

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2013] NZERA Auckland 470  
5400885**

BETWEEN                      TANIA CHRISTENSEN  
   Applicant

AND                              THE MONTESSORI  
   FOUNDATION now known as  
   PUNA CHAMBERS INC  
   Respondent

Member of Authority:        Eleanor Robinson

Representatives:            Scott McKenna, Counsel for Applicant  
   Vinay Deobhakta, Advocate for Respondent

Investigation Meeting:     10 October 2013 at Hamilton

Submissions received:     10 October 2013 from Applicant  
   None from Respondent

Determination:              11 October 2013

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The Applicant, Ms Tania Christensen, claims that she was been unjustifiably disadvantaged as a result of being suspended on 27 September 2012 by the Respondent, The Montessori Foundation now known as Puna Chambers Inc, and that she was unjustifiably dismissed on 18 October 2012.

[2]     The Respondent denies that it suspended Ms Christensen, or that it unjustifiably dismissed Ms Christensen.

**Issues**

[3]     The issues for determination are whether:

- Ms Christensen was unjustifiably suspended by the Respondent on 27 September 2012
- Ms Christensen was unjustifiably dismissed by the Respondent on 18 October 2012

### **Preliminary Notes and Non-Attendance by the Respondent**

[4] The Respondent advised the Authority on 3 October 2013 that it had changed its name from The Montessori Foundation to Puna Chambers Inc, and filed a copy of the Certificate of Incorporation confirming the name change which was registered on 10 September 2013.

[5] Mr McKenna who is acting as Counsel on behalf of Ms Christensen, and Mr Alex Hope, the Counsel who acted for Ms Christensen in this matter prior to Mr McKenna, both belong to Puna Chambers, the offices of a number of Hamilton based lawyers located at 16 Clarence Street Hamilton. In order to avoid any confusion which may be caused due to the name change of the Respondent, and for the avoidance of doubt, I therefore refer throughout this determination to the Respondent as The Montessori Foundation (MF).

[6] On 9 October 2013 Mr Deobhakta on behalf of MF, advised the Authority by email that MF had been placed into liquidation, however there was no confirmatory legal documentation attached to the email. The Authority cannot proceed to investigate a claim by an applicant once the respondent has been liquidated without the approval of the court or the Liquidator.

[7] Accordingly the Authority made the necessary enquiries to check the legal status of MF prior to proceeding with the scheduled Investigation Meeting, but found no confirmation that either Puna Chambers Inc or The Montessori Foundation had been liquidated, and no such confirmation had been provided by MF. On this basis the Authority proceeded with the scheduled Investigation Meeting on 10 October 2013.

[8] MF did not attend the Investigation Meeting on 10 October 2013. Given the difficulties encountered in progressing this case, I was satisfied that no good cause had been shown for MF's failure to attend and I consequently proceeded with the Investigation Meeting pursuant to clause 12 of Schedule 2 of the Act.

## **Background Facts**

[9] MF provides early learning education to pre-school children at two centres based at Rimu Street and Cameron Road, Hamilton. Ms Christensen said that at the time of her employment in 1996 MF had one centre in Cameron Road (the Centre), however it had subsequently opened a second centre (the Rimu Road Centre) with which she had assisted.

[10] At the time of the termination of her employment on 18 October 2012 Ms Christensen was working as the Centre Manager at the Centre. Ms Christensen reported to Mrs Hayley Hayes, Trustee of MF.

[11] Ms Christensen said that she had enjoyed a good working relationship with Ms Hayes, and Mr David Hayes, the husband of Mrs Hayes, throughout the majority of the 15 years of her employment. Ms Christensen said that she and Mr and Mrs Hayes had mixed socially as well as professionally with Ms Christensen being allowed to keep her horse at Mr and Ms Hayes property, and through attending the same congregation of Jehovah's Witnesses.

[12] Ms Christensen had provided with an individual employment agreement in 2002 (the 2002 IEA). In 2008 she had been offered a new individual employment agreement (the 2008 IEA), however she had concerns about the proposed 2008 IEA including the decrease in annual holiday entitlement from 8 weeks in the 2002 IEA to 4 weeks in the 2008 IEA without any benefit being offered as an offset.

[13] Ms Christensen said she had made her concerns known to Mrs Hayes, and had refused to agree to the proposed new terms and refused to sign the 2008 IEA. Mrs Hayes had not addressed her concerns nor raised any concern that Ms Christensen had not signed the proposed agreement.

