

May 2010

# NZ AREA SCHOOL CONFERENCE (Boards)

Principals' Advice & Support Limited

PRESENTERS

Barry Dorking and Fiona McMillan



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## Governance or Management

- **Education Act 1989 (s75)**  
Except where the law provides otherwise, the Board has complete discretion to **control** the management of the school as it sees fit.
- **Education Act 1989 (s76)**  
Except where the law provides otherwise a principal is the Board's CE in relation to the school's control and management and has complete discretion to **manage** the school's day to day administration as the principal thinks fit subject to the Board's general policy directions.



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## Board as Employer

- Responsible for governing the school
- Legal employer of all school staff
- Obligation to be a good employer
- Complex set of legislative requirements
- Collective and Individual Employment Agreements



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## Employment Relations Act 2000

- Principal legislation.
- Together with:
  - Holidays Act
  - Wages Protection Act
  - Health and Safety in Employment Act
  - etc

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## Employment Agreements

### Collective

- All teachers in NZEI or PPTA are covered by the relevant CEA

### Individual

- Employees on IEAs are on the same terms as the CEA



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## Employment Relationship Problems

- Notify the insurer
- Fixing it yourself:
  - Informal discussion
  - Informal means informal



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## Disciplinary Action

- Any formal action you take in response to alleged misconduct by an employee
- Misconduct = breach of obligations
- Performance
  - Can't do it (competency)
  - Won't do it (misconduct)



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## Basic Principles

- Honest belief on reasonable grounds that the misconduct has occurred
- An admission is reasonable grounds
- Otherwise to establish reasonable grounds you must investigate the facts
- Proper investigation
- Then take action that a reasonable BOT would take in the circumstances (s103A)



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## Proper Investigation

- Proper investigation includes:
  - Advising the employee of the allegations;
  - And of all the evidence supporting the allegations;
  - Making your own enquiries not relying on reports from others (Consultants, ERO); and
  - Not reaching a final decision until all relevant evidence, including the employee's response, is available.



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## Meeting the Employee

- Schedule a meeting ensuring that:
  - The employee is aware of the:
    - purpose of the meeting
    - specific allegations
    - possible consequences
  - The employee has time to prepare a response
  - The employee is advised of their right to be represented at the meeting
  - Not for the Board or Principal to contact NZEI



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## Meeting the Employee cont.

- Put all the matters in evidence before the employee
- Do not set traps for the employee
- Ask for the employee's version of events
- Adjourn the meeting if the employee requires further opportunity to put his or her case



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## Making a decision

- Consider the employee's explanation
- Investigate further if necessary
- Keep an open mind
- Do not pre-prepare letter of warning / final pay
- Take into account:
  - The employee's past service / work history
  - Any previous disciplinary action
  - Employer fault e.g. lack of supervision / training



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## Warnings

Depends on type of misconduct

- Verbal warning
- Written warning (signed by employee)

Warnings expire



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## Warnings and Performance

Ensure that the employee understands:

- the required standard of behaviour / performance
- his or her actual behaviour / performance
- the possible consequences of failure to achieve the required standards

Establish:

- remedial action
- method to measure achievement
- time to achieve the required levels (CEA)
- assistance to achieve the required levels
- Review date



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## Suspension of Employees

- Can suspend during investigation only if it is necessary and on pay
- Employee must have an opportunity to comment
- The rules of procedural fairness apply
- Must be what a reasonable employer would do
- An unjustified suspension can lead to a personal grievance
- Damage limitation: interim suspension



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## Summary Dismissal

- Only behaviour totally destructive of the employment relationship justifies summary dismissal:

- Assaulting a co-worker or student
- Theft
- Danger to others
- etc



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## Dismissal on Notice

- In all other cases you are not entitled to dismiss an employee without:
  - Adequate warnings which are justified at the time
  - Proper investigation
  - A final warning making consequences of future similar misconduct clear
  - Notice



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## Constructive Dismissal

- Breach by employer
- Resignation foreseeable and a reasonable response to the breach
- During disciplinary process?
- Suggesting an "exit" is a constructive dismissal



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## Personal Grievances - Section 103

Personal Grievance means any grievance because of:

- Unjustifiable dismissal
- Unjustifiable disadvantage
- Discrimination / harassment
- Different treatment because of union membership
- Failure to comply with Part 6A (restructuring)

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## Section 103A Test of Justification

- Whether a dismissal / action was justifiable must be determined, on an objective basis, by considering whether the employer's actions were what a fair and reasonable employer would have done **in the circumstances at the time** of the dismissal / action



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## PG Remedies

- Remedies in relation to personal grievances (s123):
  - Reinstatement (primary remedy)
  - Reimbursement of lost wages
  - Compensation for humiliation, loss of dignity, injury to the feelings
  - Compensation for loss of benefit



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### Written Evidence

- All letters
- All internal emails
- All discussions / notes taken of meetings
- Unless they are privileged communications with your legal adviser or they are created solely for the mediation
- So write letters for the judge



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