

**Attention is drawn to the order
prohibiting publication of
certain information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2018] NZERA Christchurch 134
3024133

BETWEEN

KMR
Applicant

A N D

IDEAL PROPERTY SERVICES
(2008) LIMITED
Respondent

Member of Authority: Christine Hickey

Representatives: Alex Kersjes, Advocate for Applicant
Simon Graham, Counsel for Respondent

Investigation Meeting: 5 May 2018

Submissions Received: At the investigation meeting and further evidence
received on 23 May 2018 from the Applicant

Date of Determination: 14 September 2018

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Determination issued outside of three-month period

[1] I have issued this reserved determination outside of the three-month period after receiving the last of the submissions. Under s 174C(4) of the Employment Relations Act (the Act), the Chief of the Authority has decided that special circumstances exist and has allowed me to provide the determination outside of the usual three-month period.

Non-publication order

[2] I have decided not to publish the applicant's name. In large part that is to protect her son's identity. If he had been charged with any offence, he would have been dealt with in the Youth Court. Youth Court decisions do not contain the real

names of offenders. In this case, he was not charged with any offence. However, he is linked to some offenders. It is not in his interest that his mother's name is published in case it identifies him. KMR is linked through her son to offending set out in this determination. However, it is notable that KMR has not been charged with any offence. Therefore, even had her son not been associated peripherally with the offences or offences committed, I would have exercised my discretion to order that her name not be published.

[3] I also do not consider Ms A's real name should be published, nor her work site at the time these events took place.

[4] Therefore, under clause 10, Schedule 2 of the Employment Relations Act 2000 (the Act) of my own motion I prohibit from publication the name of the applicant and any information that could identify KMR, her son, Ms A or the work site.

Evidence given at the investigation meeting

[5] All witnesses at the investigation meeting had provided written statements in advance. They all swore or affirmed the correctness of their statements and gave further sworn or affirmed oral evidence in response to my questions and to cross-examination from the other party's representative.

The event in the car park

[6] There was a significant factual difference between the parties in relation to what happened directly after Kirsten Oliver dismissed KMR when KMR and Mr Croft had exited the lawyers' office and were in the car park. I have not made any findings on this despite it being suggested that there were credibility issues in relation to this event that might assist me to make decisions for this determination.

[7] However, I have to decide what happened leading up to the employer's decision and whether that decision and the process leading to it were within the bounds of how a fair and reasonable employer could have acted in all the circumstances at the time. I did not need to decide what happened in the car park afterwards between Mr Croft and Kirsten Oliver. Mr Croft was not involved in these matters save for supporting and representing KMR at the disciplinary meeting.

KMR's claims and Ideal's view

[8] KMR was employed as a cleaner for Ideal Property Services 2008 Limited (Ideal) from mid-March 2017.

[9] KMR says that she was unjustifiably disadvantaged in her work when she was suspended on 20 June 2017. She also says she was unjustifiably dismissed on 29 June 2017.

[10] By way of remedy, KMR claims lost wages and compensation of \$15,000.

[11] Ideal says that her suspension and her dismissal were justified. Ideal also says that it carried out a fair process and in all the circumstances acted as a fair and reasonable employer could act.

What happened?

[12] KMR worked alongside one other cleaner, Ms A, who was her supervisor. They worked at night in a medical facility.

[13] In the evening of 15 June 2017, while she was at work with Ms A, KMR found out from social media that a service station in her neighbourhood had been robbed. She knew a boy who was a friend of her son had robbed the same service station about six months earlier. She says she called her son from work to check that he had no involvement in the robbery.

[14] Ms A alleges that night KMR revealed to her that her son's friends had just robbed the local service station. Ms A says KMR also told her that her son had received tobacco products, which were at her house, but that he had no prior knowledge of the crime. Towards the end of their shift, Ms A says that KMR approached her and said that she was going home and would let her "know what deals there will be with the ciggys".