[14] Ms Christensen explained that in the months prior to her dismissal the Centre had been frequently short staffed, saying that on a typical day at the Cameron Road Centre there would be 24-26 children attending. In accordance with the Education (Early Childhood Centres) Regulations 1998 (the Regulations) Schedule 3, the Cameron Road Centre was therefore required to have a minimum staffing of 3 staff.

[15] Ms Christensen said that the staffing complement at the Centre consisted of herself, a qualified Montessori teacher, Ms Arvina Singh, a registered teacher but not a qualified Montessori teacher, and one other teacher, who from August 2012 had been absent on maternity leave.

[16] Although there were student teachers present at the Cameron Road Centre, Ms Christensen said that because they had no employment agreement with MF, and were not remunerated, they did not qualify as staff for the purposes of the Regulations, however Mrs Hayes had included them in the staff coverage numbers.

[17] Ms Christensen said that almost every week during 2012 she would speak to Mrs Hayes about being short staffed, and that although Mrs Hayes sometimes arranged for another teacher from the Rimu Road Centre to work at the Centre, this had not always occurred as promised due to the staffing situation at the Rimu Road Centre. Further that although Mrs Hayes had also said that she would be at the Centre every morning, this had not occurred either.

[18] Whilst agency staff could be recruited to provide teaching cover, Ms Christensen said that this had to be approved by Mrs Hayes, and that frequently when she had requested to have agency teacher cover, Mrs Hayes had advised that it was not available.

[19] Ms Christensen also explained that the teachers did not provide supervision during the lunch break period and as a result she had personally supervised the children during what should have been her lunch break period on most days.

[20] In accordance with the requirements for a Montessori Centre, children had to have daily teaching based on the Montessori methods and as the only qualified Montessori teacher at the Centre, Ms Christensen said that she had been required to teach each child twice daily, and although there were some group teaching sessions, most required one-on-one teaching. Due to this pressure on her time during the working day, Ms Christensen said that she had been required to take work home with her for completion.

[21] Additionally although she had requested on several occasions to take annual leave in November 2012 as she had not had any leave that year, other than a period of bereavement leave on February 2012, Ms Christensen said that Mrs Hayes had not approved the request and would not confirm that the leave request would be granted despite Ms Christensen having raised the subject on several occasions.

[22] As a result of the situation regarding the staffing shortages which she had raised with Mrs Hayes on frequent occasions not being addressed, Ms Christensen said she had been experiencing symptoms of stress, including inability to sleep and loss of concentration.

[23] Ms Christensen said she had made Mrs Hayes aware that the situation was adversely affecting her and on one occasion had told Mrs Hayes that the staffing situation was making

her: “*bleed out*” to which Mrs Hayes’s response had been that ‘*I’ve seen someone bleed out and you’re fine.*”

[24] On 19 September 2012 Ms Christensen said that Ms Singh had told her that she was actively job seeking and intended to leave MF.

*20 September 2012*

[25] On 20 September 2012 Ms Christensen, said that the stress of the staffing shortages had come to a head for her. On that day a teacher from the Rimu Road Centre was expected to be present at the Centre, however due to staffing shortages at the Rimu Road Centre she had been advised by the Centre Manager at Rimu Road Centre at approximately 8.00 a.m. that the teacher would be unable to attend at the Centre. Ms Christensen said that as she had been busy dealing with the arriving children and their families, she had asked that the other Centre Manager inform Mrs Hayes of the situation.

[26] Ms Christensen said that she had then been informed by the student teacher present that day that she had to leave at midday, so she had called a casual relief teacher, Ms Jenny Southwal, to see if she could come in that day, and she had agreed and said that she would be there as soon as possible and certainly before midday.

[27] Mrs Hayes had telephoned the Centre and spoken to Ms Singh to check what cover would be present as she had been advised of the non-arrival of the Rimu Road Centre teacher. Ms Christensen who said she had felt unable to carry on that day, had tried to call Mrs Hayes back to explain the situation and request agency teaching cover, however she had been unable to make contact. Therefore she had requested Ms Singh to call Mr Hayes, the emergency contact in the event that Mrs Hayes was unable to be contacted, and request an agency teacher.

[28] About 15 minutes later Ms Christensen she had received a telephone call from Mrs Hayes and when they had spoken she had expressed her concern about the ongoing staffing shortage situation. In response, Mrs Hayes had told her that she needed to get a full physical medical examination and to check whether she had a chemical imbalance. Mrs Hayes had also said that she would arrange for a teacher from the Rimu Road Centre to provide cover.

