New Zealand Employment Relations Authority Decisions

Heaven v Cochrane Accountants Limited (Wellington) [2017] NZERA 2045; [2017] NZERA Wellington 45 (31 May 2017)

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Last Updated: 10 June 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON

[2017] NZERA Wellington 45
5621044

BETWEEN DENISE HEAVEN Applicant

AND COCHRANE ACCOUNTANTS LIMITED

Respondent

Member of Authority: Trish MacKinnon

Representatives: Phillip Drummond, Counsel for Applicant

Gordon Paine, Counsel for Respondent

Investigation Meeting: 5 April 2017 at Palmerston North

Submissions Received: 24 March and 7 April from the Applicant

31 March and 11 April from the Respondent

Determination: 31 May 2017

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Denise Heaven commenced employment with Cochrane Accountants Limited

(Cochranes) on 15 June 2015 as an accounting assistant. On 17 August 2015

Ms Heaven was notified by email that she was suspended on full pay pending the outcome of a meeting she was asked to attend the following day. On 21 August 2015

Ms Heaven was notified by her employer that the employment relationship was terminated effective immediately.

[2] Ms Heaven claims she was unjustifiably dismissed and unjustifiably disadvantaged in her employment by the suspension imposed on her. She seeks lost wages, compensation for her dismissal and for her unlawful suspension in addition to costs.

[3] Cochranes acknowledges it suspended Ms Heaven on 17 August 2015 and says in the circumstances it had no choice but to do so pending a meeting with her. It also acknowledges it summarily dismissed Ms Heaven on 21 August 2015 and said it did so because the trust and honesty required in an employment relationship had been destroyed and it no longer had any confidence in Ms Heaven as an employee. It considered her actions constituted serious misconduct such as to justify summary dismissal.

The Authority's investigation

[4] Ms Heaven gave evidence on her own behalf. Mr Anthony Cochrane and Mrs Gillian Cochrane gave evidence for the respondent. I have not referred in this determination to all the evidence and submissions received. I have, however, set out the material facts and made findings on issues relevant to the determination of Ms Heaven's claims in accordance with s.174E of the Employment Relations Act 2000 (the Act).

Background

[5] On 10 August 2015 Ms Heaven had a meeting with Mr Anthony Cochrane, the sole director of Cochranes, at his request to discuss aspects of the office, including practice procedures. At this time Ms Heaven had been employed by Cochranes for eight weeks. She described the meeting as a normal Managing Partner/employee meeting to discuss how Mr Cochrane liked things to be done in his office. In the course of the meeting Mr Cochrane advised Ms Heaven of the need to put any client information into the office's document destruction bin rather than in the rubbish bin at her desk.

[6] On 17 August 2015 Ms Heaven telephoned Mr Cochrane to inform him she would not be in to work that day as she was unwell. She received no answer and left a voice mail message to that effect. Later in the day she received an email from her employer informing her that a letter had been placed in her letter box. According to Mrs Gillian Cochrane, a shareholder in the business and Mr Cochrane's wife, she placed the letter in Ms Heaven's letter box at 2.45 pm.

[7] The letter stated her employer had planned to meet with her at 8.30 that morning to discuss some important and urgent matters. It said Cochranes had been investigating "some serious breaches (or what appear to be serious breaches)" of Ms

Heaven's employment agreement, three of which were itemised as being of concern. These were:

(a) "Leaving confidential client information in your rubbish bin on Friday night despite being spoken to about this on Monday 10 August 2015 and you advising that you understood our concern.

(b) Using our business internet/email excessively for personal use. This includes sending emails with the company disclaimer on them i.e. purporting to be from the compnay (sic).

(c) Unauthorised removal of proprietary and client information via email."

[8] The letter, signed by Mr Cochrane, informed Ms Heaven that Cochranes considered the allegations, if correct, to be serious misconduct which could result in her immediate dismissal from her employment. It informed her that a meeting had been arranged for 3.00pm on 18 August 2015; asked her to confirm her attendance; and invited and encouraged her to bring a representative with her to the meeting.

[9] Ms Heaven initially confirmed by telephone that she would attend the meeting and asked if she should come in to work before the meeting. She received a further email from her employer the same day suspending her from her employment.

