

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2015] NZEmpC 173
ARC 92/13**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER of an application to adduce further
evidence

BETWEEN CHRISTOPHER SCOTT ROY
Plaintiff

AND BOARD OF TRUSTEES OF TAMAKI
COLLEGE
Defendant

Hearing: 30 September 2015

Appearances: S Govender, counsel for plaintiff
RM Harrison, counsel for defendant

Judgment: 30 September 2015

ORAL INTERLOCUTORY JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] The defendant seeks leave to introduce new evidence, having closed its case, before final submissions are to be made today, following an unfortunate but necessary delay to the hearing resulting from an under-estimate by counsel of the time required.

[2] The defendant's application for leave is opposed by the plaintiff.

[3] The proposed new evidence is of events which occurred during the period between the conclusion of the hearing of evidence on 17 July 2015 and today. The new evidence is of letters that Mr Roy wrote recently to a number of members of the staff of Tamaki College including, and about, other staff members who had given evidence at the hearing. The proposed new evidence is essentially the production of

those letters that Mr Roy wrote. Mr Govender has acknowledged that there is no dispute that the letters attached to Soana Pamaka's affidavit of 25 September 2015 were written by Mr Roy to the relevant persons.

[4] Simply to give a flavour to the evidence that is sought to be introduced, on 28 July 2015 Mr Roy wrote to one of the defendant's witnesses who is still a member of the staff of the college, Russell Dunn. In the course of that letter Mr Roy said:

Despite the fact that you committed perjury throughout your giving of evidence whilst under oath ... there are a few things that you know that Richie and I have already discussed.

[5] At the end of the letter Mr Roy wrote:

Please be more informed before talking crap in a court room. You came across as being unintelligent and arrogant, not to mention, an unreliable witness.

[6] In a text message to a staff member who did not give evidence, Jason Borland, Mr Roy wrote what he described as probably his last text:

... Tamaki College people committed perjury throughout the court hearing. Even Glynis Margetts. Pamaka boiled (sic) her eyes out to get the judges sympathy. Moore also talked crap about how could we manage Roy if he were to return. ... Ngaro was an arrogant insulting shit all the time. ... Ps you were mentioned by the judge for stirring up religious hatred etc. ...

[7] It appears that after receipt of that correspondence, the school disabled Mr Roy's previous email access to its server but that did not deter Mr Roy who then wrote to a range of individual staff members by letters addressed to the school's post office box.

[8] A general letter written to staff at Tamaki College dated 10 August 2015 included an assertion that the Board's witnesses "all committed perjury throughout their giving of evidence" and generally set out Mr Roy's assessment of the nature of the defendant's case, his inferences from what he said I may have said from time to time, and what the outcome of the case would be.

[9] Mr Roy also wrote to the current Chair of the Board who had not participated in the case, by letter dated 11 August 2015, about the case and its outcome.

[10] The admissibility of evidence is governed by s 189 of the Employment Relations Act 2000 (the Act) which gives the Court a broad discretionary power to admit evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not.

[11] The relevance of this additional evidence is said by the defendant to be its relation to Mr Roy's assertion that reinstatement as a member of the staff of the school will be practicable in terms of s 125 of the Act, the principal remedy which he seeks. The evidence given in July on that topic was extensive and the school's position is essentially that despite the passage of time, Mr Roy's relationship with the Principal and other staff is still so poor that it would not promote a good working environment for all if he were to be reinstated.

[12] I am satisfied that the relevance of the evidence of Mr Roy's letters (to which I have referred above) is established, at least in relation to the remedy of reinstatement. The evidence may also be relevant to the broader but important question not only of practicability of reinstatement, but to Mr Roy's insight into the situation at issue in this case after the hearing of extensive evidence in a structured environment. The new evidence was, of course, not available to be given at the hearing because it is of events that occurred during the adjournment.

[13] In these circumstances, leave is granted to the defendant and the evidence will be admitted. The plaintiff is, of course, entitled to be heard in response to that evidence if he wishes to, and his counsel will be able to make submissions on the content and weight to be given to that evidence which, as I have already noted, is not disputed as to its factual accuracy.

GL Colgan
Chief Judge

Judgment delivered orally at 10.03 am on Wednesday 30 September 2015