

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Clare Marea Dunn (Applicant)
AND Daniel Poh of Budget Travellers Inn (Respondent)
REPRESENTATIVES Francis Sabbineni, Advocate for Applicant
No appearance for Respondent
MEMBER OF AUTHORITY Y S Oldfield
INVESTIGATION MEETING 8 June 2005
DATE OF DETERMINATION 8 June 2005

DETERMINATION OF THE AUTHORITY

- [1] The respondent in this matter, Mr Poh, provided a statement in reply and participated in a telephone conference at which a timetable for the investigation was agreed. However he failed to provide witness statements and documents by the agreed time. The day before the investigation meeting, at my instruction, the Authority's support officer telephoned the Budget Travellers Inn and inquired of the Manager of the Inn, Ms Mincher, about witness statements. She advised that notice of the investigation meeting had been received by Mr Poh but that he had recently departed for a trip overseas. Ms Mincher said that in his absence she would be unable to leave the Inn to attend the investigation meeting herself.
- [2] Mr Poh had not sought an adjournment of the investigation meeting or taken any steps to explain his non-attendance. I have therefore proceeded with the investigation meeting in his absence and after hearing from Ms Dunn, now issue a determination in her favour.

Employment Relationship Problem

- [3] Ms Dunn worked at the Budget Travellers Inn for \$10.00 per hour, 25 hours per week from May 2004 until August 2004, under the supervision of Ms Mincher. She had been referred to the position by Work and Income. She was dismissed by Mr Poh, abruptly and without reasons, on 18 August 2004. In his statement of reply (to which was attached a statement from Ms Mincher) he stated that the reasons for the dismissal were Ms Dunn's poor work and bad language and the fact that she had taken items from guest rooms. Ms Mincher's statement confirmed that she shared the concerns Mr Poh had identified.
- [4] At my meeting with Ms Dunn I asked her to comment on Ms Mincher's statement (it gave some examples of the concerns she had.) Ms Dunn told me that she could explain all the matters (in particular the allegation of taking property from a guest room) but had not had an opportunity to

do so as the first time she had heard anything about them was after she had lodged her problem with the Authority.

- [5] Ms Dunn gave me her explanation for the removal of food from a guest fridge. It was that the guests in the room had left and she cleared the food from the fridge for disposal with the rubbish. She had not been told that the fridge in another room was broken and the guests in that room had been told to store their food in the room that had been vacated. It was this that she had wrongly removed.
- [6] This is on its face a plausible explanation. Ms Dunn should have been given an opportunity to put it to the respondent.
- [7] Ms Dun did concede that Ms Mincher had spoken to staff about use of bad language and about the need to check that linen was clean before making up beds (laundry was done off site and it was sometimes found that it had not been properly washed.) However she said that these comments from Ms Mincher were not aimed solely at her. She said she did not receive any employment warnings.
- [8] Ms Dunn told me that she found work 6-8 weeks after her dismissal at the same rate of pay, and for approximately 20 hours per week. She said that her dismissal was very distressing for her as it came at a time when she was coping with personal stresses following the passing away of her father.

Determination

- [9] In the absence of an appearance from the respondent I accept what Ms Dunn told me about her dismissal. It was procedurally unfair and (in light of her explanation about the missing food) substantively unjustified.
- [10] Ms Dunn seeks the usual remedies for unjustified dismissal. In respect of lost earnings I note that she is entitled to compensation for the earnings she lost whilst looking for another job. **I therefore order Mr Poh to pay to her six weeks lost earnings, being a total of \$1,500.00 gross.**
- [11] In addition I accept that the abrupt manner of the dismissal was distressing for Ms Dunn. On the other hand I note that she worked only part-time and had been in the job only three months. **I order the respondent to pay compensation for hurt and humiliation of \$1,500.00.**

Y S Oldfield
Member of Employment Relations Authority