[10] Ms Heaven emailed her employer on the afternoon of 18 August noting her view that it was unrealistic and less than satisfactory to expect her to obtain advice and make arrangements to have a representative present at a meeting within 24 hours. She requested further time and also noted her employer's letter did not contain particulars of the allegations it made against her. She asked to be provided with those particulars and relevant information in relation to each of the allegations before any meeting took place.

[11] Mr Cochrane responded by email at 2.55pm stating that Ms Heaven had already advised she would be attending the meeting and that Cochranes "will continue with the meeting with or without you at 3.00pm". No confidential client information would be made available to her outside of the office and the other material she had requested would be made available to her at the meeting.

[12] Ms Heaven attended with legal counsel. In the meeting Cochranes agreed to provide her counsel with the information it claimed to support its allegations. On 20

August 2015 Cochranes, through its counsel, Mr Paine, emailed a letter to counsel for

Ms Heaven stating that Cochranes needed an explanation from Ms Heaven with respect to the three matters they had raised with her by letter on 17 August.

[13] Mr Paine advised that, if no explanation was forthcoming by 5.00pm on Thursday, i.e. that day, they would need to make a decision based on the information they had. The letter reiterated Cochranes believed all three matters were serious but the last allegation particularly, that is the unauthorised removal of proprietary and client information by Ms Heaven by emailing material from Cochranes to her personal email, constituted serious misconduct such as to justify summary dismissal.

[14] Ms Heaven provided her explanations by email on 20 August 2015. With regard to the first allegation, she noted most of the information she had put in the rubbish bin consisted of her hand-written notes, none of which were confidential. She accepted that, with the benefit of hindsight, it would have been prudent for her to have placed two other documents into the

document destruction bin. One was a short letter that did not contain confidential information. The other was information relating to the calculation of GST for two clients, which she acknowledged did contain confidential information in respect of those clients. However, she said this was not done deliberately and could not be considered to be serious misconduct. In her view it was a performance issue which, at best, warranted training as provided for in her employment agreement.

[15] With regard to the second allegation, Ms Heaven acknowledged she had sent and received a number of personal emails from her work email address. She had written approximately 40 emails of various lengths in total. She referred to the email policy as recorded in her employment agreement which allowed for a "reasonable" level of emails and estimated she had written on average one personal email each working day during her employment. Ms Heaven also noted she had written the emails when going through a difficult period, which was reflected in the emails' content.

[16] She acknowledged those emails contained the Cochranes' disclaimer but said the default position of her computer was to attach that disclaimer to all emails sent from its email address. She said the emails' contents made it clear they were personal and that she was not representing her employer in sending them.

[17] With regard to the "unauthorised removal of client and proprietary information", Ms Heaven explained she had emailed two client spreadsheets to her home because she wanted to satisfy herself that the calculations were correct. She had worked on the two files on the day she sent them to herself and wanted to ensure she had done so properly and accurately, as she had not done that type of calculation for two or three years.

[18] Ms Heaven acknowledged it would have been prudent to check with her employer before doing this but said she thought she was doing the right thing and being a diligent employee by working on the calculations in her own time. Ms Heaven also noted that, if her interest had been in taking confidential information, she would not have emailed it to herself: she would have copied it and taken it home in her bag.

[19] The following day Mr Cochrane informed Ms Heaven by letter that Cochranes had carefully considered her explanations but remained of the view that each of the three allegations against her constituted serious misconduct on her part. The rubbish bin incident was "not a performance related issue but a fundamental issue relating to trust and confidence...". The volume of emails was "clearly unreasonable" and the company's disclaimer on those emails could have placed the placed Cochranes "in an embarrassing position if someone believed the Company was involved in your dispute."

[20] With regard to Ms Heaven's explanation over the third matter, Mr Cochrane stated that the removal from the premises of "client information or proprietary intellectual property of the Company...without authorisation" was regarded by the Company as "theft and serious misconduct and grounds for summary dismissal". Cochranes did not accept Ms Heaven's explanation and Mr Cochrane's letter conveyed the employer's decision to dismiss her with immediate effect. She was not permitted to return to the premises and any personal effects she had at work were to be returned to her through her lawyer.

[21] Ms Heaven raised a personal grievance by letter dated 10 November 2015. The parties subsequently attended mediation but were unable to resolve the matter.

Issues

[22] The issues for determination are:

a. Whether the suspension of Ms Heaven on 17 August 2015 constituted an unjustifiable action that disadvantaged Ms Heaven in her employment;

b. Whether Ms Heaven was unjustifiably dismissed.