[15] The following day before Ms A's shift was due to start, she had a pre-arranged meeting with Diane and Kirsten Oliver, the owner and the manager of Ideal. After discussing some other work related matters, Ms A raised with Diane and Kirsten Oliver what KMR had said to her the previous evening.

[16] She says that she told her employers because she had started feeling uneasy about what KMR had revealed to her, particularly because they worked in a secure environment with access to property that could be stolen and on-sold. Ms A was also worried because she was the only one who had secure access to the premises.

[17] Ms A and KMR went to work as usual on the Friday evening and completed their work without any further mention of the robbery.

[18] On Sunday evening, 18 June 2017, the police came to KMR's house with a search warrant to search for stolen money and goods. They questioned KMR, her son and a friend of her son, who was staying at the house at the time.

[19] The search did not find any tobacco, cigarettes or money at the premises. However, some cans of Monster energy drink had also been stolen in the robbery and the police found two such empty cans in the rubbish at KMR's house. By the end of the visit, the police had obtained the names of the four offenders who had robbed the service station. They also took KMR's son's telephone with them to check his messages to make sure he had no involvement in the planning of the robbery.

[20] There have been no charges laid against KMR or against her son for the robbery.

[21] KMR says that one of the offenders was left behind at the service station when the other three escaped in a car. She says that, because he had been to her house earlier the same day with the other offenders, the stranded offender ran to her house after the robbery. Her son was at home when the offender arrived. She speculates that the offender may have brought the stolen Monster energy drinks to her house. However, KMR has also given written evidence that she had bought cans of Monster energy drink for her son prior to that day at Pak'nSave. Her written evidence says that the cans she bought were the cans the police found in her household rubbish.

[22] Before their shift started on Monday 19 June 2017, KMR contacted Ms A to say that she would be late to work. She also told Ms A that her house had been "raided by the cops". Ms A presumed that was the reason KMR was going to be late for work that evening. In fact, it was not the reason.

[23] While they were at work on Monday evening, 19 June, Ms A asked KMR a few questions about the robbery and her son's involvement in it. Ms A says that

KMR told her that her son had known about the robbery before it happened but that he was not involved in the robbery itself. She said that her house had been planned to be used as a drop off point for the stolen goods and cash. She told Ms A that a large amount of cash had been stolen during the robbery.

[24] Ms A says that she expressed surprise to KMR that the service station held a large amount of cash and said she did not think that was usual. KMR replied that she knew that particular service station did keep a large amount of cash because she used it to draw on her wages. She said it was known in the neighbourhood.

Ms A's emails to Ideal

[25] In her first email of 20 June 2017, Ms A included the following:

Thursday night 15th of June, while [engaged] in conversation, [KMR] revealed that her sons friends had just “robbed the local” gas station. She added that her son was “sitting” on the tobacco while his friends “dropped the heat” but that he had no prior knowledge of the crime. Towards the end of the shift she approached me regarding the same manner, this time stating she would go home and “suss the score”.

... Monday the 19th when she arrived late at work and informed me this was due to her house being raided by the cops”. She then confessed to me that ... her house was planned to be used as a drop off point for their illegal activities...

She stated that one of her son’s friends had already robbed this gas station six months prior.

I have also felt threatened by the fact that she consistently talks about how her son and his friends regularly steal Mazda Demios (the same vehicle that I own) and use them for their illegal activities.

[26] On Wednesday 21 June 2017, Ms A sent Kirsten Oliver a further email. It read:

On the Thursday when we had finished our work and were leaving ..., KMR said to me “I’m going home now to suss out the goodies and I will let you know what deals there will be with the ciggys”.

After that she never brought it up again.

On Monday she contacted me to say she had been raided and would be late to work. On her arrival I tried to encourage her to confide in Diane her problem as I thought Diane should know. But KMR was certain she was [not] to know and said to me “I did nothing wrong” and “have you said something to her”. To which I lied and said “No”, that was for her to do if she chose to.