[29] Ms Christensen said she had been upset by Mrs Hayes response and the comment that she might have a chemical imbalance, whatever that might mean. She had waited until the teacher from the Rimu Road Centre, Ms Hiromi Rudsits, had arrived from the Rimu Road Centre, and conducted a handover with her before leaving. Ms Christensen said that when she had left work she had been in tears and had felt too unwell to have stayed.

[30] Ms Christensen said that she had contacted the doctor's surgery that day but had been informed that as a full medical examination was required, it had to be her GP, Dr Rauber, who carried this out, and as he was unavailable at that time the examination did not take place until 24 September 2012.

[31] On 24 September 2012 Dr Rauber had issued a medical certificate stating that: "*Ms Christensen was seen and examined by me on 24 Sep 2012. In my opinion she has been medically unfit for work from 21/9/12 to return to work on 27/9/12.*" Ms Christensen said she had sent this medical certificate and the associated invoice to MF.

*27 September 2012*

[32] On 27 September 2012 Ms Christensen had arrived for work at the Centre and had been informed by Ms Singh that she was not supposed to be there, and that the employees had been told that she would not be there for a long time. Ms Singh said that the employees had been advised that if she did arrive at work, Mrs Hayes was to be contacted.

[33] Ms Rudsits had then arrived at the Centre and she had telephoned Mrs Hayes. Ms Christensen said that Mrs Hayes had subsequently telephoned her and asked what she had been doing at the Centre as she had not been expected until 1 October 2012. Mrs Hayes had then said that she should go home as she had spoken to Dr Rauber and he had told her that Ms Christensen had not been stressed.

[34] Ms Christensen said that she had been very concerned at what appeared to be breach of her right to of confidentiality as a patient, and she had mentioned this to Mrs Hayes. During the conversation Ms Christensen said that Ms Hayes had suggested that she take 6 months unpaid leave, however as she had wanted the situation resolving and to return to work, she had asked to have a meeting with Mrs Hayes to resolve the situation.

*Meeting 1 October 2012*

[35] The requested meeting took place on 1 October 2012. At the meeting Ms Christensen said she had been accompanied by Mr Hope as her representative. During the meeting Ms Christensen said that Mr Hope did the majority of the speaking on her behalf as she had been very emotional.

[36] Ms Christensen said that she had wanted to discuss why she had left the Centre on 20 September 2013, however Mrs Hayes had focussed on suggesting that she took 6 months unpaid leave, and advised that she had spoken to a relief teacher agency on Ms Christensen's behalf. The agency had confirmed that they could offer Ms Christensen employment and Mrs Hayes had suggested that this would be less stressful for her.

[37] Ms Christensen said that she had responded that she preferred to sort out the issues and return to work as she was committed to the Centre, having worked there for the majority of her 15 years employment with MF.

[38] Following a meeting on 1 October 2012 between Ms Christensen, Mr Hope, and Ms Hayes, Mrs Hayes sent a letter to Mr Hope dated 2 October 2012. In the letter Mrs Hayes stated:

*Would you please take instructions and advise us by 5 October 2012 whether your client wishes to accept the offer of having six months off.*

*In the meantime your client is off work on sick leave. Should she wish to continue working she should not return to the premises until further notice.*

[39] In the letter Mrs Hayes had referred to Ms Christensen having told Mr Hope ‘falsehoods’ about her employment with MF and these were: “*an indication that I could no longer have trust and confidence in Tania.*”

[40] On 8 October 2012 Ms Christensen received a further letter from Ms Hayes dated 8 October 2012 which set out 5 allegations of misconduct and invited her to a meeting on 10 October 2012 to discuss the allegations against her. The allegations were:

- 1. The first allegation is that you threw a milk container at a child on 20 September 2012. ...*
- 2. You walked out of your job on the same day 20 September 2012 at about 10 am without notice or reasonable excuse. ...*
- 3. You have treated other staff with disrespect namely on 4 September 2012 at 12.30 p.m. you verbally abused Marie Claire by insulting her in front of other staff. ...*
- 4. You have provided false information regarding your employment to Mr Hope ...*
- 5. You have neglected your duties by favouring your friends child*  
...