[23] If one or both of those issues is determined in Ms Heaven's favour, further issues as to remedies and contribution will arise.

Relevant law

[24] Whether or not an action is justifiable is determined on an objective basis by applying the test in s.103A of the Employment Relations Act 2000 (the Act). The test is whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the action occurred.

[25] In applying the test a number of specified factors must be considered which may broadly be described as coming under the umbrella of natural justice. Additionally, other factors the Authority considers appropriate may be taken into account. However, s. 103A(3)(5) provides that a dismissal or action is not to be found unjustifiable solely because of defects in the employer's process if those defects were minor and did not result in the employee being treated unfairly.

Was Ms Heaven's suspension justifiable?

[26] For a suspension to be justifiable there must normally be an express provision in the employment agreement sanctioning suspension or the employee must agree to it at the time. Ms Heaven's individual employment agreement did not contain provision for suspension and there was, therefore, no contractual sanction for her employer to suspend her. She was informed by email of her suspension on pay by her employer without consultation or opportunity for her input into the decision.

[27] It has been recognised that there is *"no immutable rule requiring that an employee must be told of the employer's proposal to suspend with a view to giving the*

employee an opportunity to persuade the employer not to do so" 1 In that decision, the court noted that:

Imminent danger to the employee or others and an inability to perform safety-sensitive work are two examples of circumstances in which it might be held to be inappropriate to delay an intended suspension to give the employee an opportunity to be heard about that intention. Ultimately the test in each case must be the fairness and reasonableness of the employer's conduct. In many cases that will call for advice and discussion before determining to suspend; in others, it may not. 2

[28] Mr Cochrane said he did not consider asking Ms Heaven for her views on the suspension. In his oral and written evidence he said he did not think suspension would disadvantage Ms Heaven because she would be paid while suspended and, if she had provided a satisfactory explanation for the matters of concern to him, "she would have received a brief paid holiday."

[29] I do not accept it is reasonable for an employer to consider suspension as a brief holiday. That is a simplistic approach that takes no account of the effect it has on an employee. I note the Court of Appeal has referred to suspension as "a drastic measure which if more than momentary must have a devastating effect on the

[employee] concerned".3

[30] The fact that Ms Heaven was on sick leave on the day she was suspended had not prevented her employer communicating with her by letter and email that day. It would not have been difficult for Cochranes to propose suspension to her and give her the opportunity to comment before making its decision on the matter.

[31] I am not persuaded by the employer's submission that there was imminent risk or danger of Ms Heaven disseminating information she had sent to herself by email. It put forward no reason for that belief and took no steps to ascertain Ms Heaven's motive for sending the information to herself which she had done some weeks earlier.

[32] I find the suspension was not an action a fair and reasonable employer could have taken in all the circumstances at the time. It disadvantaged Ms Heaven, not only by preventing her from returning to her workplace the following morning, but by subjecting her to unwarranted stress at a time when she was on sick leave.

1 *Graham v Airways Corporation of New Zealand* [2005] NZEmpC 70; [2005] ERNZ 587 at 613

2 Ibid n1 at 614

3 *Birss v Secretary for Justice* [1984] NZCA 24; [1984] 1 NZLR 513 (CA) at 521

Was Ms Heaven's dismissal justifiable?

[33] In his submissions on Ms Heaven's behalf Mr Drummond asserts her dismissal was not what a fair and reasonable employer could have done in all the circumstances. He submits her dismissal was unjustified both as to the termination itself and the process the employer followed leading up to it. In Mr Drummond's submission none of the matters Cochranes found to be serious misconduct by Ms Heaven fitted that description and none warranted her dismissal.

[34] Mr Paine, in submissions made on Cochrane's behalf, submits Ms Heaven's dismissal was what a fair and reasonable employer both could and would have done. He refers in submissions to Ms Heaven's employment being terminated "for stealing computer information from the firm" as well as for the other two issues raised.

[35] Mr Paine submits it is clear that the trust and honesty required in an employment relationship was destroyed by Ms Heaven's actions and the employer lost confidence in her. In his submission, looking at the three issues which the employer found separately to be serious misconduct, Cochranes had no choice but to summarily dismiss her.

Placing confidential information in the rubbish bin

[36] With regard to this issue, Mr Paine submits Ms Heaven deliberately flouted her employer's instructions by placing documents in the rubbish bin rather than placing them in the document destruction bin.

