New Zealand Employment Relations Authority Decisions

Laffey v Trust House Ltd WA 89/06 (Wellington) [2006] NZERA 752 (7 June 2006)

Last Updated: 2 December 2021

Determination Number: WA 89/06 File Number: WEA 257/05

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON OFFICE

BETWEEN Jessica Laffey (applicant)

AND Trust House Limited (respondent)

REPRESENTATIVES Harry Baynes for the applicant Peter Cullen for the respondent

MEMBER OF THE AUTHORITY Denis Asher

INVESTIGATION Wellington, 3 & 4 May 2006

SUBMISSIONS RECEIVED 12 May and 1, 6 & 7 June 2006

DATE OF DETERMINATION 7 June 2006

DETERMINATION OF AUTHORITY

Employment Relationship Problem

1. Ms Laffey says she was unjustifiably dismissed by the Company – statement of problem received on 8 July 2005. She seeks compensation for humiliation, etc of

$15,000 and costs. During the Authority's investigation Ms Laffey's advocate, Mr Harry Baines, confirmed his client was also seeking compensation for lost earnings totalling $8,080.

2. The Company says Ms Laffey was justifiably summarily dismissed following an investigation into her conduct. The respondent says it acted as a fair and reasonable employer at all times and in arriving at its determination of serious misconduct – statement in reply dated 22 July.
3. Subsequent mediation did not settle the parties' employment relationship problem. Agreement was then reached on a two-day investigation in Wellington commencing on Wednesday 3 May 2006. Witness statements and documentary evidence were usefully provided in advance. Efforts before and during the investigation to settle the problem were unsuccessful.

Background Events

4. From the evidence provided by the parties I am satisfied the following is an accurate summary of key events.
5. The Company operates a hotel, including a café, restaurant and bar at Solway Park, Masterton. Ms Laffey commenced

employment with the Company as a waitress on or around 30 March 2001. In 2004 she transferred to Solway Park as a restaurant supervisor.

6. In September 2004 the Company installed a new *"Pro Touch"* cash register system in Solway Park.
7. The respondent claims, but Ms Laffey denies, that in late 2004 she was orally instructed to cease operating an open till.
8. From 25 November until 9 February 2005 Ms Laffey temporarily assumed the responsibilities of restaurant manager. Problems seem to have arisen when the temporary arrangement came to an end but these are not relevant to the matters before the Authority.
9. On 13 February the Company undertook an unannounced audit on all of its five hotel tills including the Solway Park restaurant till: that initiative was taken because the Company had noticed the takings of the restaurant till were down for Sunday evening

shifts. The Company says that, while there were no problems with the other tills, when audited, Ms Laffey's till contained a significant amount of unaccounted for cash.

10. While the unaccounted cash caused the Company to place a covert video camera above Ms Laffey's till, it took no disciplinary steps against her.
11. Because of its concerns about restaurant till takings in respect of the following Sunday, 27 March, Ms Laffey was called to a meeting on Thursday, 31 March and asked to account for a claimed shortfall of $897. A further meeting followed on 1 April during which a video surveillance tape was played. The Company alleged Ms Laffey had not followed correct till procedure and there was a misappropriation of

$897. An explanation was sought by 4 April. The applicant worked for the respondent during the intervening period.

12. Ms Laffey put her calculations about the alleged discrepancy/misappropriation to her employer at the 4 April meeting: essentially, she said there was no or only a minimal discrepancy and that if there was a shortfall it was as a result of 12 patrons not paying for their meals. An adjournment occurred following which Ms Laffey was summarily dismissed.
13. The reasons given for the dismissal were, *"misappropriation of funds* (and) *failure of correct procedures* (and) *misuse of Trust House funds"* and that Ms Laffey *"accepted*(ed) *cash and ... did not process that cash ... straight away"* and that she *"treat*(ed) *Eftpos and cash differently"* (document 23 in the agreed bundle).
14. At par 85 of his statement, the Company's general manager of operations, Mr Allan Pollard, attempted to amend the Company's grounds for dismissing the applicant by saying it was for *"misappropriat*(ing) *funds and/**or** that she had failed to follow the correct procedures"* (emphasis added).
15. I note here that the parties' efforts to understand each others' position was complicated for some time by an undiagnosed difference of several minutes between the till and video records.

