

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2018] NZERA Auckland 53
3014597

BETWEEN FLORENCE MURWIRA
Applicant
AND KJ AND PE RADICH
LIMITED T/A SUNSHINE
CHILDCARE CENTRE
Respondent

Member of Authority: Robin Arthur
Representatives: Maxwell Rusero, Counsel for the Applicant
Alex Shadbolt and Andrea Twaddle, Counsel for the
Respondent
Memoranda: 17 January 2018 from the Applicant and
30 January 2018 from the Respondent
Determination: 19 February 2018

COSTS DETERMINATION OF THE AUTHORITY

- A. Within 28 days of the date of this determination KJ and PE Radich Limited must pay Florence Murwira:**
- (i) \$3,000 as a contribution to her costs of representation in this matter; and**
 - (ii) \$71.56 as reimbursement of the fee paid to lodge her application in the Authority.**

[1] By determination issued on 12 December 2017 the Authority found KJ and PE Radich Limited unjustifiably disadvantaged Florence Murwira by how it conducted a disciplinary inquiry prior to her resignation from its employment.¹ The determination dismissed Ms Murwira's claims she was also subjected to racial discrimination and disadvantaged by how managers had dealt with her teacher registration documentation and leave entitlements. It dismissed a further claim that Ms Murwira's resignation

¹ *Murwira v KJ and PE Radich Limited t/a Sunshine Childcare Centre* [2017] NZERA Auckland 384.

was a constructive dismissal. KJ and PE Radich Limited was ordered to pay Ms Murwira \$8000 compensation for the distress caused by its actions that had disadvantaged her.

[2] Costs were reserved. The parties were not able to resolve that matter themselves and lodged memoranda seeking an Authority determination of costs.

[3] Ms Murwira sought an order for costs based on the Authority's notional daily tariff of \$4500 for the one day investigation meeting and costs for a further four hours, at \$300 an hour, for the preparation of documents. She also sought reimbursement of the Authority filing fee.

[4] KJ and PE Radich Limited proposed the Authority order each party to bear their own costs only, that is that costs lie where they fall. It did so on the ground that the company had successfully defended five of the six grievance claims Ms Murwira had pursued. It submitted the way Ms Murwira's case was conducted had also caused the company additional and unnecessary costs and should result in a departure from the general principle that costs follow the event on the one grievance in which Ms Murwira was successful.

[5] The company's proposal would give insufficient weight to the principle that costs follow the event. In this case the event or outcome was that KJ and PE Radich Limited was found to have treated Ms Murwira unjustly and the resulting humiliation and embarrassment required a remedy of \$8000 compensation. Such an outcome warranted an order for some costs, not none at all.

[6] KJ and PE Radich Limited sought some credit in the costs assessment for a settlement offer of \$2500 made four weeks before the Authority investigation meeting. Its submission was contrary to well established case law about such offers. The difference between the offer made and the remedy awarded showed how far shy of the mark that offer was, even allowing for Ms Murwira's limited success in the extent of claims she had made.

[7] The starting point for assessment of costs was the daily tariff. There was no basis for the uplift on that tariff of the additional \$1200 Ms Murwira's counsel sought,

without details, for “preparing and compiling documents for the respondent and other incidentals”. Standard preparation of documents for the investigation is covered by the tariff. There was however a basis for a reduction in the tariff due to conduct of an unsuccessful party that unnecessarily increased costs. In this case the inchoate and belated nature of Ms Murwira’s unsuccessful claim regarding her annual leave entitlements unnecessarily added to the length of the investigation meeting. Additional time was taken to compare pay records in order to check Ms Murwira’s concerns.

[8] Allowing for the time needed on that account and the limits of her success overall, a reduction of the tariff by one third was warranted. This is the amount KJ and PE Radich Limited must pay Ms Murwira as a contribution to her costs of representation. It must also reimburse her for the filing fee of \$71.56 that she paid to lodge her application in the Authority.

Robin Arthur
Member of the Employment Relations Authority