

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2012] NZERA Christchurch 46
5358451

BETWEEN

MARIA KOLO'OFAI
Applicant

A N D

INVERCARGILL
PASSENGER TRANSPORT
LIMITED
Respondent

Member of Authority: David Appleton

Representatives: Kevin O'Sullivan, Advocate for Applicant
Janet Copeland, Counsel for Respondent

Investigation Meeting: 7 March 2012 at Dunedin

Submissions Received: 7 March 2012 from Applicant
7 March 2012 from Respondent

Date of Determination: 19 March 2012

DETERMINATION OF THE AUTHORITY

- A. The Applicant was unjustifiably dismissed and is entitled to remedies pursuant to s 123 (1) (b) and (c) of the Employment Relations Act 2000, with no reduction for contribution.**
- B. The Applicant's application for reinstatement is declined.**
- C. Section 62 of the Act was breached by the respondent, although this shall not attract a penalty against the respondent.**
- D. Costs are reserved.**

Employment relationship problem

[1] Ms Kolo'ofai was employed by the respondent as a bus driver in Dunedin on a casual employment agreement. Ms Kolo'ofai claims that she was unjustifiably dismissed on Saturday, 27 August 2011 by the respondent. Ms Kolo'ofai also claims

that the respondent failed to comply with its obligation under s.62(2) of the Employment Relations Act 2000 (the Act), relating to the respondent's obligations to inform Ms Kolo'ofai that a collective agreement existed together with other information set out in the Act.

Background information

[2] Mr Kayne Baas, the director of the respondent company who had dismissed Ms Kolo'ofai, recounted in his written brief of evidence previous occasions when Ms Kolo'ofai had worked with him in another company, Dunedin Passenger Transport, and the disciplinary issues that had arisen during that time. Mr Baas explained how Ms Kolo'ofai had been the subject of a letter of complaint from a member of the public in relation to her driving in December 2008, for which no warning had been given. Mr Baas also told me that he had issued Ms Kolo'ofai with a final written warning in March 2009 for various breaches of House Rules and Regulations.

[3] Mr Baas also referred in his brief of evidence to Ms Kolo'ofai's previous employment with Citibus (which business had been purchased by the respondent in June 2011). Mr Baas and another witness on behalf of the respondent, Mr Collins, told the Authority that Ms Kolo'ofai had been dismissed by Citibus, prior to June 2011, for *selling canaries*. *Selling canaries* refers to an occasional practice where some drivers have been known to resell used tickets to passengers, keeping the money for themselves.

[4] Mr Baas gave evidence that, despite his knowledge of all these issues, he had decided, albeit with some reluctance, to re-employ Ms Kolo'ofai when the respondent had purchased the Citibus business in June 2011 and give her a second chance. His evidence was that he was prepared to *wipe the slate clean* and enable her to make a fresh start because the company was at that time in need of experienced drivers who were able to start quickly.

[5] Upon employing Ms Kolo'ofai, the respondent had engaged her as a casual employee instead of starting her on the Tramways Union collective agreement. The respondent readily admits that this was an error on its part because Mr Baas and Mr Abbis, the respondent's Dunedin depot operations manager, had not been aware

until after Ms Kolo'ofai's dismissal that the old Citibus management had rolled over the Tramways Union collective agreement.

The alleged misconduct, the disciplinary meeting and the dismissal

[6] On Friday, 26 August 2011, the respondent company received an email from an individual (referred to in this determination as the *informant*) which was headed up *concerned passenger* and which stated as follows:

I was on the bus yesterday morning sitting toward the front in direct view of the driver, a large Maori or Samoan women [sic] on the North East Valley run.

At a stop further along the road, a passenger got onto the bus and counted out the money that was required for the fare. It seemed to be in very small denominations as she took a while to find the correct amount. As the passenger walked away from the front of the bus I noticed the money was picked up out of the tray but was not sorted into the cash box. Where did it go? – I am not sure, as it would have taken some time to sort the amounts into the cash box. I am also not sure if a ticket was issued to the passenger.

I was concerned to see this as I am aware of the difficulty that many businesses already have making ends meet in the difficult times we are in financially, without the thought of their own staff being dishonest.

Feel free to do as you will with this email, but just felt it may be worthwhile letting you know.