She said, “you better not” while glaring at me “shit will hit the fan”.

Towards the end of our shift, KMR had started commenting about the type of cars the boys would steal for their burglaries. “Their choice, Mazda Demios, always Mazda Demios they are the most ripped”.

KMR made it quite clear to me that this was a subtle threat, to watch it, shut my trap.

I no longer want to work with KMR as she makes me feel uncomfortable with this situation. I no longer feel I can trust her. I am always thinking what does she have in store for me. I feel unsafe in my work environment.

The suspension

[27] On Tuesday, 20 June 2017, in the late afternoon, Diane Oliver spoke to KMR on the telephone in relation to what Ms A had told her on the Friday evening. KMR said she knew nothing about the stolen goods having any connection with her property until the police arrived on her doorstep. She told Diane Oliver that her son had no part in the robbery.

[28] Diane Oliver answered that the conversation had nothing to do with the robbery only the stolen goods.

[29] Also during that conversation, Diane Oliver said she wanted to stand down or suspend KMR from further work until she could attend a meeting with Ideal. Ms Oliver says that KMR agreed with that proposition. KMR says she did agree but felt that there was no option. She also felt it was necessary to have a meeting “to clear the air” and thought she would have to be suspended until then.

[30] Diane Oliver says she had made the decision to suspend KMR before she spoke to her.

[31] KMR did not attend work again.

The allegation letter

[32] On 22 June 2017, KMR received a letter from Kirsten Oliver by email as well as by courier. The letter invited KMR to a meeting with Ideal and set out the allegations that Ms A made about what KMR had told her. The letter attached Ms A’s two emails. Kirsten Oliver wrote:

At this stage, the facts suggest that:

- (a) you have participated in criminal offending, including receiving and dealing in stolen property;
- (b) you have threatened and intimidated Ms A;
- (c) your behaviour has made our work environment unsafe for Ms A and other colleagues; and
- (d) you have called into question whether we can have trust and confidence in you.

Investigation

7. Because of our concerns, you have been suspended. I have not yet reached a view as to whether or not these allegations are true. I will therefore be undertaking an investigation into the above allegations. I would like to arrange a meeting with you so that you can provide a response.

...

Conclusion

9. You are on notice that if the allegations are established it will likely be viewed as serious misconduct. The next step would be to consider the appropriate disciplinary outcome which may include the issuing of a warning (including a final warning) or termination of your employment. You will be given the opportunity to comment on the appropriate disciplinary outcome before a final decision is made if we get to that stage.
10. You are entitled to bring a support person to the investigation meeting and I would encourage you to do so.

The meeting

[33] The meeting took place on 29 June 2017 at Ideal's lawyers' office. Kirsten Oliver attended for Ideal and was the decision-maker. She was assisted by two lawyers. KMR attended with Ced Croft, a friend of hers as her support person. Mr Croft spoke, asked questions and made representations on KMR's behalf throughout the meeting.

[34] The allegations from the letter were put to KMR at the meeting and she was given the opportunity to respond to them. Prior to the meeting KMR had sent Ideal the contact details for the senior police officer dealing with the robbery and stolen goods case.

[35] Kirsten Oliver says she rang that police officer prior to 29 June 2017. She told KMR at the meeting that she had spoken to him. There was no discussion at the meeting about what the police officer had told Kirsten Oliver. However, Kirsten Oliver knew by then that no charges had been laid against KMR or her son. I am satisfied that she took that into account in her decision-making.

[36] KMR denied that she ever threatened Ms A and said that she had only said to Ms A that teenage boys like stealing Mazda Demios. She said that was just a conversation not a threat.

[37] Re the alleged comment about possibly having deals on cigarettes at the meeting, KMR said that Ms A raised the possibility of “goodies” being at KMR’s home. KMR said she was being “smart” when she that there “might be cheap cigarettes”.

