

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 313
5552365

BETWEEN YVONNE DEMPSEY
 Applicant

AND TAURANGA HOROLOGICAL
 LIMITED
 Respondent

Member of Authority: Vicki Campbell

Representatives: Warwick Reid for Applicant
 Jess Danby for Respondent

Investigation Meeting: 5 October 2015

Determination: 7 October 2015

DETERMINATION OF THE AUTHORITY

- A. Ms Dempsey was unjustifiably dismissed.**

- B. Tauranga Horological Limited is ordered to pay to Ms Dempsey an amount equivalent to three months lost wages within 28 days of the date of this determination.**

- C. Tauranga Horological Limited is ordered to pay to Ms Dempsey the amount of \$7,500 as compensation within 28 days of the date of this determination.**

- D. Tauranga Horological Limited is ordered to pay to Ms Dempsey a contribution to her costs in the amount of \$1,750 within 28 days of the date of this determination.**

Employment relationship problem

[1] Ms Dempsey claims that she was unjustifiably dismissed from her position of Office Assistant/Administrator on 28 March 2015. Tauranga Horological Limited (THL) agrees Ms Dempsey was dismissed but says the dismissal was justified.

[2] As permitted by s.174E of the Employment Relations Act 2000 (the Act), this determination has not recorded all of the evidence, the submissions received from Ms Dempsey and THL but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result.

Issues

[3] The issue for determination is whether Ms Dempsey's dismissal was justified.

Background

[4] Ms Dempsey commenced working for THL on 16 March 2015 following three interviews. Ms Dempsey told the Authority in her evidence that the job with THL was appealing because it was less hours than she was working at her previous employment and she wanted to return to study. There was no written employment agreement, however, Ms Dempsey says it was agreed she would be paid \$18.50 per hour and that she would be working Monday to Friday inclusive from 10am to 3pm each day.

[5] On Ms Dempsey's first day of employment on 16 March 2015 Mr Danby worked alongside Ms Dempsey and explaining the packaging of parcels and the high level of attention to detail that was required. Mr Danby explained to Ms Dempsey the extremely high value of the items being packaged and posted and that there was no room for error. Mr Danby showed Ms Dempsey the procedure for sending self-addressed return courier envelopes to their main account holders.

[6] Mr Danby told Ms Dempsey about the importance of cross-checking the repair number with the invoice number and the corresponding job packet along with the numbers on the back of the individual timepieces. Mr Danby says he made particular note of advising Ms Dempsey that this was not a procedure to be rushed because if it was this could give rise to errors being made. This is denied by Ms Dempsey.

[7] At the end of the first day of employment, Mr Danby says he had a quick chat with Ms Dempsey to thank her for the day and explained once again that she needed to slow down in her work and be aware and attentive to detail.

[8] On Thursday, 19 March 2015, Mr Danby says that he left a number of packages to be sent to account holders and a number of repairs were to be processed for despatch. He says he left the workshop for about 30 minutes and was surprised to see that Ms Dempsey had completed the task in hand on his return. He said the repairs were all packaged up with invoices enclosed and address labels attached.

[9] On Friday, 20 March 2015 at approximately 10.30am Mr Danby received a phone call from a major client who advised Mr Danby that they had received an incorrect self-addressed envelope. Mr Danby apologised to the client and assured the client it would never happen again and that the mistake had been made by a new member of staff.

[10] Mr Danby discussed the concerns raised by the client with Ms Dempsey and also raised a concern that a watch not been wrapped well enough. Mr Danby says the main point he was trying to make during the discussion with Ms Dempsey was that she needed to slow down in her work and felt that she was finding that difficult to do. Ms Dempsey told Mr Danby that she did find it difficult to work at a slower pace having previously been employed in a fast working environment.

[11] On Monday, 23 March 2015 Ms Dempsey worked on getting parcels ready for shipment. After the first one was completed, she asked if it was acceptable to be sent and she was informed it was. She then completed the process and getting the other parcels completed. Once that was done, she did stock entry into the database.

[12] On Saturday, 28 March 2015, Mr Danby received a phone call from a major client in Auckland advising that it had received a repair from CourierPost from THL that did not belong to it. Unfortunately, it belonged to their main competitor, also in Auckland. Mr Danby says this caused great embarrassment to himself as this had never happened before. He explained to the client that the parcel had been incorrectly despatched by a new member of staff but he accepted full responsibility for the error.

[13] Mr Danby says his reputation was severely dented and he was willing to drive to Auckland straight away to collect the repair from the incorrect address and

personally deliver it to the correct retailer. However, the client offered to have the parcel delivered to the correct address, an offer that was accepted by Mr Danby.

