

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** About Demolition & Contracting (2003) Limited (Applicant  
186/ Respondent 270)

**AND** Ria Greening (Respondent 186/Applicant 270)

**REPRESENTATIVES** Graeme Ogilvie for Applicant/Respondent  
Robert Foitzik for Respondent/Applicant

**MEMBER OF AUTHORITY** G J Wood

**INVESTIGATION** 30 November 2005

**MEETING**

**SUBMISSIONS RECEIVED** By 16 December 2005

**DATE OF** 17 January 2006

**DETERMINATION**

**DETERMINATION OF THE AUTHORITY**

1. The applicant/respondent, About Demolition & Contracting (2003) Limited (About Demolition), is, as its name implies, a business focused on demolition work. It is owned by a Mr McCarty but managed in his absence by his father, Mr Warren McCarty. Mr McCarty senior is, however, limited in his involvement in the financial affairs of the company in that he is not a director, shareholder or cheque signatory. He was, however, in effective control of the operations of the company despite the constraints that were imposed, said to be in place to limit his generosity with money.
2. Since her employment in July 2004 the respondent/applicant, Ms Ria Greening, was the person in charge of all accounting and other office matters for About Demolition. At the time of the commencement of her employment Ms Greening worked closely with the accounting firm of Dean & Associates (in fact in their offices) as Mr Murray Dean was a director, until December 2004, of About Demolition.

3. Matters proceeded relatively smoothly with Ms Greening's employment until January 2005, when it came to About Demolition's attention that Ms Greening was making what it considered excessive use of the internet. Without discussing this matter with her, her internet use at work was disconnected on 19 January 2005.
4. Ms Greening had an arrangement which allowed her to do some work from home. As a result of not having an internet connection, she determined to do the wages for About Demolition at home on 20 January 2005. In so doing she paid herself twice for that week. The wages payments for that week were complicated by the fact that instead of all workers being paid at the same time as was usual, the labourers were paid a day or two before other staff because of the financial state of the company.
5. When Mr McCarty noticed this he raised it with Ms Greening. She admitted she had made a mistake and agreed to pay back the money. This highlighted concerns Mr McCarty had about Ms Greening's activities. He therefore sought advice on the matter and then arranged to have a letter dated 15 February 2005 sent to Ms Greening about his concerns. These involved the two concerns already raised and two additional matters.
6. Ms Greening was given the letter on 17 February. Ms Greening indicated that she wanted to respond to the letter straight away, although she was not required to. Ms Greening asked a number of questions about the allegations, but did not receive any particular response, except that matters would be discussed in full at a formal meeting. Amongst her responses was the important point that she did not know whether she had paid herself twice in one week because her wages went directly into a savings account that was not regularly monitored.
7. A formal meeting was scheduled for 22 February 2005. Mr McCarty deferred that meeting to the next day. However, Ms Greening was then given another letter which summarised the discussions of the previous week. That letter states:

*Last Thursday I gave you a letter setting out four issues I needed to discuss with you. You said you wanted to discuss them straight away. I have considered your responses and advise that I do not consider your responses are satisfactory. I therefore advise you that I am regarding these as disciplinary matters and the outcome may result in disciplinary action, possibly including dismissal for serious misconduct.*

1. *Use of internet: I do not accept that this has been reasonable use of the internet and although I do not regard this as serious misconduct it could result in a warning.*
2. *Pornographic material: You laughed at this allegation and said it was not serious. I believe this is a serious misuse of the internet and that downloading and sending on pornographic material is serious misconduct.*
3. *Pay calculation: Your response was that you have been working from 10 to 5. I have talked to others who say this is not the case. You have been at home for lunch and I believe you have been working the reduced hours without adjusting your pay. I regard this as serious misconduct.*
4. *Double pay: You seemed to indicate that this was an error and you would repay it. I have since noticed that the second pay is not entered in the wage book. It seems that when you completed the wage schedule for the bank for others you added an extra pay for yourself even though this had not been entered in the wage book. I do not believe that this was done by error and therefore my present view is that it is dishonesty and therefore serious misconduct.*

*I wish to meet with you again to give you an opportunity to respond to the above comments and issues. We will arrange a suitable time for a meeting and you are welcome to bring a representative or support person to the meeting. I will fully consider any responses you make and will not make any decision on disciplinary action until I have completed this process.”*

8. Mr McCarty met with Ms Greening accordingly on 23 February. Ms Greening’s father was in attendance to support her. At that meeting Mr McCarty concluded, following Ms Greening’s explanation about excessive use of the internet, that no serious misconduct had been proved. It was explained that the sort of (allegedly pornographic) emailing complained about was endemic throughout the office, but Mr McCarty stated that only Ms Greening in that office was an employee of About Demolition. As this matter did not form part of About Demolition’s reasons to later dismiss Ms Greening, I make no further mention of it except to note that the allegations were effectively not pursued by About Demolition and can not be seen as proven.
9. In respect of the changed hours of work, Ms Greening explained that she had approval to change her hours and that she made up any shortfall in hours on the weekend. Again as this matter was not pursued later it can be taken to be unproved.
10. Mr McCarty’s most serious concern was over Ms Greening being paid twice. Ms Greening accepted that she had made an extra payment and that she would pay it back when she had an opportunity to check with the bank. She said she had done it

accidentally as a result of having to do the work from home (with internet connection problems) and as a result of having to make two sets of payments.