[37] Mr Drummond submits the placing of the documents into her rubbish bin did not constitute a breach of confidentiality as Cochranes alleged. In his submission it was a relatively minor matter that warranted an oral reminder to Ms Heaven or, at most, a first written warning.

[38] I note that the employer's letter of 17 August 2015 setting out the matters it wished Ms Heaven to answer did not refer to her deliberate flouting of an instruction. Nor was it referred to in the letter of dismissal. While the earlier letter setting out the allegations did refer to Ms Heaven being "spoken to" on 10 August about leaving confidential client information in her rubbish bin, it did not accuse her of a deliberate flouting of an instruction.

[39] Ms Heaven readily acknowledged in her written response of 20 August to the allegations that, in hindsight, it would have been prudent for her to have placed aGST document and a short letter in the shredder bin and she expressed her regret for not having done so. She had noted in her response that, when Mr Cochrane had spoken to her on 10 August about not placing confidential documents in her rubbish bin, the issue had concerned a taxation form which clearly contained confidential information.

[40] Mr Cochrane's letter of dismissal noted that the fact that Ms Heaven had, within a week of their earlier conversation, again placed such documents in her rubbish bin suggested "at best a lack of attention to the job and the nature of the job". When questioned over describing this as serious misconduct, Mr Cochrane rejected that it was a performance issue.

[41] I accept client confidentiality is a matter an accounting firm is obliged to take seriously. However, I view the employer's reaction as exaggerated and not within the range of responses available to a fair and reasonable employer. I agree with counsel for Ms Heaven that an appropriate response would have been verbal counselling or, at most, a first written warning.

Using business internet/email excessively for personal use: having the company disclaimer on emails

[42] With respect to this issue, Mr Paine submits the amount of personal email traffic Ms Heaven sent far exceeded what would be normal and reasonable. He refers also to the content of her emails in categorising her email usage as a breach of the email policy.

[43] Mr Drummond, in his submissions, highlights the employer's policy which permitted personal and social use provided it was kept to a reasonable level and was for a reasonable purpose. He submits Ms Heaven did not breach that policy and, even if she had, the policy as articulated in her employment agreement categorised a breach of the email/internet policy as misconduct, not serious misconduct as Cochranes described Ms Heaven's alleged breach. A warning would have been the sanction a fair and reasonable employer would have administered in that situation in his submission.

[44] Regarding the company’s disclaimer on Ms Heaven's emails, Mr Drummond submits her employment agreement required all emails sent from Cochranes to contain the company's disclaimer which was automatically applied to them.

[45] It was apparent to me from Mr Paine's submissions as well as from the evidence given by both Mr and Mrs Cochrane that they were equally concerned with the content of the personal emails Ms Heaven sent and received at work as with the quantity of them. However, that concern was not put to Ms Heaven. The letter of 17

August 2015 setting out the employer's concerns referred to excessive personal use of the business internet/email and to the inclusion of Cochrane's disclaimer on them. It made no mention of the content of the emails.

[46] The letter of dismissal similarly referred to "the sheer volume of emails" being "clearly unreasonable, and a misuse of not only the email but also work time such as to amount to serious misconduct". It also referred to the company's disclaimer appearing on those personal emails. Mr Cochrane acknowledged in the course of the Authority's investigation that Ms Heaven's dismissal was partly for the content of her emails, to which he and Mrs Cochrane took exception. No copies of the email correspondence were produced in evidence.

[47] Mr Cochrane also acknowledged it was the company’s policy that all emails contain the disclaimer. He agreed the disclaimer was the default setting on emails sent from Cochranes and that Ms Heaven was complying with company policy when it appeared on her personal emails. Under cross examination he stated his belief that it was reasonable to dismiss an employee who was acting in compliance with company policy in such a situation.

[48] I do not agree with that view and do not accept it was open to Cochranes to conclude Ms Heaven's use of work email for private purposes, and the inclusion of the company's disclaimer on the emails, constituted serious misconduct which in part justified her dismissal. Ms Heaven's employment agreement provided for "a reasonable level" of private internet and email use and required her to include the company disclaimer on all emails. Ms Heaven's evidence was that she had sent approximately one email per working day. Cochranes provided no evidence to refute that or to establish what it considered to be reasonable usage.