Parties' Positions

Applicant's Position

16. In response to the allegation that she did not follow correct procedures and policy in operating the till, Ms Laffey says that the restaurant was very busy on the night in question, that training in till operations was minimal, that everyone had been experiencing problems with the *Pro Touch* system and that there were no established policies and procedures for operating the till.
17. The applicant also says she followed the process taught to her by a former manager, Mr David Faulkner.
18. Ms Laffey says the Company's claim that she was shown *"on camera misappropriating company assets"* (document 8) is not supported by the relevant video: it does not display or indict her misappropriating any money.
19. The applicant says the Company based its decision to dismiss her not on actual figures of missing monies but on abstract calculations based on assumptions and not what happened on the actual night. Ms Laffey's calculations based on attendances on the night in question show a discrepancy not of $800 but only the price of one meal, i.e. $25.50: the respondent's process was therefore incorrect and faulty.
20. The applicant says the Company failed to show a proper regard for the facts and therefore could not come to a correct decision to dismiss her. Ms Laffey says that, in coming to its decision to dismiss her, the Company failed to *"take her excellent service into account"* (Statement of Problem). She also says she has been damaged locally by her dismissal and seeks compensation for the resulting humiliation, etc.

Respondent's Position

21. The test for determining whether a dismissal is justified is that set out in s. 103A of the Act.

22. The respondent relies on the findings in *Northern Distribution Union* v *BP Oil NZ Limited* [1992] NZCA 228; [1992] 3 ERNZ 483, at 487, that:

Usually what is needed is conduct that deeply impairs or is destructive of that basic confidence or trust that is an essential of the employment relationship.

23. The Company says Ms Laffey is not a novice or junior waitress: she was a restaurant supervisor and had been acting as restaurant manager. The applicant had extensive restaurant experience and was highly spoken of. In the latter part of 2004 the then restaurant manager noticed Ms Laffey collecting money on one side of the till: she was asked what she was doing. Ms Laffey explained she was too busy to ring through the cash transactions but would do so later. The manager instructed the applicant not to operate an open till and to record all transactions as they occurred. That night the till cashed up with over $300. It was clear Ms Laffey had not rung through transactions nor had she rung them through later (using her memory or a record). The Authority can safely conclude the applicant knew how to operate a till and knew of the importance of doing so.
24. In early 2005 the Company noticed that the average spend for food per person for the Sunday night buffet was erratic and had dropped on average, from $19 to $16 (document 30). The drop caused the Company to conduct, through its front office manager, an unannounced audit on all five of its hotel tills. The audit demonstrated that only the restaurant till caused concern: on the night in question it had approximately $180 in cash in the till that was not recorded through the till's point of sale system: Ms Laffey was responsible for the till on that night. The front office manager did not believe Ms Laffey's claim that she had not had time to record all transactions that evening. The former's report to Mr Pollard caused him to have security cameras installed. Their footage showed Ms Laffey operating the till contrary to normal practices and procedures: the applicant was leaving the cash drawer open and taking cash from customers without running the transaction through the point of sale system.
25. During the subsequent disciplinary investigation Ms Laffey confirmed her actions and was unable to account for all of the cash transactions. There is no record or explanation of at least three occasions where cash was received by her.

