NEW ZEALAND NURSES ORGANISATION

Reinstatement As A Remedy for Personal Grievance

The Amendment Act reinstatement provision provides:

- that the Authority may provide for reinstatement if it is practicable and reasonable to do so

Comment

The three main changes effected by the Amendment Act are:

- to change the title of relevant section from "reinstatement to be primary remedy" to simply "remedy of reinstatement"

- change the Authority obligation to provide for reinstatement from a mandatory obligation to a discretionary obligation

- rather than awarding reinstatement where "practicable" it must now be both "practicable **and** reasonable"

Given that the Authority rarely awarded reinstatement prior to the enactment of the Amendment Act, how much practical effect the changes will have may be arguable. For instance it might be said that up until now the Authority has included an assessment as to the 'reasonableness' of reinstatement as part of its consideration as to whether or not reinstatement will be practical – therefore there should be little real change.

However, clearly the intent is to amend the previous legislative emphasis on the remedy of reinstatement in a personal grievance setting. This might raise again the former Chief Judge Goddard's expressed concerns that 'reinstatement' as a remedy is something akin to an endangered species.

Yet reinstatement is still provided for as a remedy. Organisers should continue to raise the claim of reinstatement as one of the remedies sought on behalf of a member when raising a grievance for unjustified dismissal with the employer. Arguments may still be raised at both Mediation and the Authority for reinstatement on the basis that the Amendment Act still requires the issue of reinstatement to be addressed when raised on behalf of a member, and that if it is practicable to reinstate it will also be reasonable to reinstate.

Jock Lawrie 30.03.2011