11. Mr McCarty remained extremely concerned about the double payment issue although the money was returned on 24 February 2005.
12. In the meantime Mr McCarty discovered that on 22 February the office door alarm had been turned off and that \$9,000 had been transferred from About Demolition's bank account into his own personal bank account, by way of three transfers of \$3,000. Although it was Ms Greening who notified Mr McCarty about these three payments of \$3,000, Mr McCarty considered that the most likely person responsible for these unauthorised actions was Ms Greening. Ms Greening told Mr McCarty that she had no idea how this occurred and that she had not been involved. As it eventuated, in fact, the payments had been made through Ms Greening's home computer.
13. On 2 March Mr McCarty and Ms Greening had a disagreement over About Demolition's ordering system. Mr McCarty told Ms Greening in response to a question that he was still investigating the previous matters of concern that he had raised with her.
14. On 3 March Ms Greening raised concerns over how that week's wages would be paid. Mr McCarty, however, had already arranged for Ms Greening to be removed from access to the online banking system of About Demolition and for the accountants to pay the wages.
15. Because of his concerns over the transfers and the double of payment of salary to Ms Greening, Mr McCarty delivered to her on 3 March a letter, dated 2 March 2005, covering his concerns. It states:

*I have had discussions with you and your father about some issues I was concerned about, especially you paying your own salary twice in one week. You have said it was an error and you will repay it immediately. However, I am not convinced it was an error. I simply don't see how you could possibly put your salary through so soon after already paying it. Your actions in doing this cause me to lose trust in you and I regret this has occurred.*

*Before I make any decision on the matter I want to raise another matter formally with you, but you are aware I have already asked you about it. Last Wednesday evening our door alarm was turned off and shortly after that \$9,000 was transferred from the*

*company bank account into my personal bank account. As far as I am aware you are the only person who has that alarm code and also the bank details for the company account and my bank account. I therefore have to assume that you were responsible for that transfer. You have told me that you did not do it but I still cannot see who else could have done it.*

*If you did do that I would regard that as serious misconduct and a serious breach of trust. If that is the conclusion I reach I will have to consider summary dismissal as a likely outcome.*

*I ask you to formally respond on this matter, either in writing or at a meeting where you may bring a representative and/or support person, by 5pm tomorrow. Please let me know whether you wish to have a meeting to make your response. After I receive your response I will consider it and make a final decision on this matter”.*

16. A meeting over the letter of 2 March was held on 4 March. The first point discussed was about the three transfers of \$3,000. Ms Greening indicated that she had no knowledge of any transfers of this type and was trying to get information about it from the bank. Mr McCarty suggested that she had done the transactions when entering About Demolition’s premises at night. Ms Greening said that she had no idea what Mr McCarty was talking about with respect to the transfer of money into his personal account. She denied doing so after hours on 23 February. Mr McCarty asked who else had access to the bank account and was told that one of Mr Dean’s staff did, but that when questioned by Ms Greening, she had denied knowing anything about the transactions either. Mr McCarty discussed that matter with Mr Dean’s staff member and she again denied having any involvement.
17. As a result of all these matters, Ms Greening went on stress leave between 7 and 11 March. During this period Mr McCarty went to Ms Greening’s home to try and get the security codes for the office from her. This did not occur and both parties were upset as a result of this discussion.
18. After the 4 March meeting, Ms Greening was not paid until after she was dismissed and even then only following an urgent application to the Authority.
19. In the meantime, About Demolition was undertaking further investigations with its bank to determine how its accounts had been accessed. It later transpired that the principal of About Demolition, Mr McCarty’s son, did have access to the accounts in some way, but it was clearly not him who had transferred the money into his father’s personal accounts.