[49] If Cochranes had concerns that one personal email per day on average exceeded what it intended by "a reasonable level", it should have brought that to Ms Heaven's attention. Similarly, if it was unhappy with the content of her personal emails, it should have informed her of that and asked her to desist from sending emails on that matter from work. I find a fair and reasonable employer could not have reached a decision that Ms Heaven's email usage constituted serious misconduct justifying dismissal in the circumstances.

Unauthorised removal of proprietary and client information

[50] With regard to this matter, which concerned Ms Heaven's emailing of documents home, Mr Paine submits it was fair and reasonable for the employer to terminate her employment for theft of information. He says there is no doubt she accessed the computer system for a dishonest purpose in breach of s. 249 of the Crimes Act 1961.

[51] Mr Paine notes in submissions that it is still open to Cochranes, following the outcome of the Authority's investigation, to lodge a complaint with the Police and to notify the Institute of Chartered Accountants of Australia and New Zealand. He says this will happen. Mr Paine submits Ms Heaven lied about her reasons for taking Cochrane's highly confidential client information and continues to lie about it.

[52] Mr Drummond notes in his submissions that Ms Heaven had accepted she had emailed two client spreadsheets to herself at home, and that she explained her reason for doing so to her employer. She had not undertaken those types of calculations for two to three years and was not conversant with them. She had wanted to work on them in her own time to satisfy herself the work was done properly and accurately.

[53] In Mr Drummond's submission she was acting as a diligent employee and there had been nothing untoward, mischievous or duplicitous in her actions. She had accepted in hindsight it would have been prudent to ask her employer's permission but it did not occur to her Mr Cochrane would disapprove.

[54] Mr Drummond submits Ms Heaven's emailing home of the information she wished to check could only be categorised as unauthorised if she was stealing the information. She was not stealing it but working in her own time on the information to check the calculations. Cochranes, in his submission, needed compelling evidence of Ms Heaven's dishonesty to dismiss her for her actions but it had none. Cochranes

did not deny that on the day Ms Heaven emailed client worksheets home she had been working on the files of those clients which, in Mr Drummond's submission, adds veracity to her explanation of wishing to be satisfied of the accuracy of the work she had done.

[55] I accept Cochranes was justifiably concerned that Ms Heaven had sent client documents to her home address and that was an issue it wished to address with her. I do not accept the conclusions it reached, or the manner in which it reached them, were either reasonable or fair.

[56] Cochranes was unwilling to give credence to Ms Heaven's explanation of her reasons for sending the documents to herself. Mr Cochrane simply told her in his letter of dismissal that it was unacceptable. He did not say why, or what aspect of

her explanation, was unacceptable but his letter referred to theft, and to an unspecified breach of the Crimes Act. It also referred to a template Ms Heaven had emailed home for which Cochranes had a licence which could not be used elsewhere. In his evidence to the Authority Mr Cochrane asserted she had taken that template for her own purposes and had used it for personal work.

[57] I am not satisfied these are matters Ms Heaven had the opportunity to address before she was dismissed. They did not form part of the allegations put to her on 17

August, and were not included in the letter of 20 August requiring Ms Heaven's explanation by 5 p.m. that day. When I questioned Ms Heaven she said the first she knew of the theft allegation or breach of the Crimes Act was when she received her letter of dismissal dated 21 August.

[58] Nor am I satisfied that Mr Cochrane properly considered the explanation Ms Heaven provided. I discerned from his evidence he had placed a negative interpretation on Ms Heaven's actions in the weekend preceding 17 August when he found documents in her rubbish bin that he considered should not have been there. That led to the examination of Ms Heaven's computer and the subsequent discovery of the other two matters for which she was dismissed. I find it unlikely anything Ms Heaven said or did would have dispelled the adverse impression Mr Cochrane had formed of her actions.

[59] This applies equally to Mrs Cochrane whose evidence it was that she and Mr

Cochrane made the decision together to dismiss Ms Heaven. Mrs Cochrane doubted

whether Ms Heaven had been genuinely ill on 17 August, referring to her absence as a "case of Monday-itis". When questioned over the grounds for that belief she said they thought Ms Heaven was aware she had left confidential documents in her rubbish bin and "was covering her tracks". While that statement made no logical sense, I believe it reflected the negative attitude the employer had adopted towards Ms Heaven over the weekend preceding her suspension and dismissal.