26. By way of explanation, Ms Laffey claimed she had been instructed by the then assistant manager to record cash transactions at a later time, when she was less busy. The assistant manager subsequently denied instructing the applicant to operate the till in that way. There was no acceptable evidence ever presented of the transactions being recorded later, after the transaction: Ms Laffey was failing to implement the alleged instruction.
27. Ms Laffey's claim she had not been trained adequately on the till and had problems with its point of sale system was not bourn out by an examination of the training she had received and the absence of any significant record of issues with the sale system. The applicant's explanation simply did not stack up. Ms Laffey clearly breached standard till operating procedures and acted in a highly suspicious manner. She held a senior position. Ms Laffey's actions destroyed the trust and confidence necessary to an employment relationship.
28. The Company conducted a procedurally fair process in reaching its decision to dismiss the applicant. In particular, it took Ms Laffey's length of service into account.

Discussion and Findings

29. *Parliament has legislated for the Authority or the Court to evaluate* (an employer's disciplinary) *choice against a specified objective standard: What would a fair and reasonable employer have done in the circumstances?*

...

It may mean that the (Authority and the) *Court reaches a different conclusion from that of the employer but, provided this is done appropriately, that is objectively and with regard to all the circumstances at the time the dismissal occurred, a conclusion different from that of the employer may be a proper outcome.*

Air New Zealand Limited v *Andrea Hudson*, unreported, AC 30/06, Shaw J, 30 May 2006,

pars 119 & 120

34. ... (Section)*103A can be read as giving the Authority and the Court the opportunity objectively to evaluate the subjective decision of an employer against the standard of a*

hypothetical fair and reasonable employer in order to ensure that the objectives of good faith behaviour and the need to address any inherent inequalities is achieved in all the circumstances of that case.

(above, par 129)

35. *The effect of s103A is to move from* (the) *analytical approach* (of BP Oil NZ Ltd v Northern Distribution Workers Union [1989] 3 NZLR 580) *to requiring* (the Authority and) *the Court to evaluate all of the employer's actions in all the circumstances. While the range of responses open to an employer is obviously one of the matters to be considered, it is not the only matter and the* (Authority and the) *Court is directed to a wider inquiry than was mandated by the previous decisions of the Court of Appeal.*

(above, par 131)

36. (T)*he test for justification applies at all stages including the employer's decision that misconduct has occurred and the employer's decision to dismiss.*

(above, par 132)

37. *The emphasis has shifted from the range of possible responses open to an individual fair and reasonable employer to an objective evaluation of the employer's response to misconduct against what a fair and reasonable employer would have done in all the circumstances.*

...

Therefore, a particular employer, having followed proper investigative processes is justified in dismissing for misconduct it reasonably believes has occurred if the Authority or the Courts finds that a fair and reasonable employer would have dismissed in all the circumstances.

(above, pars 141 & 143)

38. The issue for the Authority in this instance is therefore whether Ms Laffey's dismissal was justifiable, as determined on an objective basis, by considering whether the Company's actions were what a fair and reasonable employer would have done in all the circumstances: s. 103A of the Act and *Air New Zealand* (above).