Sincerely,

[7] Upon receiving this email, a letter was produced by Mr Baas, which he gave to Ms Kolo'ofai later the same day. The letter told Ms Kolo'ofai that Mr Baas had received a letter from a passenger alleging that she had stolen money. He stated in the letter that he wished her to attend a disciplinary meeting on the following day at 10am to discuss the matter further, but that she should contact him if the time was unsuitable, in which case the meeting would be re-scheduled. Mr Baas' letter reminded Ms Kolo'ofai that she was welcome to have a representative present at the meeting and he encouraged her to do so. He explained in the letter that, at the meeting, they would discuss the incident and her explanation of the events and she would be given every opportunity to have her say. The letter concluded by saying that, given the seriousness of the complaint, she was given the rest of the day and the following day off as additional paid leave. Mr Baas also handed Ms Kolo'ofai a copy of the written complaint, with the name of the informant blanked out.

[8] Mr Baas then contacted Mr Bill Simpson, the president of the Dunedin Branch of the NZ Tramways and Public Passenger Transport Employees' Union, and asked him to call Ms Kolo'ofai and act for her in the forthcoming disciplinary hearing. (Ms Kolo'ofai said in evidence that she had no problem with her representative being chosen for her by the respondent. Mr Simpson is a very experienced union official who has represented many staff in disciplinary matters and who had represented Ms Kolo'ofai when she worked with a previous employer).

[9] The disciplinary meeting took place on Saturday, 27 August 2011 as planned, and present were Ms Kolo'ofai and her husband, Mr Simpson, Mr Baas and Colin Abbis. Notes were taken by Mr Abbis, which were made available to the Authority. No other notes were taken.

[10] The notes show that Ms Kolo'ofai denied taking money. The respondent's evidence was that Ms Kolo'ofai had stated during the disciplinary hearing that she had put the coins in question in a spare compartment of the cash box and had sorted them at the end of the trip because she had not had time to sort through the coinage when the passenger had given it to her. However, during the Authority's investigation meeting, Ms Kolo'ofai maintained that she had actually sorted the coins after serving the passenger, before driving off.

[11] Ms Kolo'ofai's evidence before the Authority was that she had not been told the identity of the informant at the disciplinary meeting, although she had guessed who it was. (By the time of the Authority's investigation meeting, the informant's identity had been made known to Ms Kolo'ofai). It was not clear how she had guessed, although this may be because few passengers were on the bus when the other passenger with the small change had embarked. Ms Kolo'ofai said she remembered where the informant had been sitting and agreed that the informant would have had a partial view at least of her actions as she sat in the driver's seat.

[12] The parties agreed that Ms Kolo'ofai had asked for the footage from the camera situated on the bus to be viewed as Ms Kolo'ofai maintained that it would prove her innocence. However, Mr Baas had already sought to view the footage before the disciplinary hearing, but had discovered that the camera had been inoperable.

[13] Mr Baas explained that, as well as seeking to view the footage, he had also checked before the disciplinary hearing whether there were any discrepancies in Ms Kolo'ofai's takings, and was told that there was nothing out of the ordinary about them (small discrepancies being normal). However, Mr Baas pointed out that if Ms Kolo'ofai had been selling canaries and had not put the money in the cash box, or had not issued a ticket and had kept the money, the reconciliation of the takings would not have shown a discrepancy in any event.

[14] Mr Baas said that he had also asked Ms Kolo'ofai whether there had been anyone on the bus at the time who was a regular passenger who may have seen anything, or whether the passenger with the small change was a regular. He said that Ms Kolo'ofai had said no to both questions. He said that he had also asked whether Ms Kolo'ofai had believed whether there was any reason why the informant may have lied in her email. Again, he said, Ms Kolo'ofai had replied in the negative. Mr Baas said that if Ms Kolo'ofai had told him that she had recognised any passengers as regulars, he would have travelled on the bus with her on her next run and questioned them before making his decision.

[15] Mr Baas admitted that he had not told Ms Kolo'ofai or Mr Simpson the identity of the informant, but that this was standard practice within the companies he had worked for because drivers in the past had tried to intimidate or influence people who had complained about them. Mr Baas also said that he had not questioned the informant to get further details about what she had reported in her email because he had not had a telephone number for her and had not believed that her account had lacked credibility because the informant had not gone so far as to say she had seen a theft occur. Mr Baas said that he had replied to the email though and had requested a telephone number from the informant. He did not get a reply before he had held the disciplinary meeting at 10 am on Saturday 27 August however.