20. While I find that Mr McCarty always considered that Ms Greening was responsible, he also followed up the possibility that computer hackers were at work on About Demolition's accounts. The resulting information from the bank was given to the Police, who determined that the transfers were made from Ms Greening's personal computer.
21. Mr Ogilvie, representing About Demolition, forwarded this information to Mr Foitzik, representing Ms Greening, on 15 March. The two representatives and Ms Greening met on 17 March to hear Ms Greening's explanation. She stated that the three lots of \$3,000 transfers were made after she was told by Mr McCarty to transfer \$300 to him to meet certain expenses. She then explained that unfortunately she kept getting error messages on her screen (probably as the result of having to use an unreliable 'dial up' connection) and therefore the transfers went through three times by mistake. Ms Greening also informed About Demolition that she was asked about transfers on 23 February, yet the transfer(s) she was responsible for had occurred on 22 February.
22. Also at issue in the fax of 15 March was advice from About Demolition's bank that the computer at Ms Greening's address had been used in an attempt to access the company's accounts the prior Sunday evening. Ms Greening denied making any such attempt, even as late as in her statement of evidence in reply. In her oral evidence Ms Greening explained that she had tried to access the account to see if her wages had been paid.
23. Ms Greening was offered the opportunity to speak directly to Mr McCarty about these matters, but declined. Part of the correspondence that followed was a claim by Ms Greening that the representatives of About Demolition provided no evidence of Ms Greening's alleged misconduct and that it had pre-determined the outcome of its investigations, claims still in issue at the investigation meeting. Following this, About Demolition determined on 18 March 2005 to dismiss Ms Greening summarily.
24. About Demolition considered

*“...that the double payment of wages, the unauthorised accessing of the bank account on 22 February and again last Sunday, the unauthorised transferring of money, the dishonest answers about making the transfer and the way that the employee at Murray*

*Dean's office was accused of making the transfers has completely destroyed the trust in the employment relationship and amount to serious misconduct."*

25. Thus Mr McCarty did not accept the explanations forwarded to him by Mr Ogilvie. His grounds for doing so were that he did not ask for \$300 to be transferred, that each transfer would have had to have been confirmed, so that mistakes could not be made over the amount involved and that this could not have been done in error three times. Mr McCarty also did not accept that Ms Greening could not remember making the transfer(s) some days later. This was reinforced in Mr McCarty's mind by the fact that Ms Greening denied any knowledge of the transactions several times and indeed went so far as to ask an employee of Mr Dean's if she was responsible, particularly when this occurred within days of the transfers.
26. Following Ms McCarty's dismissal, the Police became involved in another matter, but given that About Demolition's allegations took place after the dismissal I have not taken this matter into account.

### **Determination**

27. The principal issue for determination is justification of the dismissal. Here I must determine, on an objective basis, whether About Demolition's actions and how it acted were what a fair and reasonable employer would have done in all the circumstances at the time of the dismissal. In so doing, I take into account that an employer in this situation does not have to prove actual wrongdoing, but rather to carry out inquiries to a reasonable extent in all the circumstances, see *Airline Stewards & Hostesses of New Zealand IUOW v. Air New Zealand Ltd* (CA) [1993] NZILR 584. As was held in *Chief Executive of the Ministry of Maori Development v. Travers-James* (unreported, Goddard CJ, 4 April 2003, WC11/03) –

*In reaching conclusions, an employer is entitled to draw reasonable inferences from surrounding and circumstantial facts and it is not a valid objection that such inferences may not have been the subject of direct proof.*

28. Thus About Demolition, in conducting its investigations, had to do so in accordance with the requirements of procedure fairness and any conclusions it reached must be those consistent with an objective assessment of what a fair and reasonable employer would have done. Direct proof, however, is not needed. Even in criminal cases

circumstantial evidence may suffice and the standard to be applied here is not to that standard, as the above cases make clear.

29. In this case, I reject any pre-determination by Mr McCarty. While Mr McCarty had firm views from early on that Ms Greening was responsible for the interferences with About Demolition's bank accounts (correctly as it transpired), I hold that Mr Ogilvie's supervision of the investigation process ensured that no premature decision was reached. Mr Ogilvie made sure that About Demolition gave Ms Greening every opportunity to explain her actions and that all relevant information was put to her before her explanations were sought. Furthermore, the fact that About Demolition did not pursue certain matters, such as excessive use of the internet, once Ms Greening had made her explanation, also show that Mr McCarty had an open mind on some matters.
30. I also reject any claim that the investigation was seriously deficient in any other way. I accept that Ms Greening should not have been disconnected from the internet or have had the wages function removed from her without notice. She should not have had her pay temporarily withheld either, but that issue was later resolved. Overall, however, I find that the dismissal process was fair. Ms Greening was given all information as and when it became available and was given every opportunity to explain by way of formal meetings at which her support people were also present.
31. Ms Greening was sacked for a number of alleged misdeeds. What must be assessed objectively is whether or not a fair and reasonable employer would (and here I believe the correct assessment must be would, more likely than not), have dismissed Ms Greening, if it reasonably concluded that she had deliberately committed any or all of the offences About Demolition believed she did commit. Grouped together, those alleged offences were the deliberately double paying wages, unauthorised access to bank accounts to transfer money from About Demolition's accounts and lying over her involvement in that matter. I accept that a fair and reasonable employer would most likely dismiss any employee in this situation who it reasonably concluded had committed any or all of these three offences. They are just the sort of matters which would ensure the trust and confidence of an employer would be impaired or destroyed. This is because when evaluating the nature of the obligations imposed on an employee (particularly a person effectively in sole charge of a company's accounts in an

