[36] On 23 June Pr Larsen replied to Pr Timothy's 14 June email. The subject line remains "Grievance Matter". While it does not explicitly reference that the parties have settled the grievance it includes:

I acknowledge the difficulties you have faced with seeking a positive outcome for your grievance with NNZC. Unfortunately we have not come to the conclusion you wished for...

[37] On 30 June Pr Timothy replied to Pr Larsen's email, again using the subject line "Grievance Matter". The email is focused on his employment ending and how this was raised with him in Ms McFarlane's 10 June email and revisits the circumstances of his grievance, requesting Pr Larsen advise how he would have handled the situation faced by the executive committee which resulted in the decision to issue him with a written warning. As Pr Larsen acknowledged in his evidence, such a question put him in a difficult position, and he said he did not wish to take sides. He told Pr Timothy this at a meeting he attended with Pr Timothy and his wife on 7 July. During this conversation, having listened to Pr Timothy recount his concerns about his treatment, Pr Larsen asked him how he thought the problem could be solved, including matters concerning Pr Timothy's relationship with senior members of the church. As agreed, Pr Larsen provided Pr Timothy the reference.

[38] Witnesses for NNZC said in their evidence they were surprised to learn Pr Timothy had lodged an application in the Authority 2 years after his employment ended because they thought the matter was settled.

[39] NNZC says settlement was reached by the parties on 21 May 2021 when the terms of the parties' settlement were agreed and that on reliance on that agreement it has met its terms as, it believes, has Pr Timothy. Those terms include and I find significantly the finalisation to Pr Timothy's satisfaction the organisational agreement and payment of the contribution to legal costs.

[40] There can be no doubt there was a genuine dispute between the parties – the first limb of the *Crestline* test is met. Pr Timothy had raised in writing a personal grievance in respect of the written warning and its circumstances. The basis of his concerns were detailed at length in two letters from his lawyer. The parties engaged in an attempt to resolve his concerns without success and some months later Pr Timothy revived this discussion with the new president and administration team of the executive committee with the intention of resolution. The parties then, as stated above, embarked on such a process.

[41] Pr Timothy's letter of 21 May is properly read as a response to Ms McFarlane's 18 May offer of terms of settlement. As stated above it is a counteroffer the terms of which were accepted by NNZC in Ms McFarlane's letter of 10 June. The parties' subsequent actions including the payment and acceptance of the contribution to costs is in fulfilment of those terms. While Ms McFarlane has sought Pr Timothy's express acceptance that his personal grievance was settled and that was not provided, objectively assessing the totality of the parties' communications and actions, I am satisfied that process meets the second limb of *Crestline* which requires either a meeting of minds or an act of inducement to think consideration was taken in satisfaction of the claim. This is what has occurred.

[42] Consideration has been given to whether the negotiation to end Pr Timothy's employment has introduced ambiguity to the settlement of his personal grievance such that it could be said the terms were uncertain. It has not. The parties' communications separate the issues and show they carefully worked their way through the employment relationship problem. In particular there can be no doubt the reimbursement sum paid was in response to Pr Timothy's personal grievance.

[43] The parties have settled Pr Timothy's personal grievance and the Authority is unable to determine the matters raised in his statement of problem for want of jurisdiction.⁶

Costs

[44] In its closing submissions NNZC confirmed it will not seek a contribution to costs. Accordingly, there is no issue as to costs.

Marija Urlich
Member of the Employment Relations Authority

⁶ Employment Relations Act 2000, s 161(1)(r).