

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 94
5560600

BETWEEN DEBORAH ANGELA LYNN
Applicant

A N D MANSON MARINE &
ENGINEERING LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
Steve Mair, Director of the Respondent

Investigation Meeting: 23 March 2016 at Auckland

Written Record of Oral 23 March 2016
Determination:

**DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Employment relationship problem

[1] Ms Deborah Lynn worked for Manson Marine & Engineering Ltd (Manson Marine) from September 2009 to June 2010. Her employment ended around 20 July 2010 after she was caught stealing from her employer.

[2] Between February and June 2010 Ms Lynn accessed her employer's computers, obtained cheque details, and changed the cheques so they were written out to her, forged her employer's signature and then cashed the changed cheques into her own personal bank account. Ms Lynn admitted to receiving \$14,488.73 of her employer's money in this way.

[3] Ms Lynn also undertook grocery shopping for her employer. In the course of doing that she used her employer's account with Gilmore's to pay for her own personal shopping. Manson Marine says that Ms Lynn charged up at least \$5,000 of her own personal grocery shopping to the company's account. This amount is in

excess to the theft/loss associated with the fraudulent cheque use. Ms Lynn does not dispute that.

[4] The exact figure associated with this offending was not determined because of the amount of time and resources required to review each purchase charged to the company's Gilmore account over a six month period meant that Manson Marine (in consultation with the New Zealand Police) stopped counting their losses after they reached \$5,000.

[5] On 06 April 2011 Ms Lynn was sentenced by the District Court at Waitakere to 10 months' home detention for the criminal charges associated with her offending against Manson Marine.

[6] The Court also ordered Ms Lynn to pay \$14,488.73 reparation to Manson Marine for the cheque fraud crimes. Ms Lynn has been paying that amount weekly and it is due to be repaid in full by the end of May this year.

[7] Manson Marine says that no reparation was ordered in respect of the \$5,000 groceries that Ms Lynn purchased for herself but charged to the Gilmore account without authority to do so. Ms Lynn told the Authority that the Court ordered her to pay \$863.50 reparation for the grocery offending which involved the crime of 'theft by a person in special relations'.

[8] Ms Lynn says she was not paid her final pay. In her Statement of Problem Ms Lynn seeks "*unpaid final holiday pay*". Manson Marine denies that any amount is owed to Ms Lynn and further says that she still owes it for the money she took while employed.

[9] Manson Marine says that after it discovered Ms Lynn's offending and raised that with her she told them she would use her final pay and holiday pay to help repay some of the money she had taken. Manson Marine produced an email from Ms Lynn dated 23 July 2010 to one of the directors that confirmed that.

[10] Ms Lynn was adjudged bankrupt on 21 November 2011 and discharged from bankruptcy on 21 November 2014. Ms Lynn's unpaid wages had to be disclosed to the Official Assignee when Ms Lynn disclosed her assets and liabilities because the Official Assignee would normally seek to recover such amounts.

[11] Manson Marine produced to the Authority an email from the Official Assignee which confirmed that Ms Lynn advised her (the Official Assignee) that her (Ms Lynn's) unpaid wages and holiday pay were to be applied by her employer towards repaying the money she had stolen from them which is why the Official Assignee had not moved to recover those amounts from Manson Marine.

[12] During the course of today's investigation meeting the parties worked through the calculations associated with Ms Lynn's final pay. It was agreed that Ms Lynn was not paid for her last week of work which meant that when her employment ended she was entitled to (but did not receive) her last week's pay of \$1,000 (her gross salary being \$52,000 per annum).

[13] It was also agreed that Ms Lynn was paid annual holiday in advance which in accordance with s.23 of the Holidays Act 2003 is to be subtracted from the holiday pay she is to be paid upon termination.

[14] The parties agreed that the total amount of wage arrears (unpaid salary and holiday pay) owed to Ms Lynn as at the date of termination was \$1,880.

[15] Ms Lynn also agreed that she told Manson Marine to apply that amount towards repaying the money she had taken from them. That was also confirmed in an email she sent Mr Wood on 23 July 2010 and in the information she conveyed to the Official Assignee.

[16] The parties also agreed that in terms of the money Ms Lynn admits stealing, Manson Marine remains at least \$4,000 or \$5,000 out of pocket, based on the grocery related theft being capped at \$5,000 loss.

[17] I am satisfied that Manson Marine does not owe Ms Lynn wage arrears. I am satisfied that Ms Lynn authorised Manson Marine in accordance with the requirements of s5(1) of the Wages Protection Act 1983 to apply her final pay towards what she admitted she owed them as a result of her theft. Accordingly, Ms Lynn's wage arrears claim does not succeed.

[18] Manson Marine was self-represented so there is no issue as to costs.

Rachel Larmer
Member of the Employment Relations Authority