[41] By response email Mr Hope requested, on Ms Christensen's behalf, further information relating to Ms Christensen's employment and in respect of the allegations against her. Mr Hope also pointed out that Ms Christensen had not been paid and stated:

*“She is still employed by you and advised that she was cleared to go back to work. You refused a meeting. She asked for mediation. You responded with disciplinary allegations and requested a meeting. You should be paying her..”*

[42] Mrs Hayes responded to Mr Hope's email on 13 October 2012 by email in which she stated that: *“Tania has not been paid because she elected to be off work on sick leave and has used her entitlements up.”* The email also accused Ms Christensen of taking money from student teachers in addition to her salary.

*15 October 2012 Meeting*

[43] On 15 October 2012 a disciplinary meeting was held and attended by Ms Christensen, Mr Hope, Ms Hayes, and Mr Aaron Ogilvie, Representative for MF.

[44] Prior to the meeting Ms Christensen said she had received a telephone call from Mr Ogilvie whom she knew because he was an elder of the Jehovah's Witnesses congregation she attended. During the telephone call Ms Christensen said that Mr Ogilvie had told her he had spoken to Mr Hayes and advised that she should cease using the services of Mr Hope in order that the matter could be resolved. Ms Christensen said that Mr Ogilvie had tried to persuade her of this course of action using religious premises, however she had not agreed to this.

[45] During the meeting on 15 October 2013 Ms Christensen said that Mr Ogilvie had put the allegations to her and she had responded to them. Ms Christensen said that she had pre-prepared some responses to the allegations as she felt very emotional about what was happening and wanted to stay focussed; however she had provided responses to each of the allegations as required.

[46] Ms Christensen said that her responses to the allegations had been:

1. That she had thrown a mild container a short distance to a child who had caught it and thanked her, however there had been no staff member present at the time who could have witnessed it;
2. That she had not left the Centre without reasonable notice or excuse, she had left for health reasons after arranging for a relief teacher and conducting a handover, thereafter obtaining a medical certificate to cover her absence;

3. She had lost her temper with Marie Claire , but had apologised later and her apology had been accepted by Marie Claire;
4. There may have been a misunderstanding between herself and Mr Hope, but she had not provided false information to him and it did not amount to misconduct; and
5. She had not favoured a friend's child over any other child.

[47] Ms Christensen said that Mr Ogilvie and Mrs Hayes had requested a copy of the notes to which she had referred during the meeting and she had subsequently provided these to them.

#### *18 October 2012 Letter*

[48] On 18 October 2012 Ms Christensen received a letter signed by Mrs Hayes in which Mrs Hayes had detailed MF's conclusion regarding each of the 5 allegations against Ms Christensen and concluded:

*Unfortunately our findings mean that I can no longer have trust and confidence in you. I have considered the various options available. .... Legally you must understand I am unable to have you in contact with the children given my findings.*

*Therefore it is appropriate that my decision is to terminate your employment from noon 18 October 2012 for serious misconduct.*

[49] Following receipt of the dismissal letter Ms Christensen said she had contacted Mr Hope and had issued him with instructions to raise a personal grievance on her behalf with MF. Although the parties had subsequently attended mediation, this had not resolved matters and on 8 February 2013 Ms Christensen had filed a Statement of Problem with the Authority.

#### **Determination**

#### **Was Ms Christensen unjustifiably disadvantaged by being suspended by MF on 27 September 2012?**

[50] On 27 September 2012 when Ms Christensen arrived at the Centre she had been medically cleared as fit to attend work. There was therefore no medical reason for MF to

exclude her from the workplace, and I can find no substantive justification for it to have done so.

[51] Despite Ms Christensen and Mr Hope making it clear to Mrs Hayes that she wished to return to the workplace, Mrs Hayes continued to exclude Ms Christensen from the workplace after 27 September 2012. Although Mrs Hayes states in the email to Mr Hope dated 13 October 2012 that Ms Christensen had: “*elected to be off work on sick leave*” I find no grounds in support of this assertion, on the contrary Ms Christensen’s evidence is that she wished to be back at work in the Centre and this had been made clear to MF on 27 September 2012, at the meeting on 1 October 2012 and in the email from Mr Hope dated 12 October 2012.

[52] I find that by excluding Ms Christensen from work on 27 September 2012 MF had effectively suspended her from her employment.

[53] There are several leading judgments which establish the law on justification for suspension. The 2002 IEA contained a provision regarding the right of MF to suspend an employee in the event of, *inter alia*, misconduct, although there is no such provision in the 2008 IEA..

[54] However even if there is a contractual right to suspend an employee, the Employment Court in *Tawhiwhirangi v Attorney-General in respect of Chief Executive Department of Justice* established that there is nonetheless a requirement to apply the rules of natural justice to a decision involving suspension<sup>1</sup>.