[38] Kirsten Oliver and Ideal’s lawyers took two or three breaks from the meeting to consider what they had been told.

[39] After one such break, Kirsten Oliver told KMR that she had decided that KMR had threatened Ms A and therefore was guilty of serious misconduct. She said that the sanction Ideal was considering was termination of her employment. She gave KMR and Mr Croft an opportunity to comment on that.

[40] KMR was very upset. Mr Croft made a number of statements and submissions on her behalf including saying that Ideal was wrong and that KMR should be reinstated to her cleaning role and be paid some compensation for the hurt and humiliation she had suffered to that point.

[41] Kirsten Oliver and the lawyers took a further adjournment to consider whether termination was the appropriate sanction, having heard what KMR and Mr Croft had to say.

[42] Kirsten Oliver considered that termination was the correct outcome and went back into the room and conveyed that to KMR. Later that day Kirsten Oliver sent KMR the letter outlining the reasons for her dismissal which reads:

After considering your explanation, I reached the conclusion that the allegations in 6(b) – (d) of the letter of 22 June 2017 were established.

In reaching this conclusion I consider that Ms A's version of the events should be accepted over yours. This did not mean that everything that you had told Ms A was necessarily established, i.e. there were some factual inaccuracies, but the facts that I did find were established were that:

- You had some knowledge of the robbery at ... Service Station and you told Ms A about this. This is information other than through the media or Facebook.
- You offered to sell Ms A items stolen during the robbery.
- You intimidated Ms A by an implied threat that some youths you knew would steal her Mazda Demio. Ms A took this as a subtle threat to keep her mouth shut otherwise her car would be stolen. You in fact admitted at the meeting that you had told Ms A on Monday, 19 June 2017, that Mazda Demios are frequently stolen, which does lend support to Ms A's version of events.
- What also supported Ms A's version of the events was that there was external evidence linking your family to the robbery:

...

It was therefore not a situation where Ms A had made up the story because the robbery was entirely unrelated to you. There were connections between your family and the robbery, outside of what Ms A had told us. On balance, taking into account some inaccuracies, there was sufficient evidence for me to be satisfied of the matters referred to above.

...

In the circumstances, the appropriate outcome in my view was termination of employment. The proven allegations were of such a serious nature that it had irreparably damaged the employment relationship.

We then advised you that the outcome that your employment was terminated and that two weeks' notice pay would be paid to you.

[43] On 30 June 2017, Ideal paid KMR for 50 hours of work, which it had calculated was her fortnightly amount of hours. It later paid her holiday pay on her earnings.

The issues

[44] The issues I will need to decide in order to determine these claims are:

- (i) Did Ideal act as a fair and reasonable employer could have acted in all the circumstances at the time when it:

(a) suspended KMR; and

(b) dismissed KMR.

(ii) If not, what remedies is she entitled to?

Was the suspension justified?

[45] Mr Kersjes submits that the suspension was unjustified and caused KMR disadvantage in her employment. In part, that submission was premised on the fact that the period of suspension was unpaid.

[46] Generally, suspension is a contractual right. KMR's evidence is that she was not provided with an individual employment agreement. Diane Oliver's evidence is that she handed KMR a copy of an individual employment agreement for her to take away and sign on the night she met her at the worksite for the first time. However, she says that KMR did not return the agreement to her.

[47] Ideal says that the employment agreement contained a contractual right to suspend in certain circumstances. I have not been provided with a standard Ideal individual employment agreement. It is an employer's duty to keep a copy of an employee's employment agreement. Ideal should have ensured that KMR returned the agreement to it. In the absence of the employment agreement I cannot be sure that there was a contractual right to suspend KMR.

[48] Mr Graham submitted that Ideal was justified in suspending KMR. Diane Oliver's evidence was that she made the decision primarily because of security concerns about goods that could be stolen from the secure premises KMR and Ms A worked in.