39. As a consequence of mixed procedural deficiencies and substantive shortcomings, I find, for the following reasons, that Ms Laffey's dismissal was unjustifiable.
40. The employer failed to properly investigate Ms Laffey's response to its concerns because, firstly, Mr Pollard did not personally interview Mr Faulkner, the manager that Ms Laffey said had instructed her, in busy situations, to seat people first and to process cash transactions later. This is a significant omission because Ms Laffey has consistently relied on that instruction to justify her open till practice. It was a lost opportunity to determine first hand the credibility of Ms Laffey's and Mr Faulkner's competing claims. Instead, Mr Pollard relied on another manager reporting back to him, that Mr Faulkner denied the applicant's claim. However, Mr Faulkner makes it clear in his statement that, when the older system malfunctioned, he did instruct staff that *"they need not worry about ringing meals through ... because they couldn't"* (par 9). It is not clear what records, if any, staff were instructed to keep in these circumstances. But, it is clear – I find – that there was a significant exception to what the respondent describes is a fundamental procedure, and I am satisfied there were matters that should have been explored first hand by the Company's decision-maker.
41. Second, that error was compounded by Mr Pollard's failure to speak to other staff that he was advised could confirm Ms Laffey's account: he made no effort to do so. He gave no explanation for that failure other than to say the applicant *"did not produce them"* (par 66 above). I do not accept it was for the applicant to produce those witnesses but that, fairly and reasonably, Mr Pollard should have spoken to them before determining to dismiss Ms Laffey. This was a crucial, missed opportunity to test his understanding of a major, authorised variation to what he saw as a golden rule.
42. These are surprising omissions, as is Mr Pollard's statement that he *"did not believe that* (Mr Faulkner) *would have trained* (the applicant) *that way. It was contrary to procedure that is so fundamental that it simply defied belief"* (par 67 of his statement). I conclude from these failures and statements that Mr Pollard undertook the investigation on behalf of the respondent with a closed mind. As a result of his strongly held views on 'fundamental procedure' or golden rules, that staff did not operate open tills and always record cash transactions at the time, I find that Mr Pollard failed to fairly

and reasonably look into the applicant's replies to his concerns. This failure is all the

more significant given Mr Pollard's previously held very high opinion of the applicant, and his belief she could *"go all the way"* (oral evidence) in the hospitality industry.

43. The issue of whether Mr Faulkner did or did not instruct the applicant as she alleges became no clearer during the Authority's investigation. This is because Mr Faulkner insisted he had not instructed Ms Laffey to get diners to their seats on busy nights while worrying about their cash payments later, whereas Ms Laffey continued to insist he had. Moreover, one witness resiled from her initial, hand-written statement in support of Ms Laffey's claim while two others gave equally credible evidence that they had either heard the manager instruct Ms Laffey in that way and had seen him do the same, or they had seen him do the same. A fourth witness provided a similar statement but did not appear at the Authority's investigation. Two of the witnesses advised they had not always immediately rung up transactions during busy periods but did so later; they also make it clear they did not operate an open till.
44. Third, Mr Pollard did not, at the time, investigate the applicant's claim of 12 diners in one party, on the night in question, not paying for their meals. This was because, Mr Pollard said, he *"simply did not believe her"* (par 72 of his statement). When the respondent did contact the party in question, some 8-months later, a family member heatedly denied the allegation. Like the instruction to seat diners first, etc the parties very much dispute the extent of non-paying diners. Mr Pollard says it is *"virtually unheard of … and* (in his memory) *there has never been an occasion of people leaving the restaurant and not paying at all*" (par 70, above). Other witnesses provided by the respondent do recall instances of non-paying diners (par 23, Hanlon; par 19 Lingham).
45. However, I find Mr Pollard's failure to be all the more inexplicable when it is appreciated he was willing, to an extent, to rely on Ms Laffey's recalculations of numbers of diners on the night and what they paid. As a result, Mr Pollard moved from the Company's first estimated shortfall (a discrepancy of $897, based on a calculation of 327 diners) to a second, lesser estimation of $342.90 following Ms Laffey's advice that her original, signed off on the night, advice of actual diners was wrong (document 34) and they totalled 302 instead. It was then that Ms Laffey explained that the shortfall was attributable, in part, by the failure of 12 diners to pay for their meal. It is difficult to understand the respondent's willingness to accept a

reduction from 327 to 302, while baulking at a claim of 12 non-payers without attempting some investigation of the latter. I can only conclude it is another expression of Mr Pollard's closed mind to the applicant's explanation.