[60] Ms Heaven was not given the opportunity to meet with her employer after giving her written response to the three allegations against her. She had only one meeting after her suspension, that of 18 August. The meeting was for the purpose of the employer providing to Ms Heaven and her lawyer details of the three allegations. Mrs Cochrane's evidence was that there was no expectation Ms Heaven would answer the allegations at that time and she did not do so.

[61] Mr Cochrane's evidence made it clear he had contacted Mr Paine and taken advice over the weekend before he suspended Ms Heaven. Accordingly, there is no question Cochranes had adequate resources to assist it with its investigation of the matters of concern it had regarding Ms Heaven. Its failure to put full information to her, with regard to the allegation concerning proprietary and client information, before seeking her explanation of those matters is a significant breach of process.

[62] That failure was also evident in the employer's omission to inform Ms Heaven it considered the content of her emails to be of equal concern as the number of emails she sent during her employment.

[63] Having considered the evidence and the submission of the parties I conclude Ms Heaven's dismissal was unjustifiable. The procedure Cochrane's followed was unfair and the reasons for dismissal were not compelling. Among the features of the procedure that were unfair, was the short timeframe in which the events unfolded.

[64] Ms Heaven was not informed of the particulars of the matters of concern to her employer until the meeting on the afternoon of 18 August 2015. Until this occurred Ms Heaven had not been informed what proprietary and client material she was alleged to have removed from her employer without authorisation or what confidential document she was alleged to

have placed in her rubbish bin.

[65] She was then informed by letter from counsel for her employer on 20 August

2015 that she was required to provide her explanation by 5.00 pm the same day. If

she made no explanation by that time her employer would make a decision without receiving her responses to the allegations it had made to her.

[66] Ms Heaven composed a memorandum responding to the allegations that day, in which she provided explanations for her actions. Little time was devoted to consideration of her explanations as Mr Cochrane's letter of dismissal was sent to her the next day.

[67] Mr Cochrane acknowledged under questioning that, if it had not been for Ms

Heaven's illness on 17 August, the meeting that took place on the afternoon of 18

August would have occurred at 8.30 a.m. on 17 August. He had intended to meet with Ms Heaven as soon as she arrived at work to discuss the matters of concern he and Mrs Cochrane had.

[68] Mrs Cochrane, who gave evidence after her husband, contradicted that evidence and said they would have apprised Ms Heaven of their concerns and given her time to get "counselling" following which they would have had a meeting at 4 p.m. that day.

[69] I prefer Mr Cochrane's evidence as it was spontaneous and unqualified whereas Mrs Cochrane's evidence was given following a lunch adjournment and with the benefit of time to reflect on the impression her husband's evidence may have given. I find Mr Cochrane's acknowledgement provided an honest insight into how he viewed the requirement for fairness and reasonableness in the procedure that led to Ms Heaven's dismissal.

Remedies and contribution

[70] Ms Heaven seeks lost wages from 22 August 2015 to 5 October 2015 when she obtained alternative employment. I am satisfied from her evidence that she made efforts to find other work very soon after her dismissal. She calculates her loss as

$6,750, being six weeks' wages. Subject to contribution I award that amount.

[71] She also seeks compensation for the hurt and humiliation she suffered from both her suspension and dismissal. Ms Heaven seeks $3,000 for the suspension and

$6,000 for the dismissal. I accept the effect of her employer's actions was shocking and stressful for Ms Heaven and I find her requests to be moderate in the

circumstances. Subject to findings on contribution, I award her compensation under s.

123(1)(c)(1) of the Act as a global sum of $9,000.

[72] Ms Heaven has acknowledged contributing to the situation that led to her personal grievance by placing some material in her work rubbish bin which, in hindsight, she realised it would have been prudent to place in the document destruction bin. She also acknowledged sending personal emails and not asking her employer's permission to work on client matters at home.

[73] I find her contribution to have been relatively low as it was her employer's unfair and unreasonable response to her actions that led to her dismissal. I assess her contribution at 7.5% and reduce the above remedies accordingly.

Determination

[74] Ms Heaven was unjustifiably suspended and unjustifiably dismissed from her employment with Cochranes.

[75] Cochrane Accountants Limited is ordered to pay Ms Heaven the following sums:

a. $6,243.75 gross as reimbursement of lost wages under s. 128 of the

Act;

b. $8,325.00 without deduction under s. 123(1)(c)(i) of the Act.

Costs

[76] The issue of costs is reserved.

Trish MacKinnon

Member of the Employment Relations Authority