[49] Even in cases where there is no contractual right to suspend, suspension may sometimes be justified. What is required in such circumstances:

... is good reason to believe that the employee's continued presence in the workplace may or will give rise to some other significant issue such as safety issues, particularly in relation to other employees or customers.¹

¹ *Hall v Dionex Pty Ltd* [2015] NZEmpC 29.

[50] I consider that Ideal had sufficient substantive reason to consider suspending KMR because of the seriousness of the allegations made against her by Ms A, which raised the possibility of KMR, or her son and his friends, posing a threat to Ideal's customer's security and Ms A's safety.

[51] However, even in such cases the rules of procedural fairness set out in s 103A(3) of the Employment Relations Act 2000 (the Act) apply. That subsection requires an employer to put the proposal to suspend to an employee explaining why it is proposed and to give the employee a reasonable opportunity to comment on it before reaching a decision.

[52] That did not happen in this case because Diane Oliver had decided before ringing KMR that she was going to suspend KMR.

[53] KMR agreed that she should be suspended without pay until an investigation/disciplinary meeting could take place. However, she did so because Diane Oliver had already decided on the unpaid suspension. That is, KMR felt she had no option. She was correct.

[54] In all the circumstances, I consider that Ideal could have consulted KMR about its proposal to suspend her and allow her to have her say within the same day before making its decision. I consider the procedural breaches to have been more than minor and to have caused KMR disadvantage. She felt correctly that Ideal had already made its mind up about the suspension.

[55] As I understand it, KMR was not paid for the period of suspension. After her dismissal, Ideal paid KMR for 50 hours. However, that was for two weeks' notice, as set out in the dismissal letter. If Ideal has not paid KMR for the period of suspension (22-28 June 2017) it must do so.

[56] I deal with the issue of KMR's application for compensation for this disadvantage at paragraphs [89] to [94].

Was the dismissal justified?

[57] In assessing whether KMR's dismissal was justified, I need to be satisfied that Ideal had substantive grounds to find that KMR was guilty of serious misconduct for which dismissal was one of a range of options open to a fair and reasonable employer. That decision must be based on evidence known to Ideal at the time as well as

evidence that would have been available to it after proper enquiry. Ideal must have made its:

... decision to dismiss on a reasonably founded belief, honestly held, that serious misconduct has occurred.²

[58] I also need to be satisfied that Ideal carried out its investigation and disciplinary processes fairly. However, I need to assess overall principles of fairness and be aware Ideal did not have to conduct an investigation “akin to a judicial inquiry”.³ However, when allegations against an employee are very serious the employer must be satisfied to a similarly high level that what it alleges is sufficiently proved.

Allegation that KMR participated in criminal offending, including receiving and dealing in stolen property

[59] Receiving stolen property is a very serious offence with a conviction leading to a potential sentence of imprisonment from 3 months to 7 years, depending on the value of the property received.

[60] According to Kirsten Oliver’s letter giving the reasons for dismissal, Ideal did not find that KMR had received or dealt in stolen property. I consider that to have been an appropriate finding made after hearing from KMR as there was no evidence that she had any prior knowledge of the robbery or the fact that an offender or any stolen property was going to be brought to her house. Certainly, there was no evidence that she had actually received any stolen property or otherwise dealt with it herself.

[61] By the time of the investigation, Kirsten Oliver had spoken to the police and knew that neither KMR nor her son had been charged with anything.

Did KMR offer to sell stolen items?

[62] KMR was dismissed, at least in part according to the dismissal letter, because Ideal decided that she had offered to sell Ms A stolen items. KMR denied this in the Authority.

² *Ritchies Transport v Merennage* [2015] NZEmpC 198 at [78].

³ *A Limited v H* [2016] NZCA 419; [2017] 2 NZLR 295 at [25]

[63] However, it was a reasonable conclusion for Kirsten Oliver to reach based on what KMR admitted to Ideal she had said. In the course of the Authority's investigation meeting, KMR said that it was Ms A who said, jokingly, "there might be some cheap deals on ciggys", to which KMR replied "yea", also jokingly.