46. Fourth, while set out in abbreviated form, the minutes of the respondent's disciplinary investigation make it clear there was no attempt by the parties to attempt to reach agreement on the specifics of who paid what on the night, compared with what should have been paid. Instead, the exchange moved quickly from one estimated shortfall ($897), to a figure less than half that ($342.90) with seemingly no further effort to identify the extent of the claimed misappropriation, despite Ms Laffey's claims about other errors and 12 diners not paying. During and after the Authority's investigation the respondent invested considerable effort in, as it says, using Ms Laffey's figures to prove a significant shortfall remained: it is not clear why this effort was not applied at the time, when memories and comprehension would have been superior and the parties were better placed to achieve a reconciliation of what are now bitterly contested figures.
47. It would have been fair, timely and reasonable for the Company to have undertaken at the time of its original investigation the subsequent in-depth scrutiny it provided of Ms Laffey's claims, and would not have amounted to microscopic and/or pedantic scrutiny.
48. While it is clear Ms Laffey's accounting for diners and their payments on the night of 27 March 2005 was, and continues to be, bluntly, a mess, I find however that a fair and reasonable employer would not have determined, in the original circumstances, that her behaviour amounted either to misappropriation or a breach of the Company's unwritten procedures. I reach this conclusion because, notwithstanding Mr Pollard's years of experience and seniority in the industry, I am satisfied that something more than faith in a golden rule is required in respect of a serious allegation of the type brought by the Company against the applicant and her response to it. This is because a finding of serious misconduct requires proof of the allegation sufficient to justify a finding not only that serious misconduct has occurred but that the sanction of dismissal or a lesser sanction should be applied: *Honda NZ Ltd* v *NZ etc Shipwrights etc IUOW* [1990] 3 NZEL 98, 130 (CA).

49. In this instance the Authority's investigation disclosed that the respondent's staff are not trained in a coherent and consistent manner about till procedures: varying practices apply. Given the Company's resources, and the number of its employees, it is reasonable to expect, as a matter for both parties' protection, that its staff enjoy suitable and consistent training, that they have before them clear instructions as to their tasks and responsibilities, particularly in cases involving the handling of money and that those instructions are set out in writing.
50. I also find that other factors work against the respondent's claim that its dismissal of the applicant was what a fair and reasonable employer would have done in all the circumstances, at that time. These are: Ms Laffey was dismissed for a parcel of reasons and not, as Mr Pollard claimed in his statement, on an and/or basis (see par 14 above). It follows that

the failure of one part of the parcel causes all of the parcel to fail. That parcel consisted of: the Company finding the applicant had misappropriated and misused its funds **and** her failure to apply correct procedures (document 23). In particular, the respondent says – and, as it happens, the applicant agrees – that she accepted cash but did not process it straight away, but instead treated it different from Eftpos. As already explained, Ms Laffey justifies her conduct by saying she acted under instruction.

51. The first element of Ms Laffey's dismissal, misappropriation, is defined by the dictionary (Concise Oxford, 10th Ed.) as *"dishonestly or unfairly"* taking for one's own use. In this case, and the Company agrees, there is no direct camera or video evidence of Ms Laffey taking the Company's money. That evidence does not show, for example, Ms Laffey taking cash from the till and placing it in her pocket.
52. The Company also accepts that it cannot be specific as to an actual amount it says was dishonestly taken. In its closing submission the Company argues that the figures it now relies on are those provided by the applicant herself: that is clearly not the case because Mr Pollard's evidence makes expressly clear he did not believe her claim of 12 non-paying diners.
53. Ms Laffey accounts for the shortfall by listing some of the differences between what was recorded and what was actually paid by the guests (documents 36 & 37) and her claim of non-paying diners. Her calculation is now a shortfall of $25.50.