[16] Mr Baas' evidence was that he had considered Ms Kolo'ofai's explanation given at the disciplinary hearing but had decided that he was not satisfied by it and decided to terminate her employment immediately, although he paid her two weeks' pay in lieu of notice. The notice of termination stated as follows:

To Maria Koloofai

Termination of Employment

The company has exercised its rights under the individual employment agreement to terminate your employment for the following reasons:

- *Monday 4th July 2011: Written warning for Missed trips due to being late for the part of a rostered shift,*
- *Given the above infraction and the latest accusation of theft (submitted by a passenger on the 26th August 2011),*

*The management of this company has lost all trust, faith and confidence in you as an employee. Given that you lost your last paid employment for theft, and that we warned you, when you started here (as a casual employee) that this was your last chance to be honest and stay employed as a bus driver in Dunedin, we now find ourselves in the same position as your previous employer. Therefore, your employment with Invercargill Passenger Transport Limited (trading as Passenger Transport Citibus) will cease on 27th August 2011 at ("**Termination Date**"). You have been provided with two weeks' notice from 27th August to 10th September ("**the Notice Period**"). The Company Does [sic] not require you to work for the duration of the Notice Period. You will be paid all your entitlements up to the Termination Date.*

At that time you are required to:

1. *Return all the company's property in your possession including keys (if any)*
2. *Leave the premises.*

Your Summary of Earnings will be sent to you prior to expiry of the current tax year.

Yours faithfully,

Dated: 27th August 2011

*Kayne Baas
Director*

Invercargill Passenger Transport Limited (trading as Dunedin Passenger Transport)

[17] The final written warning that had been referred to in the notice of termination, cited above, related to an incident when Ms Kolo'ofai had failed to drive a route on Monday, 4 July 2011, despite being rostered to do so. The explanation given for this had been that Ms Kolo'ofai had misread her shift sheet and had not realised that she had been required to drive the route that she had missed. Ms Kolo'ofai had not challenged that final written warning.

[18] Mr Baas explained that his thought process in concluding that Ms Kolo'ofai had committed theft was as follows;

- a. It was rare to get a complaint from a member of the public;
- b. There was no reason to disbelieve the informant's account, which was credible;
- c. He had wanted Ms Kolo'ofai to say something that could have *got her off*, but she did not;
- d. The on-bus camera did not assist;
- e. Ms Kolo'ofai had already received a final written warning; and
- f. Ms Kolo'ofai had been unable to prove the informant had been telling lies.

[19] One final twist to the events occurred when, a day or two after the dismissal, another driver had approached the respondent company and had alleged that the informant was the partner of a male driver who had a negative attitude towards Ms Kolo'ofai, and that the complaint by the informant had been malicious. Mr Baas explained that he had talked to both the informant and the male driver as a result, and had satisfied himself that there had been no bias. Ms Kolo'ofai told the Authority that the male driver had made negative comments about her before her dismissal.

[20] On this particular point, although it would have been good practice for Mr Baas to have given Mr Simpson at least an opportunity to have taken part in the conversation with the informant and the male driver, it occurred after the dismissal, at which point the respondent no longer owed duties to Ms Kolo'ofai. As I explain below, Mr Baas should have taken steps to have afforded Mr Simpson the opportunity to question the informant before the dismissal.

The issues

[21] In deciding whether or not Ms Kolo'ofai had been justifiably dismissed, I must have regard to s.103A of the Act, as amended on 1 April 2011. This states as follows:

- (1) *For the purposes of s.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).*
- (2) *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.