[64] The notes from the disciplinary meeting, that were handed up at the investigation meeting, record that KMR or Mr Croft said the following:

[Ms A] said "might be goodies at home" – being smart said "might be cheap cigarettes."

[65] I take that quote to mean that KMR said "might be cheap cigarettes" but that she was just being "smart". That is somewhat consistent with her later insistence she was only joking when she responded to Ms A.

[66] Ideal reached a serious conclusion but KMR did not deny having made that comment before she was dismissed. She did not offer the explanation that she had been joking and did not really intend to offer any deals on cigarettes for Ideal to consider before it made its decision to dismiss her.

[67] A fair and reasonable employer could have made this finding in all the circumstances at the time it made its decision.

Did KMR threaten Ms A?

[68] At the employer's investigation/disciplinary meeting, KMR denied these allegations. She said she did not threaten Ms A but merely said that teenage boys like stealing Mazda Demios. She said it was just a conversation and not a threat.

[69] KMR maintained her position that the Mazda Demio comment was just conversation at the Authority's investigation meeting. In addition, she said that it was a fact that such cars were frequently stolen and referred to a Stuff article she had read that in. The notes of the disciplinary meeting do not record her having explained she was just conveying what she had read in a Stuff article. She may have given that explanation but I cannot be sure of that.

[70] At the Authority's investigation meeting but not in her written evidence submitted before the meeting, KMR said that she did say "the shit will hit the fan" to Ms A if Ms A told Diane Oliver about the robbery and the conversations they had had

about it. However, she says she meant that would mean trouble for her, that is, the shit would hit the fan for her and not for Ms A.

[71] There are notes from that meeting but they do not that record KMR giving the explanation she gave me at the Authority's investigation meeting. She may have done and it was not recorded. The notes are not a transcript and I accept the notetaker was likely to have missed some things that were said.

[72] I questioned Ms A robustly about why she thought that the words "the shit will hit the fan" were directed at her as a threat from KMR. She demonstrated KMR's tone of voice, facial expression and glare when saying those words, which she says left her in no doubt KMR said the phrase as a threat.

[73] Ms A was also unshakeable in her evidence that KMR had not only mentioned that Mazda Demios were frequently stolen but that her son's friends used to steal Mazda Demios to use in events such as the service station robbery.

[74] Even if KMR gave the explanation about the shit hitting the fan to mean trouble for her and not Ms A at the disciplinary meeting, Ideal was entitled to believe Ms A over KMR on both the car and the shit hitting the fan issue. Kirsten Oliver had heard from both of them in person, which gives context and meaning to otherwise potentially ambiguous phrases, particularly when body language is taken into account.

[75] Kirsten Oliver decided that KMR had intended to threaten Ms A when making both comments. A fair and reasonable employer could have decided that, in all the circumstances.

[76] Because of that finding, Kirsten Oliver also acted as a fair and reasonable employer could have acted when she found that Ms A felt intimidated by those comments.

Allegation that KMR's behaviour had made the work environment unsafe for Ms A and other colleagues

[77] Because Kirsten Oliver had decided that KMR's comments to Ms A were threats and had intimidated Ms A, Ideal reached a conclusion that a fair and reasonable employer could have reached, being that those threatening comments made the work environment unsafe for Ms A.

Finding of irreparable damage to the employment relationship

[78] In all the circumstances, even without a finding of receiving and dealing in stolen property, a fair and reasonable employer could have found its employment relationship with KMR was irreparably damaged. That was particularly so in such a security sensitive work environment with Ms A and KMR working at night and isolated from other Ideal employees.

Was the process used by Ideal fair?

