

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Kelly Cribb (Applicant)
AND Centro Reigns Limited (Respondent)
REPRESENTATIVES Kaye Goldsbury, counsel for Ms Cribb
No attendance
MEMBER OF AUTHORITY Marija Urlich
INVESTIGATION MEETING 16 August 2005
FURTHER INFORMATION RECEIVED 20 September 2005
DATE OF DETERMINATION 20 September 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Kelly Cribb started employment as a bar person at the Record Reign Hotel (“the hotel”) in 2002. After six months employment she became the bar manager. The hotel was purchased by Centro Reigns Limited (“CRL”) in 2003 and Ms Cribb continued in her role as bar manager. Part of her duties involved filling the gaming machines located in the hotel. In April 2004 Ms Cribb was dismissed following the investigation of an allegation that she was responsible for monies unaccounted from the gaming machines. Ms Cribb denies this allegation and says her dismissal was unjustified. By way of remedies she seeks reimbursement of lost wages and compensation for hurt and humiliation caused as a consequence of her dismissal.

[2] No statement in reply was filed by the respondent. I am satisfied Ms Cribb arranged for personal service of the statement of problem on 21 February 2005 at the registered offices of CRL.

[3] CRL did not attend the scheduled investigation meeting. I delayed the start of the investigation meeting some 15 minutes to accommodate the possibility of lateness on the part of CRL. Having satisfied myself that CRL had been properly served with the notice of investigation meeting I proceeded with the investigation meeting pursuant to schedule 2 clause 12 of the Employment Relations Act 2000.

Background

[4] On 8 April 2004 Ms Cribb was invited by Barry Blumfield, her manager, to attend a disciplinary meeting. She was told to bring a witness. Ms Cribb attended the meeting with her brother in law, Monarch Glover. Copies of notes taken on Ms Cribb’s behalf at the meeting have been made available to me. Mr Blumfield told Ms Cribb:

- the Southern Trust (gaming organisation) had advised that in the proceeding 3 months money from the gaming machines located at the hotel did not reconcile;
- CRL had hired a private investigator who played the machines at the hotel on 7 April;
- the private investigator had asked for the machine to be filled and that when he collected there was not enough money in the machine to pay out; and
- the private investigator identified Ms Cribb as the employee who filled the machine.

[5] The notes record Ms Cribb denied “the allegations” and on her behalf Mr Glover asked for a copy of the hotel’s procedures regarding hopper filling and cash handling. The notes record Mr Blumfield said he would get them typed up and sent to Ms Cribb along with the reports from the private investigator and the Southern Trust. The cash handling procedures and the report of the Southern Trust were not provided.

[6] Mr Blumfield then advised Ms Cribb she was suspended on pay during the investigation and it was agreed another meeting would be set up when the requested information had been provided.

[7] The private investigator’s report was provided and the second disciplinary meeting convened for 18 April. Ms Cribb attended with Mr Glover and her sister Angela Glover. Ms Cribb denied the allegations and Mr Blumfield told her he would have to dismiss her. The notes record Ms Cribb accepted money had gone missing but did not agree she was responsible. At Mr Glover’s request Mr Blumfield agreed to think it over and to telephone Mr Glover the following day to let him know his decision.

[8] The following day Mr Blumfield requested a further meeting on 21 April. The meeting proceeded with the same attendees. Mr Blumfield asked Ms Cribb if she had anything further to say, she said no. He then said he was satisfied she was the staff member responsible for the thefts and that no other staff member was involved. He then advised she was dismissed for serious misconduct.

[9] On 31 May 2004 Ms Cribb’s solicitor wrote to Mr Blumfield raising a personal grievance on her behalf and requesting the reasons for dismissal.

[10] By letter dated 15 June CRL’s solicitor replied advising:

- Mr Blumfield had carried out a full investigation into the shortfalls in the gaming machines;
- A private investigator had been retained to inquire into the shortfalls and his report showed a pattern of monies going missing on the days Ms Cribb filled the machines;
- specific allegations were put to Ms Cribb and she was given opportunities to respond;
- the reason for the dismissal was that following extensive enquiries, investigation and analysis of the gaming functions Mr Blumfield was satisfied Ms Cribb had committed serious misconduct. The serious misconduct was that Ms Cribb was responsible directly or indirectly for significant shortfalls of money in relation to the gaming machines at the hotel because standard refill amounts had not been put in the hoppers or money had been misappropriated from the hoppers; and
- the employer was CRL.

Determination

[11] A justifiable dismissal is one where the employer has reasonable grounds for honestly believing the employee has committed misconduct serious enough to warrant dismissal. An

employer is required to show a fair process was carried out which requires, at a minimum, proper notice of the allegations, a fair opportunity for an explanation to be provided and fairly considered before a decision to dismiss is made¹.

[12] Ms Cribb was told what the allegation against her was and provided with a copy of the private investigator's report which details her filling of the machine. She was told that CRL viewed her as responsible because she filled the hopper. Ms Cribb accepted money had gone missing, accepted she was the person identified by the private investigator but denied the allegation. Other than a blanket denial Ms Cribb did not provide an explanation as to the shortfall during the investigation.

[13] The cash handling procedures were directly raised by Mr Glover when he asked for a copy. These were not provided as undertaken. At the investigation meeting Ms Cribb described the cash handling procedures to me as:

- buckets of \$200 worth of coin were kept in an open shelf under the bar;
- buckets less than \$200 were kept on the next open shelf under the bar;
- coin to fill the buckets was taken from notes kept in the store room which were then changed at the till; and
- the key to the store room was kept by the duty bar person who may or may not remember to hand it on to the next duty bar person.

[14] There is no evidence CRL examined its cash handling procedures in relation to the allegations against Ms Cribb. A possibility existed that the cash handling procedures or lack thereof could have contributed to the shortfall in the hopper filling observed by the private investigator. The failure to investigate this obvious feature of the allegation against Ms Cribb, coupled with Mr Glover drawing attention to the cash handling procedures renders the basis of the decision to dismiss Ms Cribb unreasonable. Ms Cribb's dismissal was unjustified.

Remedies

[15] Having established a personal grievance Ms Cribb is entitled to a consideration of the remedies sought.

[16] Ms Cribb said she received no earnings during the three month period after her dismissal. She said she sent out 12 CVs for both jobs advertised in the paper and to drop off at businesses around town. I am satisfied Ms Cribb has taken reasonable steps to mitigate her loss.

[17] **CRL is ordered to pay Ms Cribb 3 months lost wages at her usual weekly rate at the date of dismissal pursuant to section 123 of the Act.**

[18] Ms Cribb said the allegation that she was responsible for the shortfall of money was very hurtful and has damaged her reputation in the community.

[19] **CRL is ordered to pay Ms Cribb \$3000 pursuant to section 123(c)(i) of the Act.**

Costs

[20] The issue of costs is reserved. If Ms Cribb wishes to seek a costs determination a memorandum as to costs should be filed and served on the registered offices of CRL within 21 days of the date of this determination. Any memorandum in reply should be filed within 14 days of the

¹ *Man O'War Farm Limited v Bree*, unrep judgment, Court of Appeal, 31 July 2003, CA 169/02

receipt of Ms Cribb's memorandum.

Marija Urlich
Member of Employment Relations Authority