- (3) *In applying the test in subsection (2), the Authority or the court must consider –*
- (a) *whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and*
 - (b) *whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and*
 - (c) *whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee; and*
 - (d) *whether the employer generally considered the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.*
- (4) *In addition to the factors described in subsection (3), the Authority or the court may consider any other factors it considers appropriate.*
- (5) *The Authority or the court must not determine a dismissal or an action to be unjustifiable under this section solely because of defects in the process followed by the employer if the defects were –*
- (a) *minor; and*
 - (b) *did not result in the employee being treated unfairly.*

[22] In respect of this particular case, I am mindful of the following issues:

- (a) Whether Mr Baas should have forewarned Ms Kolo'ofai in his letter that she could face dismissal for serious misconduct;
- (b) Whether Ms Kolo'ofai had been given enough time to prepare before the disciplinary hearing.
- (c) Whether a sufficient investigation had been carried out by the respondent (including, whether the informant should have been questioned before a decision had been made and whether Ms Kolo'ofai or her representatives should have been given the opportunity to question the informant before a decision had been made);

- (d) Whether the respondent had been justified in taking into account the final written warning issued in respect of the missed trips;
- (e) Whether the respondent had taken into account Ms Kolo'ofai's previous history with Dunedin Passenger Transport and Citibus, and if so, whether it had been fair and reasonable to do so; and
- (f) Whether it was fair and reasonable for the respondent to have concluded that Ms Kolo'ofai had stolen money on 26 August 2011 in all the circumstances.

Should Mr Baas have forewarned Ms Kolo'ofai in his letter that she could face dismissal for serious misconduct?

[23] Although it is good practice to warn an employee of the risk of dismissal when embarking on a disciplinary process, and whilst in some circumstances, a failure to do so may render a subsequent dismissal unjustifiable, in this particular case I am satisfied that Ms Kolo'ofai and Mr Simpson would have known that she faced dismissal, both because she had been dismissed previously for dishonesty, and because Mr Simpson was a very experienced representative who would have known that stealing fare money would be viewed as serious misconduct. This failure does not render the dismissal unjustified.

Had Ms Kolo'ofai been given enough time to prepare before the disciplinary hearing?

[24] Although Ms Kolo'ofai said she would have liked to have had more time to understand the allegations and to think about them, Mr Baas' letter did make clear that she could request an adjournment if she had wanted one. Neither she or Mr Simpson had requested an adjournment, so I am satisfied that, although little notice had been given of the disciplinary hearing (around 19 hours) the fact that Ms Kolo'ofai or Mr Simpson did not ask for more time means that she did not feel unduly prejudiced.

Had a sufficient investigation had been carried out by the respondent?

[25] I believe that, having regard to the resources available to the employer, it carried out a sufficient investigation in all but one respect; namely, that it should have questioned the informant and also allowed Mr Simpson, on behalf of Ms Kolo'ofai, to have done so. No cogent or convincing answer was given by Mr Baas as to why he

had not waited to hear from the informant when he had emailed her asking for her telephone number before he carried out the disciplinary hearing. He had said that he would have postponed the hearing if Ms Kolo'ofai had asked him to, so he could equally as easily have postponed it while he ascertained whether the informant would be prepared to answer some questions. Had he done so, he may have obtained more information than the somewhat inconclusive information contained in the informant's email.

[26] Furthermore, it is a fundamental tenet of fairness that the accused (Ms Kolo'ofai) should be able to ask questions of the accuser. Even if the company had wanted to protect the identity of the informant from Ms Kolo'ofai, they could have allowed Mr Simpson to have questioned the informant. Mr Baas had acknowledged during the Authority investigation meeting that the respondent does advise the union of the identity of anyone who has made a complaint, even if the driver is not informed.

[27] It is my view that a failure to allow or arrange questioning by or on behalf of an employee accused of serious misconduct of the person who has made the allegations and who is a direct witness of the alleged misconduct is not the action that a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred. This failure, which I regard as a fundamental one, therefore, renders the decision to dismiss unjustified.

Was the respondent justified in taking into account the final written warning issued in respect of the missed trips?

[28] Mr Baas' evidence was not entirely clear with respect to the extent that he had taken into account the final written warning for the missed trips in deciding to dismiss Ms Kolo'ofai. However, in view of the wording of the termination notice, I am satisfied that the final written warning formed a significant role in the dismissal. However, the final written warning was for a misdemeanour that was not connected with dishonesty, and so I do not believe that it was reasonable for it to have weighed in the decision to dismiss. Having said that, a finding of dishonesty such as that found by Mr Baas to have occurred will usually, in itself, justify dismissal without notice and I do not believe that this case would have been any different, if it had been reasonable for Mr Baas to have concluded that Ms Kolo'ofai had kept the fare tendered to her on 25 August.

