

**IN THE EMPLOYMENT COURT
WELLINGTON**

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

EMPC 116/2018

IN THE MATTER OF a proceeding under the Equal Pay Act 1972 and
the Government Service Equal Pay Act 1960

BETWEEN NEW ZEALAND POST PRIMARY
TEACHERS' ASSOCIATION
INCORPORATED
First Plaintiff

AND LISA KIRSTEN HARGREAVES
Second Plaintiff

AND PAMELA SHERYL FOYLE
Third Plaintiff

AND LEANNE MARGUERITA DONOVAN
Fourth Plaintiff

AND DEBRA LEE ENO
Fifth Plaintiff

AND SECRETARY FOR EDUCATION
First Defendant

AND HAVELOCK NORTH HIGH SCHOOL
Second Defendant

AND TAURANGA GIRLS' COLLEGE
Third Defendant

AND THAMES HIGH SCHOOL
Fourth Defendant

AND TAITA COLLEGE
Fifth Defendant

Minute: 22 June 2020

Appearances: A Butler and H Bergin, counsel for plaintiffs
V Casey QC, counsel for defendants

**MINUTE TO THE PARTIES OF JUDGE K G SMITH
FOLLOWING TELEPHONE DIRECTIONS CONFERENCE
HELD AT 9.30 AM ON FRIDAY 5 JUNE 2020**

[1] This minute follows a recent telephone directions conference convened to discuss the further evidence that might be required to complete the hearing of this case.

[2] In anticipation of the conference Mr Butler provided a memorandum proposing that the defendants should be required to file their additional evidence by 31 July 2020 and that the plaintiffs would respond by 28 August 2020.

[3] Ms Casey QC was not able to file a memorandum but during the conference advised the Court that:

- (a) The Secretary intends to call further evidence and is in the process of procuring a data survey.
- (b) That survey is likely to take two months to result in an interim report, and four months for a final report (that is a total of four months).
- (c) Depending on the outcome of the survey, evidence is anticipated to be given by an expert and, perhaps, one other witness from the Ministry.
- (d) The Boards of Trustees (that is the second to fifth defendants) are taking independent advice, including addressing what evidence they may need to present if they seek to establish, on an objective basis, that the decisions they have made were not based on discrimination by gender. Ms Casey was unable to say if the Boards would change their representation but advised that there were no conflicts of interest between the defendants that would preclude her from continuing to represent all of them.

(e) No witnesses who have already given evidence are to be recalled.

[7] In explaining the position about the Boards, Ms Casey asked Mr Butler for confirmation that the agreement they had made before the trial continued to hold. Expressed generally, the agreement was that the litigation concentrated on the terms of the STCA and did not involve an allegation that the Boards had failed to comply with that collective agreement by not using best endeavours to provide pro-rated timetabled non-contact time.

[8] Mr Butler expressed concern about any delay inherent in waiting for the survey to be completed. He submitted that the time to undertake a survey has passed, saying that any result likely to be produced by one would not go to the question of objective justification for differential treatment but would be about comparability.

[9] Mr Butler accepted that NZPPTA is not alleging that the Boards breached the STCA but with a caveat. NZPPTA's position is that, if the Boards want to say that there is objective justification for not treating part-timers and full-timers in the same way, they will need to "come forward with that evidence".

[10] The possibility of resolving any residual difficulties between the parties, relating to what the Boards might consider by way of further evidence, led to a request for a brief opportunity to discuss a possible way to progress the litigation. An opportunity was provided to file memoranda. None were filed and, therefore, I assume the position is as relayed at the conference. That is, NZPPTA has not resiled from the pre-trial agreement, but if the Boards are to establish objective justification for differential treatment, evidence may be required.

[11] While I am conscious of the concerns raised by Mr Butler, I accept the Secretary and Boards are entitled to produce the evidence they consider falls within the leave that has been granted. Inevitably that means allowing time to complete the survey and to present its results. That said, there need to be strong controls on how long this work takes so that the hearing can reconvene and be concluded as soon as is possible.

[12] The timetable that follows was prepared on the basis that all of the steps can be undertaken in sufficient time to allow the hearing to resume this year.

[13] I direct as follows:

- (a) The Secretary may file brief/s of evidence from an expert witness relating to its survey data, and one further witness from the Ministry, so long as it does so no later than **4 pm on 2 October 2020**.
- (b) If the Secretary intends to rely on survey data a copy of the interim report is to be provided to NZPPTA no later than **three working days** after its receipt. The purpose of this direction is to enable NZPPTA to anticipate the evidence that is likely to be presented by the Secretary and to begin preparation of its response.
- (c) NZPPTA may file briefs of evidence in response to the survey data, and to the Ministry's witness, no later than **4 pm on 2 November 2020**.
- (d) If any further evidence is to be led for or on behalf of the second to fifth defendants, briefs of evidence are to be filed and served no later than **4 pm on 30 July 2020**.
- (e) Any evidence in reply from the plaintiffs is to be filed and served no later than **4 pm on 27 August 2020**.
- (f) The parties are to provide a progress report, about the state of preparation of the evidence, no later than **27 August 2020**. The purpose of this report is to assist the Court in allocating adequate hearing time and, if necessary, to take steps to address any further issues that may have materialised.
- (g) The hearing will resume on the first available dates after 2 November 2020. Those dates will be fixed by the Registrar after consulting counsel.
- (h) Leave is reserved to apply for further directions.

[15] Costs are reserved.

K G Smith
Judge