[55] Additionally there is a legislative requirement that that parties to an employment relationship deal with each other in good faith as set out in s4 of the Act:

*S4(1A)The duty of good faith in subsection (1)-*

- i. requires the parties in an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative; and*
- ii. without limiting paragraph (b), requires an employer who is proposing to make a decision that will, or is likely to, have an adverse effect on the continuation of employment of 1 or more of his or her employees to provide to the employees affected-*

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<sup>1</sup> [1993] 2 ERNZ 546

1. *access to information, relevant to the continuation of the employees' employment; about the decision; and*
2. *an opportunity to comment on the information to their employer before the decision is made.*

[56] I have found no substantive justification for MF to have suspended Ms Christensen who had been cleared as medically fit to attend work and who had presented at the Centre on 27 September 2012 as being willing and able to resume work.

[57] Procedurally in light of the comments made by Ms Singh that Ms Christensen had not been expected to be there, and that Mrs Hayes had given instructions that she was to be called should Ms Christensen arrive at her workplace, it is apparent that a pre-determined decision had been made by Mrs Hayes to exclude her from the Centre.

[58] There is no evidence that MF followed a fair procedure in arriving at its decision to suspend Ms Christensen, or that it acted in good faith in so doing.

[59] I determine that Ms Christensen was unjustifiably suspended by MF on 27 September 2012.

#### **Was Ms Christensen was unjustifiably dismissed by MF on 18 October 2012?**

[60] Ms Christensen was dismissed on 18 October 2012. The test of justification in s103A Employment Relations Act 2000 (the Act) states:

##### ***S103A Test of Justification***

- i. *For the purposes of section 103(1) (a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test in subsection (2).*
- ii. *The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.*

[61] The Test of Justification requires that the employer acted in a manner that was substantively and procedurally fair. MF must establish that the dismissal was a decision that a fair and reasonable employer could have made in all the circumstances at the relevant time.

[62] In accordance with s 103A (3) of the Act the Authority must also consider whether:

(a) ... *the employer sufficiently investigated the allegations against the employee ...*

(b) ... *the employer raised the concerns that the employer had with the employee ...*

(c) ...*the employer gave the employee a reasonable opportunity to respond to the employer's concerns ...*

(d) ... *the employer genuinely considered the employee's explanation (if any) in relation to the allegations against the employee ...*

[63] The allegations against Ms Christensen had been raised in the letter from Mrs Hayes dated 8 October 2012. Mr Hope had requested information relating to the allegations in the email dated 12 October 2012, however the requested information had not been provided prior to the disciplinary meeting which was held on 15 October 2012.

[64] Ms Christensen had provided responses to the allegations at the meeting on 15 October 2012 in accordance with the good faith requirement to be “ *responsive and communicative*” pursuant to s 1A(b) of the Act.

[65] MF as a fair and reasonable employer had been required to “*genuinely consider*” Ms Christensen’s explanations before reaching a decision as to the outcome. I find however that MF had predetermined the outcome prior to the disciplinary meeting on 15 October 2012 on the basis that:

- Ms Singh’s comments on 27 September 2012 indicate that a decision had been made to exclude Ms Christensen from the Centre;
- The letter dated 2 October 2012 states that MF no longer had trust and confidence in Ms Christensen; and
- The letter dated 8 October 2012 containing the allegations against Ms Christensen and inviting her to a disciplinary meeting states that: “*The above actions have resulted in a loss of trust and confidence in you as head teacher.*”

[66] I consider moreover that whilst there may have been grounds for finding Ms Christensen had been guilty of misconduct in light of the milk container throwing incident which Ms Christensen had admitted at the Investigation Meeting had not been best practice

and which she now regretted, a fair and reasonable employer could not have arrived at a conclusion that serious misconduct had occurred.

[67] Moreover in light of the fact that Ms Christensen had worked for slightly more than 15 years for MF without having been subject to disciplinary action or being given any indication prior to the events in September and October 2012 that her performance as Centre Manager had not been acceptable, I do not find that a fair and reasonable employer would have deemed dismissal to have been an appropriate outcome.

[68] I determine that Ms Christensen has been unjustifiably dismissed by MF.

### **Remedies**

[69] Ms Christensen has been unjustifiably disadvantaged and unjustifiably dismissed and she is entitled to remedies.

#### *Lost wages: unjustifiable suspension*

[70] Ms Christensen at the time of her dismissal was paid \$1,125.00 per week.