administrative sense), the nature of the breach that has occurred (namely personal financial gain, or misuse of a position to create misleading accounting information, being information of a sort that is difficult to remedy and lying over such incidents) are extremely serious matters. Therefore, dismissal would be an appropriate sanction – *Chief Executive of Department of Revenue v. Buchanan and Symes* (unreported, CA, Chambers, O’Regan and Pankhurst JJ, CA2/05, 22 December 2005) applied.

32. In the case of the double payment, were it not for Ms Greening’s subsequent untruthful denials of knowledge about the later accounting issues, a conclusion that Ms Greening did not deliberately double pay herself was the most likely outcome a fair and reasonable employer would have reached. However, given the deceptive conduct of Ms Greening over the three transfers of \$3,000, including her later denial of it, I accept that it was open to About Demolition as a fair and reasonable employer not to accept her explanation, when in other circumstances it may well have. That is not to say that Ms Greening did in fact actually double pay herself wages. There can be no certainty about that. In fact with the benefit of hindsight and a full investigation by the Authority I find that it is still possible that this may well have merely been an unfortunate mistake by Ms Greening. In all the circumstances, however, I determine that there was certainly sufficient evidence for About Demolition to disbelieve her explanation on that point.
33. The key to this case was the strength of evidence gathered by About Demolition which showed that Ms Greening’s personal home computer was the source of the unauthorised payments of the three lots of \$3,000. Not only is it difficult to accept that she could not have recalled these payments a day or two later, it is interesting to note that she in fact was the one who informed Mr McCarty of the fact that this had happened. While this would ordinarily be a very strong factor in her favour, the fact that she had apparently deliberately carried through this form of pretence meant that her behaviour was even more subject to question. What was clear was that she denied doing the transfers and questioned someone else, knowing that she was the one responsible, unless she was covering for someone else using her computer, an explanation never given. Furthermore, she continued to deny responsibility until About Demolition had obtained evidence from the Police which showed definitively

that the transactions had been created from Ms Greening's own personal computer. In addition, her explanation that the bank made the same mistake three times and put ten times more money into Mr McCarty's account than she had attempted to do so, despite the "confirm" function as to the amount, which needed to be exercised by her on each occasion, simply lacks all credibility. I therefore determine that About Demolition have acted well within the bounds of what a fair and reasonable employer would do in concluding that Ms Greening made the transfers deliberately.

34. My finding here is strengthened by Ms Greening's evidence. Given her inadequate and misleading explanations at the time, her different explanations on some matters to the Authority, her only grudging acceptance of liability when confronted with records and her misjudged efforts to blame matters on the bank, coupled with the apparent credibility of the evidence of the employee of Mr Dean's, who had nothing to gain in giving untrue evidence, I have rejected Ms Greening's evidence whenever it is in conflict with that of other witnesses, even although Mr McCarty himself did not create a great impression as a witness as he had large memory lapses and was inconsistent on occasions. Therefore, I have not mentioned, for instance, in the Facts section, Ms Greening's claim that she had been asked by Mr McCarty to put \$300 into his private bank account, as I have determined on the balance of probabilities that this did not occur.
35. Given all the above, it is clear that About Demolition conducted an investigation process which although not ideal, was fair and reasonable overall. From that investigation it was concluded that Ms Greening be summarily dismissed and that, assessed objectively, was a finding that a fair and reasonable employer would have made in the circumstances that prevailed at the time. I therefore dismiss Ms Greening's claims for personal grievance.
36. About Demolition also filed an employment relationship problem against Ms Greening, claiming damages, being one week's wages paid to her for stress leave on the grounds that she caused the stress herself, an additional \$320 spent on the disciplinary investigation which About Demolition considers was unnecessary and \$450 for the cost of shifting premises as About Demolition were later asked to leave Mr Deans' premises. I dismiss all these claims. Ms Greening was under stress and

was sick during periods of the investigation. She was entitled to sick leave. It is not for the Authority to order Ms Greening to pay for her own sick leave. The costs of the disciplinary investigation were not identified in any detail, and in any event, I determine that the costs of this investigation were ones that About Demolition should meet in normal circumstances, namely as part of the cost of doing business. Furthermore, there was no evidence that the shifting of premises was actually caused by actions of Ms Greening, and in any event the claim for \$450 was not backed up by any documentary evidence. I therefore dismiss About Demolition's claims against Ms Greening.

### **Costs**

37. Costs are reserved.

**G J Wood**  
**Member of Employment Relations Authority**