54. As is made clear above, the respondent's analysis was not undertaken as part of its investigation, but was produced instead during the Authority's investigation. So, also, was Ms Laffey's more detailed response. No comprehensive effort was made, at the time, to attempt to jointly reconcile the records, including the till record with the video tape, in an effort to identify any actual shortfall. In fact it was only shortly before the Authority's investigation that the applicant and her support team appreciated there was a significant time difference (of approximately 2.5 minutes) between the video timing and the till record.
55. In its closing submission the respondent presented fresh, detailed argument in support of its claim that Ms Laffey's calculations are flawed (pars 56-72 inclusive). At par 64 of its submissions, the Company is arguing that, from the documents provided, and based on the applicant's own figures and shift reports (documents 35-38 inclusive) there is still a difference between expected and actual revenue of $182.30. In light of the significant procedural shortcomings in the respondent's investigation, I am satisfied that this matter – which, in reality, is a claim not of misappropriation but of failing to account – is best addressed in terms of the applicant's contributory fault.
56. The second element of Ms Laffey's dismissal is that she failed to apply correct procedures. The Company argues Ms Laffey breached procedures that *"were elementary in nature"* and her actions were similarly *"contrary to accepted service standards universally"* (par 43, respondent's closing submissions). It also says that it is entitled to rely on Ms Laffey's *"extensive experience in the hospitality industry and on her skills as a senior member of staff in expecting her to follow standard and elementary procedures"* (above). In confirming his view, Mr Pollard accepted my simile – put to him during the investigation – that these procedures were like the air we breathe, so obvious as to be taken for granted.
57. A difficulty in relying on Ms Laffey's experience is that most of it was gained working for the Company, and in the absence of clear, written practices.
58. As is made clear above, the Company is obliged to advance these arguments because it accepts there are no written directions requiring staff **not** to operate, as Ms Laffey did, an open till and to record each cash transaction as it takes place (which the applicant clearly accepts she failed to do). Till procedures and

requirement to ring transactions through at the point of sale are not set out in, for example, employees' employment agreements, a Code of Conduct, a manual or the like.

59. Not only are no written instructions or policies in respect of till procedures and ringing through transactions at the point of sale not in place, but the Company similarly cannot point to a training programme that spells out to new staff these, and other, procedural requirements.
60. The absence of clear written policy, and reliance on golden rules, is unsatisfactory. This is because, as was made clear in the Authority's investigation, till practices vary

– a number of staff admit to not always immediately recording cash transactions, in busy situations. It is clear they do not appreciate that recording cash transactions at the time of payment is, for the Company, a golden and unbreakable rule.

61. The requirement for clear instruction is sharper in this instance given the respondent's claim Ms Laffey was orally warned in late 2004 for not recording cash transactions as they occurred. Surprisingly, that warning was not put in writing, despite the applicant's apparent breach of a fundamental or golden rule. The claimed warning does not seem to have inhibited the Company from appointing, on an acting basis, Ms Laffey to a more senior role on or shortly thereafter.
62. Ms Laffey was similarly not warned in early February 2005 when an unannounced cash check of all of the tills in the hotel was undertaken and the applicant's was found to be approximately $180 over. Mr Pollard says the applicant was

not warned on this second occasion because he *"wanted to be fair, to keep matters under wraps* (so that he might) *do a thorough investigation"* (oral evidence). That approach is unsatisfactory. It runs the risk of entrapment.

63. Ms Laffey's actions in February 2005 were clearly in Mr Pollard's mind when he installed a video camera above Ms Laffey's till, and when he conducted an investigation into her conduct on the night of 27 March. Her earlier actions clearly contributed to his negative view of her. It is a matter that should have been clearly put to the applicant, as part of the respondent's investigation into her actions on 27 March: it is not recorded in the Company's minutes.

64. I repeat the finding set out above: in this instance, something more than faith in a golden rule is required in respect of a serious allegation of the type brought by the Company against the applicant when, as Ms Laffey does, a worker relies on an instruction to operate in that way. A finding of serious misconduct requires proof of the allegation sufficient to justify a finding not only that serious misconduct has occurred but that the sanction of dismissal or a lesser sanction should be applied: *Honda*, etc (above).

Applicant's Record of Service

65. I can find no reason to doubt the Company's claim that it took into account Ms Laffey's record of service before arriving at its decision to summarily dismiss the applicant.