[71] Ms Christensen was suspended with effect from 27 September 2012 until her dismissal on 18 October 2012. She was paid for 27 September and 28 September 2012, but had received no payment in respect of her wages after 28 September 2012.

[72] **I order that MF pay Ms Christensen lost wages in respect of the unjustifiable suspension in the sum of \$3,150.00 gross (calculated as 14 working days payment at the rate of \$1,125.00 per 5 day week).**

#### *Lost wages: unjustifiable dismissal*

[73] Ms Christensen was dismissed on 18 October 2012. Following that date Ms Christensen said that she had found it difficult to obtain alternative teaching employment due to the reasons for the termination of her employment.

[74] Ms Christensen is to be paid lost wages for the period from 18 October 2012 until the date of this determination in the sum of \$57,375.00 gross. From this amount I deduct the income earned by Ms Christensen through casual work as a relieving teacher, unemployment benefit and, since 13 May 2013, in her new job for which she is paid \$25.00 gross per hour and works 30.5 hours per week, a total sum of \$33,845.80 gross.

**[75] I order that MF pay to Ms Christensen lost wages in respect of the unjustifiable dismissal in the sum of \$23,530.00 gross.**

*Holiday Pay Entitlement*

[76] Ms Christensen has not been paid holiday pay entitlement in respect of 31 days accrual.

[77] In accordance with the 2002 IEA Ms Christensen was entitled to 8 weeks annual leave, in accordance with the 2008 IEA the holiday entitlement was 4 weeks.

[78] I find that Ms Christensen had not accepted the proposed 2008 IEA and had in fact raised her objections to the decreased in her annual holiday entitlement. In light of the fact that there had been no mutual agreement to vary the terms of the 2002 IEA, I find this to be the effective IEA.

[79] Despite requests from Ms Christensen and from the Authority, MF provided no wage and time records. Ms Christensen claims that she is owed 51 days annual leave entitlement, and I have no evidential basis for refuting this claim.

**[80] I order that MF pay Ms Christensen the sum of \$11,475.00 as holiday pay entitlement (calculated as 51 days at the rate of \$225.00 gross per day.)**

*Compensation for Hurt and Humiliation under s 123 (1) (c) (i).*

[81] Ms Christensen is also entitled to compensation for humiliation and distress. I find that in respect of both matters giving rise to a personal grievance, these being the disadvantage grievance and the dismissal grievance, Ms Christensen suffered significant distress.

[82] The suspension, disciplinary proceedings and subsequent dismissal of her employment affected every area of Ms Christensen's life. She found it difficult to obtain alternative employment in her chosen profession, and her social and family life was affected. Ms Christensen said that her religious life has also been affected, although she remains a member of the Jehovah's Witnesses congregation, she has been ostracised by a large portion of it as a result of the issues leading to the termination of her employment with MF.

**[83] In respect of the unjustifiable disadvantage and the unjustifiable dismissal grievance, I order that MF to pay Ms Christensen the sum of \$16,000.00, pursuant to s 123(1) (c) (i).**

[84] I have considered the matter of contribution as I am required to do under s124. Ms Christensen accepted that she had not acted appropriately in respect of the milk container incident, and I therefore reduce the amount ordered in respect of compensation pursuant to s 123(1)(c)(i) of the Act by 10%.

#### **Costs**

[85] Mr McKenna is claiming a costs award in excess of the Authority's normal daily tariff, citing actual costs of approximately \$19,000.00. In support of this application Mr McKenna claims that MF has acted in an obstructive manner throughout the proceedings which has involved the Applicant in incurring costs in the sum cited.

[86] Whilst there have been two Investigation Meetings in respect of this matter, the preliminary meeting held on 16 August 2013 and the second on 10 October 2013 which would be reflected in a costs award of \$7,000.00 at the usual daily tariff rate in the Authority of \$3,500.00 per day, I accept that there have been issues raised during the course of the proceedings which have resulted in the Applicant incurring increased costs.

[87] In this respect I note the requirement for the Applicant to enter submissions on an interlocutory application by the Respondent for a stay, removal and recusal application, and to file a memorandum in respect of the Respondent's advice of the Respondent being placed into liquidation.

[88] Weighing those factors in the discretionary exercise of awarding costs, I consider that the usual daily rate should be increased by \$5,000.00.

[89] Accordingly, MF is ordered to pay Ms Christenson \$12,000.00 costs, pursuant to clause 15 of Schedule 2 of the Employment Relations Act 2000

**Eleanor Robinson**  
**Member of the Employment Relations Authority**