



AN INVESTIGATION GOES WRONG

The unjustified dismissal of the manager of an early learning centre has lessons for all employers, says Paul Robertson. The case illustrates the importance, for a full and fair investigation, of asking questions to get to the heart of a dispute and of taking good notes.

THE EMPLOYMENT RELATIONS

Authority has criticised an investigation by an early childcare centre. The mistakes made are worth studying by any employer embarking on an investigation into misconduct.

THE BACKGROUND

Ms Murray was the manager of an early learning centre. It was alleged that she threw water on a child, screamed at a child (her son) and roughly cleaned a child's sore toe.

The employer investigated and Ms Murray was dismissed for serious misconduct.

The Authority found that the investigation was inadequate.

Firstly, the interviews with members of staff appeared focused on confirming the witnesses' previous statements rather than exploring or testing the information given.

Witnesses were asked leading questions, appropriate basic inquiries were not made in response to information provided

and important witnesses were not interviewed.

Secondly, the notes taken were inadequate. This meant that Ms Murray was not able to respond to what had been said by other witnesses. There was no record of the questions they were asked or their answers in their own words.

Ms Murray also complained that the notes of her interview were inadequate and the employer made no effort to identify what parts of the notes were in dispute and why.

Thirdly, the management of the centre appeared to be uncritical of the evidence.

The relationship between Ms Murray and the person bringing the complaints was poor and this ought to have been taken into account. There were inconsistencies in the evidence that were not considered.

The Authority member said that the timing of the complaints (some six to seven weeks after the alleged incidents), and the

fact that the person complaining had in the meantime raised numerous other complaints without mentioning the more serious ones, ought to have caused concern.

Not all the complaints by Ms Murray were upheld. One complaint was that the employer had not provided Ms Murray with relevant information before the final decision to dismiss was made. The Authority accepted that there was a problem, but it was not fatal.

"[23] [The employer] should have provided Ms Murray with all relevant information when it sent her the disciplinary letter. However its failure to do so is not a breach of good faith because she was subsequently given all relevant information prior to her dismissal."


In spite of this comment, the Authority found that the dismissal was procedurally and substantively unjustified. Ms Murray was awarded the salary she had lost over three months

and \$8000 for hurt, humiliation and distress.

THE LESSON?

The only way to prevent liability is to undertake a full and fair investigation. The person undertaking the investigation on behalf of the employee should take professional advice on the correct procedure.

It is important to ask questions to get to the heart of the dispute and to take good notes.

Best practice is to ensure that the records taken reflect all the information available to the decision maker and to give a copy of that information to the person under investigation. 

Murray v CNI Early Education Services Trust [2014] NZERA Auckland 211

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