Other Matters

66. For the sake of completeness, I record the following findings: the applicant's claim that the problems with the *Pro Touch* system were ongoing for all staff was largely not bourn out by the evidence of others although most said there were initial teething problems for one or two months (Faulkner, oral) and they took some time to adjust to the new system.
67. Finally, I do not accept the argument advanced by the respondent that Ms Laffey breached an instruction that no staff member was to cash up their own till (document 4). I reject this allegation as I can find no trace of it being put to Ms Laffey as part of the Company's disciplinary process culminating in her dismissal.

Conclusion

68. Having regard to the above, I find that the conclusion reached by the respondent at the time of its dismissal of Ms Laffey, that she misappropriated funds and that she failed to follow correct procedures, to be – on a balance of probabilities basis – objectively unsupported: a fair and reasonable employer would not, in all the circumstances, have reached those conclusions. It therefore follows that the applicant has been unjustifiably dismissed.

Remedies

69. Ms Laffey seeks compensation for lost wages, unspecified costs and $15,000 for humiliation, etc. She says – and I readily accept – that the effects of her dismissal in a town the size of Masterton have been very difficult, both in terms of finding new employment and in terms of the comments of others and that she says she continues to be upset by considerable gossip about what is in effect a continuing allegation.
70. Ms Laffey's earnings since her dismissal are not clear: during the Authority's investigation she gave evidence of a number of examples of unsuccessful job applications, but also of temporary grape picking for 10-days and, later, other casual work. The applicant says she now holds down a full-time casual position.

Direction to Parties

71. Consistent with my advice to the parties at the conclusion of the Authority's investigation, and in light of evidence provided by way of the applicant's closing, written submissions, I require the parties to attempt – via mediation if that will assist – to reach agreement on the amount of wages lost to the applicant since her dismissal and until the date of her current, full-time employment. Leave is reserved for the matter to be returned to the Authority if agreement is not forthcoming. Any discussion, and ideally agreement, between the parties of necessity will take into account my following contributory fault findings.
72. Consistent with this determination going in favour of the applicant and her evidence as to humiliation, I find that Ms Laffey is entitled to compensation. My findings as to contributory fault will, of course, reduce the amount to be paid to the applicant.

Contributory Fault

73. Ms Laffey's contribution to her personal grievance is significant. This is because, amongst other short comings, she accepts signing off as correct a shift balance sheet recording a till variance of 50 cents and 327 guests while later saying that the guest figure in fact was 302 of whom 12 had not paid. Ms Laffey said, during the Authority's investigation, that she had suspicions at the time but could not explain her

significant failure to alert management about non-payment: Ms Laffey provided no explanation to the Authority for her errors and failings. Ms Laffey also accepts she cannot account for 3 cash transactions: this is as a consequence of not ringing up cash transactions at the time and relying instead on her memory to record them later. She did not. The applicant's shifting account of events on 27 March and her inability to account for all of her cash transactions contributed significantly, I find, to the respondent's decision to dismiss her.

74. In all the circumstances I asses Ms Laffey's contribution at 50%: s. 124 of the Act applied.

Determination

75. I find in favour of the applicant's claim, Ms Jessica Laffey, that she was unjustifiably dismissed by the respondent, Trust House Limited. Accordingly I direct the respondent to pay the applicant the sum claimed as compensation for humiliation, etc. That amount is to be reduced as a result of contributory fault amounting to 50%: the respondent is therefore to pay to the applicant $7,500 (seven thousand, five hundred dollars).
76. The parties are also directed to attempt to settle the matter of Ms Laffey's entitlement to compensation for lost wages. Any agreed figure is also to be reduced by 50% contributory fault.
77. Leave is reserved for the parties to submit this matter back to the Authority in the event agreement is not forthcoming.

Costs

60. As requested by the parties, costs are also reserved.

Denis Asher

Member of Employment Relations Authority