[14] Mr Danby contacted Ms Dempsey by telephone and told her she was not required in the workshop any more. It was common ground that Mr Danby told Ms Dempsey it was really hard for him to dismiss her but he just did not need her any more.

[15] Following the telephone discussion Ms Dempsey emailed Mr Danby and requested the reasons for her dismissal. Mr Danby did not respond. On 30 March 2015 Ms Dempsey sent a letter to Mr Danby setting out how her sudden dismissal on 28 March 2015 had affected her to which Mr Danby responded (verbatim):

You have been dismissed from employment from Tauranga Horological Limited

This is the LAST contact I will respond to. Any further correspondence either via email communication or hard copy of same.

Any further attempts to communicate / bully / harass will be treated as an aggressive act and will be acted upon in that manner.

**** PLEASE TAKE NOTE ****

[16] In the statement in reply, Mr Danby gave two reasons for terminating Ms Dempsey's employment. First, he says that Ms Dempsey had despatched two incorrectly self-addressed courier envelopes to a client and secondly he says Ms Dempsey had sent the incorrect watch and repair to the incorrect customer. Ms Dempsey says neither of these issues were raised with her on 28 March 2015.

[17] Mr Danby says that he realised he did not handle the matter in the most appropriate way but feels there are several mitigating circumstances which contributed to the way he handled the matter. These included that he had been under a great deal of pressure for the last four to five years and was taking medication for stress and anxiety. He said there were days when he did not work due to health reasons and this in itself caused extra stress because of the build-up of work and not answering emails. Mr Danby gave evidence of other personal issues that were also affecting him.

[18] With all the pressure that he was under, Mr Danby says that he has now made the decision to close his business. From 1 September 2015 Mr Danby is no longer accepting new orders and is clearing his current backlog with a view to ceasing

trading. He said this was a huge decision on his part as his family has been in the profession since 1640 and he himself has been a watchmaker for 43 years.

Determination

[19] A fair and reasonable employer is expected to comply with its statutory obligations which include the duty of good faith and the four procedural fairness tests set out in s.103A(3) of the Act. Failure to do so undermines an employer's ability to justify its actions and how it acted.

[20] Section 4(1A) of the Act requires that an employer who is proposing to make a decision which will adversely impact on an employee's ongoing employment to provide that employee with relevant information and an opportunity to comment on it before a final decision is made.

[21] By his own admission, Mr Danby has acknowledged that he did not handle the dismissal particularly well. I agree with him. I find that the dismissal was unjustified both substantively and procedurally. Performance issues needed to be addressed and steps for improvement agreed upon with the possibility of warnings being issued, but at all times providing Ms Dempsey with a full opportunity to improve.

[22] I find that THL's actions and how it acted in terminating Ms Dempsey's employment were not what a fair and reasonable employer could have done in all of the circumstances and the dismissal is unjustified.

Remedies

[23] I have found Ms Dempsey was unjustifiably dismissed. As required by s.124 of the Act, I have considered whether Ms Dempsey contributed to the actions giving rise to her personal grievance and determine that she did not. While there were concerns about her performance and mistakes were made, Mr Danby did not address those concerns in a way that put Ms Dempsey on notice that her employment was in jeopardy.

[24] Ms Dempsey has provided compelling evidence of the steps taken to mitigate her loss. Ms Dempsey continues to be unemployed despite her extensive efforts to secure alternative employment.

[25] In her statement of problem Ms Dempsey claims an amount equivalent to three months lost wages as a result of her dismissal. I am satisfied that is an

appropriate award. Tauranga Horological Limited is ordered to pay to Ms Dempsey an amount equivalent to three months lost wages within 28 days of the date of this dismissal.

[26] In her statement of problem Ms Dempsey seeks the payment of \$7,500 for humiliation, loss of dignity, and injury to feelings. Ms Dempsey has given compelling evidence as to the emotional distress she has suffered as a result of her unjustified dismissal.

[27] Tauranga Horological Limited is ordered to pay to Ms Dempsey the amount of \$7,500 compensation under s.123(1)(c)(i) of the Act within 28 days of the date of this determination.

Costs

[28] Ms Dempsey has incurred legal costs in bringing her application to the Authority. The investigation meeting took less than half a day. As indicated at the investigation meeting Tauranga Horological Limited is ordered to pay to Ms Dempsey a contribution to her costs in the amount of \$1,750 within 28 days of the date of this determination.

Vicki Campbell

Member of the Employment Relations Authority