[29] Therefore, although I believe that it was not reasonable for Mr Baas to have taken the final written warning into account in the decision to dismiss, it does not in itself render the decision unreasonable because a reasonably held finding of dishonesty would have justified dismissal in any event.

Ms Kolo'ofai's previous history with Dunedin Passenger Transport and Citibus.

[30] Mr Baas was candid in his evidence and essentially admitted that, whilst he did not take into account Ms Kolo'ofai's previous history when deciding whether to dismiss her, his knowledge of Ms Kolo'ofai's previous history did influence him when deciding whether he could believe her or not. I do not think that this was unreasonable on the part of Mr Baas, and it is almost inevitable that an employer will have in his or her mind an employee's previous disciplinary history and credibility when deciding whether the employee's account of current events is credible or not.

Whether it was fair and reasonable for the respondent to have concluded that Ms Kolo'ofai had stolen money

[31] The informant's email does not state that she saw Ms Kolo'ofai pocket or otherwise steal the fare tendered to her. The informant merely raises the possibility by implication that the money was stolen because she did not see Ms Kolo'ofai put the money in the cash box. In my view, this is not sufficient evidence, on its own, reasonably to conclude that Ms Kolo'ofai had stolen the money. Although Mr Baas reasonably tried to ascertain whether there had been corroborative evidence to show whether or not she had stolen the money, none existed, so it came down to a straight contest between, on the one hand, an informant who said no more than she had not seen money being put in the cash box, and who *was not sure* where the money had gone or whether a ticket had been issued and, on the other hand, an employee who denied outright any wrong doing.

[32] Mr Baas's conclusion that Ms Kolo'ofai had stolen the money was partially based on the fact that Ms Kolo'ofai had not been able to prove the informant had been telling lies. However, even if the informant had not been telling lies, the informant had not seen theft take place. Therefore, to conclude that theft had taken place, and that Ms Kolo'ofai was the thief, was not a conclusion that a fair and reasonable employer could have reached in all the circumstances.

[33] On this basis too I must find that the dismissal was unjustified.

Remedies and contribution

[34] Section 123 of the Act provides for the provision of remedies following a finding of unjustifiable dismissal. One of these remedies is reinstatement, which Ms Kolo'ofai sought in this case. Section 125 of the Act provides that the Authority may, whether or not it provides for any of the other remedies specified in section 123, provide for reinstatement if it is practicable and reasonable to do so.

[35] Mr Baas gave evidence that he could not contemplate having Ms Kolo'ofai back in his workforce having heard that she had pleaded guilty to eight counts of benefit fraud in 2010, a fact that he had been unaware of when he had agreed to employ her in June 2011, and which now caused him to worry about her suitability for reemployment. In light of the fact that a bus driver regularly handles cash, I believe that it would not be reasonable in the light of this conviction (which Ms Kolo'ofai did not deny) to order reinstatement and so Ms Kolo'ofai's application for reinstatement is declined.

[36] Turning to s 123(1)(b) of the Act, which provides for the reimbursement to the employee of a sum equal to the whole or any part of the wages or other money lost by the employee as a result of the grievance, Ms Kolo'ofai gave evidence that she had tried to find work since her dismissal and had succeed in finding casual work as a security guard. She had earned \$756 gross in the three months between 28 August 2011 and 27 November 2011 in that casual employment. Ms Kolo'ofai also stated that she had found it hard to find permanent employment due to the nature of her dismissal. I believe that likely to be the case, although her difficulties may well also arise from her previous dismissal from Citibus for dishonesty as well as her convictions for dishonesty. However, I am satisfied that Ms Kolo'ofai made such attempts to find alternative work as she reasonably could in the circumstances.

[37] Where the Authority has found that there is a personal grievance and that the employee has lost remuneration as a result of it, s 128 of the Act requires the Authority, whether or not it provides for any of the other remedies provided for in section 123, and subject to subsection (3) and section 124, to order the employer to pay to the employee the lesser of a sum equal to that lost remuneration or 3 months' ordinary time remuneration. Subsection (3) gives the Authority the discretion to

award a greater sum than is set out in s 128. Section 124 deals with contribution, which I deal with below.

