IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND

[2016] NZERA Auckland 109
5605232

BETWEEN   ROBERTA RATU
                 Applicant

A N D   AFFCO NEW ZEALAND
                 LIMITED
                 Respondent

Member of Authority:	Rachel Larmer
Representatives:	Simon Mitchell and Garry Pollak, Counsel for Applicant Christine Pidduck and Rachel Webster, Counsel for Respondent
Investigation Meeting:	On the papers
Submissions Received:	14 March 2016 from Respondent 22 March 2016 from Applicant
Date of Determination:	08 April 2016

DETERMINATION OF THE EMPLOYMENT RELATIONS AUTHORITY

Employment relationship problem

[1]   Affco New Zealand Limited (Affco) has applied to strike out parts of Ms Ratu's witness statement dated 04 March 2016. It submits that the disputed evidence is not relevant to the matters the Authority is determining in these proceedings.[1]

[2]   Affco claims it is likely to be prejudiced if the evidence is admitted and it says there is no risk to prejudice to Ms Ratu if the evidence is inadmissible as the evidence can be submitted to support her disadvantage grievance, which is being investigated at a later date.

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[1] It is accepted the evidence relates to Ms Ratu's disadvantage claim which is not being heard at this time.

[3]   Ms Ratu objects to Affco's application. She says that the disputed evidence is relevant to the Authority's consideration of why she may have been dismissed. She further says that this evidence is relevant to remedies because Affco is suggesting she should not be reinstated if her dismissal grievance succeeds because of her alleged view about it as an employer.

[4]   Ms Ratu says her evidence of alleged past mistreatment is relevant to the Authority's assessment of whether or not reinstatement is reasonable and practicable.

[5]   The evidence in paragraphs 5-7 of Ms Ratu's statement dated 04 March are admissible on the basis they contain relevant background information.

[6]   The evidence in paragraphs 8-16 is not admissible on the grounds it is not considered to be sufficiently relevant to the matters the Authority will be investigating during the April investigation meeting to warrant its conclusion. This evidence will be admissible in respect of the disadvantage claim when that is subsequently investigated.

[7]   The inclusion of paragraphs 8-16 would also be likely to have unnecessarily delayed and//or prolonged the investigation meeting which has been set down for two days this month because Affco understandably wants to call evidence to contradict Ms Ratu's version of events.

[8]   I consider that can more appropriately be done when the disadvantage claim is investigated so there is no reason to have the upcoming investigation meeting delayed on that basis.

[9]   The evidence in paragraph 35 of Ms Ratu's witness statement is admissible on the grounds it is sufficiently relevant because it sets out Ms Ratu's belief of why she was dismissed which is contrary to Affco's stated reasons.

[10]   Paragraphs 41-43 of Ms Ratu's witness statement dated 04 March is inadmissible on the grounds it is not sufficiently relevant to the dismissal grievance.

[11]   The Authority is aware that there have been issues between the parties relating to Ms Ratu's work in the Tripe Room which arose prior to Ms Ratu's dismissal. Affco claims these previous matters had nothing to do with its decision to dismiss Ms Ratu while she believes they may have.

[12]   Affco considers Ms Ratu has an inappropriate attitude towards it which should impact on any assessment of reinstatement as a remedy if matters get to that point. Whilst Ms Ratu's positon is that her view of Affco as an employer and any comments she may have made about Affco are coloured by the issues she has experienced.

[13]   The Authority is aware of this so does not need to get into the detail of who is right and wrong – suffice to say that Ms Ratu has filed a disadvantage grievance about her concerns which is being defended by Affco.

[14]   Costs on this application are reserved until the substantive disadvantage grievance has been resolved.

Rachel Larmer
Member of the Employment Relations Authority