

# Victory at any cost



Employment disputes often result in a pyrrhic victory, says **Paul Robertson**. He takes a look at the case of an early child care teacher, dismissed for misconduct, whose contributory behaviour proved costly.

**A PYRRHIC VICTORY IS** named after King Pyrrhus of Epirus, an ancient Greek state. His forces defeated the Romans in battle, but suffered irreplaceable casualties. Similarly, employment disputes often end in 'wins' with disastrous financial consequences. A mediated settlement is nearly always the better tactic. A 2017 decision involving an early child care centre in Kaiapoi is a good example.

## TROUBLE AT THE EARLY CHILDHOOD CENTRE

The dispute involved the dismissal of a teacher for misconduct. The disciplinary process started in April 2016 leading to the teacher being dismissed the following month on five grounds, including allegations that she yelled at a child and that she left the centre in defiance of instructions to remain.

Over two days in June 2017, the Authority investigated whether a proper procedure had been followed in relation to the allegations, and then whether they were sufficiently serious to warrant dismissal.

The Authority rejected concerns about bias and pre-determination. It was appropriate for the manager to investigate the complaints, even though she also put forward three of the five complaints—in a small business it can be difficult to ensure that the investigation is carried out by an independent person. As long as the person is not caught up in the events leading to the grievance, they can still be the decision maker.

Less helpfully, the Authority accepted that some of the allegations made were imprecise, all relevant documents were not released and that allegations should have been investigated in more depth. These procedural problems made it unsafe for the employer to rely upon three of the five allegations.

In relation to the seriousness of the complaints, only one issue—the decision by the teacher to leave the kindergarten without permission—amounted to serious misconduct. Unhelpfully, the manager of the centre said this complaint would not

have been enough to dismiss the teacher; she relied upon all the complaints.

The Authority found that it was unlikely that a fair and reasonable employer would have dismissed the teacher for the one proven act of serious misconduct. It upheld the claim for unjustified dismissal.

## AND THE MONEY?

The teacher was unemployed for eight months after she was dismissed. In part, this was because of ill health. She claimed salary over that period along with a lump sum for hurt, humiliation and distress.

The Authority refused to award more than three month's salary. The teacher's ill health was not sufficiently linked to any employment issue. In addition, given the poor employment relationship, it was unlikely to have lasted more than a few more months in any event. \$12,000 was awarded for hurt, humiliation and distress.

The Authority then looked at the teacher's conduct and

the extent to which she contributed towards her situation. This included her decision to walk out of the kindergarten leaving the cook to supervise the children, refusing to follow written instructions, being untruthful and failing to cooperate with the disciplinary process. A significant contribution was warranted and the claim was reduced by 60 percent.

After contribution, the teacher was awarded \$4160 gross for loss wages and \$4800 for hurt, humiliation and distress. When claiming costs, it was confirmed that her solicitors had recorded in excess of \$40,000 worth of time. In spite of this, she was awarded only scale costs of \$7000. If all the legal costs were payable then the teacher would have lost over \$24,000 as a result of taking her claim.

**Edmonds v Sovereign Star Limited [2017] Limited NZERA Christchurch 150, 182**

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