[79] Mr Kersjes submitted that because of some inconsistencies in how Ms A expressed her concerns in writing in the two emails to Ideal after hearing from KMR Kirsten Oliver should have gone back to Ms A and checked aspects of difference within her emails and between her and what KMR had said. He says that in recognising “some inconsistencies” but not further investigating, Ideal did not act as a fair and reasonable employer could have acted.

[80] I disagree, Kirsten Oliver had heard from KMR and from Ms A. She recognised some inconsistencies in Ms A’s two emails, but had also heard from her in person on Friday, 16 June. She also considered the issue of inconsistency in Ms A’s evidence in her consideration when deciding what had been proved. She outlined what evidence she found she could rely on in her letter of dismissal.

[81] I need to assess the employer’s conduct for:

... substantive fairness and reasonableness rather than ‘minute and pedantic scrutiny’ to identify any failings.⁴

[82] Kirsten Oliver had to decide which of two employees she believed. She was in the unique position of having heard from both of them. She put allegations to KMR and gave her a reasonable opportunity to respond to those allegations; she considered those responses and decided she did not accept at least some of them.

[83] Mr Croft’s statement says that all the allegations in the letter were put to KMR one by one at the employer’s investigation/disciplinary meeting and KMR “had an opportunity to put her side and to refute the allegations.”

⁴ Note 3, at [46]. The Court of Appeal quoted the Employment Court in *Angus v Ports of Auckland Ltd (No 2)* [2011] ERNZ 466, at [26].

[84] Kirsten Oliver took KMR and Mr Croft's responses into account in making the decision to dismiss KMR. She accepted that KMR had not received or dealt in stolen property.

[85] Even if failing to go back and question Ms A was a failure of process, it was a minor one and caused KMR no disadvantage.

Conclusion on whether the dismissal was justified

[86] KMR submitted that she need not have been suspended or dismissed but could have been moved to another part of the worksite where she was no longer working with Ms A. Ideal's evidence was that all its work sites are secure sites with similar isolation of the cleaners. I accept that evidence.

[87] Given the justifiable finding of irreparable damage to the employment relationship, the decision to dismiss KMR was a decision a fair and reasonable employer could have made in all the circumstances. The decision was justified.

Remedy on disadvantage grievance

[88] KMR claimed compensation for humiliation, loss of dignity and injury to her feelings of \$15,000 for both grievances. Only one grievance has been proved, and it is the less serious one.

[89] I have ordered that Ideal must pay KMR for the unpaid period of her suspension.

[90] There were 9 days between the notification of the suspension and the meeting at the end of which KMR was dismissed. There does not appear to have been much more investigation undertaken at the time, other than Kirsten Oliver contacting the police officer in charge of the robbery enquiry.

[91] KMR was on a low number of hours per week, and while not on minimum wage was not on a high hourly rate. She had recently come off a benefit because of the increasing number of hours she was receiving from Ideal. She relied on the income from her job to support herself and her son. She was distressed during her period of suspension by her lack of income. She felt backed into a corner when Diane Oliver said she would be stood down.

[92] Without any issue of contribution, I consider that the suspension without pay should be compensated by a payment of \$4,000. However, I consider KMR's behaviour contributed to the situation giving rise to the personal grievance in a blameworthy way by 50%.

[93] Therefore, in addition to paying her for the unpaid suspension period based on 29 hours per week, Ideal must also pay KMR \$2,000 in compensation.

Costs

[94] Costs are reserved. Generally, the unsuccessful party needs to make a reasonable contribution toward the successful party's legal costs. Costs in the Authority are set in relation to a notional daily tariff. The tariff for a one-day investigation meeting is \$4,500.

[95] The parties should seek to agree on costs. If that is not possible, the party seeking costs may make submissions on costs within 28 days of the date of this determination.

[96] The other party then has a further 14 days to make their own submission on costs.

[97] I note that there has been a mixed result and the parties should consider that when discussing costs and making any submissions to me.

Christine Hickey
Member of the Employment Relations Authority