[38] I do not believe that the circumstances justify me exercising a discretion under subsection (3) to award more than three months' lost wages, given that her difficulties in finding alternative full time employment may well be attributed to factors (such as her conviction and previous dismissal for dishonesty) that fall outside the responsibility of the respondent. Therefore, I will fix the award of lost remuneration at 3 month's ordinary time remuneration, less the two weeks already paid in lieu. Ms Kolo'ofai's gross hourly pay was \$14.08 and her weekly average hours of work fluctuated between 25 and 54.5. Averaged across the 10.5 weeks that she worked, that equates to 49.75 hours a week. The sum of \$14.08 multiplied by 49.75 equals \$700.48 a week, multiplied by the 11 weeks (the period between 28 August 2011 and 27 November 2011, less two weeks) equals \$7,705.28, less \$756 earned in casual employment, equals a loss of \$6,949.28 gross.

[39] Ms Kolo'ofai is also entitled to compensation for humiliation, loss of dignity, and injury to her feelings pursuant to s 123 (1) (c) of the Act. I am satisfied that Ms Kolo'ofai did suffer humiliation, loss of dignity and injury to her feelings as a result of having been dismissed for dishonesty on the allegations of an informant whose identity was kept from her and from her representative, who her representative was not given the opportunity to question and who had not even professed to have directly witnessed theft. In these circumstances, I believe that an award of \$7,500 is warranted.

[40] Having assessed the remedies, Section 124 of the Act provides that, where the Authority determines that an employee has a personal grievance, the Authority must, in deciding both the nature and the extent of the remedies to be provided in respect of that personal grievance:

- a. consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance; and*
- b. if those actions so require, reduce the remedies that would otherwise have been awarded accordingly.*

[41] In a strict sense, Ms Kolo'ofai's actions did contribute to the situation that gave rise to the personal grievance because she did not sort the fare into the cash box

immediately she received it. She either did so at the end of her run or before she drove off from the stop at which she had received the fare (depending on which version of Ms Kolo'ofai's account - that given to Mr Baas at the disciplinary hearing or that given to the Authority - is correct). However, the actions contributing to the situation giving rise to the personal grievance must be blameworthy, and Mr Abbis, the operations manager for the respondent, confirmed in evidence to the Authority that sorting money into the cash box at the end of a run was not a disciplinary matter, although it may not be best practice. Evidence from Mr Simpson also indicated that some drivers did not put cash into the cash box at the time of receipt to help prevent loss through robbery and that that was not seen as an action for which they should be disciplined. Furthermore, there is no cogent evidence available that supports a conclusion that Ms Kolo'ofai did steal the money.

[42] In light of this evidence from the respondent, supported by the evidence from Mr Simpson, contrary to the submissions of counsel for the respondent I cannot reach a finding that Ms Kolo'ofai's actions were blameworthy, and so cannot be persuaded that there should be a reduction in the remedies awarded to Ms Kolo'ofai.

[43] For the avoidance of doubt, I do not accept that pre-employment actions by Ms Kolo'ofai which may be argued to show a history of dishonesty in her employment on the buses can in anyway be said to constitute contributory actions which fall within section 124 of the Act, not least because the respondent chose to employ her knowing that history.

Breach of s 62 of the Act

[44] Ms Kolo'ofai also claims that the respondent failed to comply with its obligation under s.62(2) of the Act relating to the respondent's obligations to inform Ms Kolo'ofai that a collective agreement existed together with other information set out in the Act. This is admitted by the respondent and is attributed to a misunderstanding that came out of the sale and purchase process and which was only rectified after Ms Kolo'ofai had been dismissed. No penalty was sought by Ms Kolo'ofai for this breach and so it is not appropriate for me to impose one.

Orders

[45] I order that the respondent pay Ms Kolo'ofai the following sums:

- a. The gross sum of \$6,949.28 pursuant to s. 123 (1) (b) and
- b. The sum of \$7,500 pursuant to s. 123 (1) (c).

Costs

[46] Costs are reserved. Any claim for costs by the applicant should be made by lodging and serving a memorandum within 28 days of the date of this determination, and the respondent shall have a further 28 days to lodge and serve any reply

David Appleton
Member of the Employment Relations Authority