

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Jennifer Quintal (Applicant)
AND Restaurant Brands Ltd (Respondent)
REPRESENTATIVES Stuart Henderson, Counsel for Applicant
Niki Dines, Counsel for Respondent
MEMBER OF AUTHORITY Y S Oldfield
INVESTIGATION MEETING 25 May 2005
DATE OF DETERMINATION 3 August 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

- [1] Ms Quintal was employed by the respondent as the manager of the Pizza Hut takeaway store in Whangarei. It was part of her job to be responsible for cash and inventory management. On 23 March 2004 she was dismissed for serious misconduct when it was discovered that a free item code was still being used in her store (at very high levels) long after the promotion to which it related had ended. Further investigation by the respondent revealed that Ms Quintal's personal pass code had been used to ring on a number of these sales.
- [2] Area manager Chris Deacon held two meetings with her in order to hear what she had to say in response to what he had discovered. Ms Quintal denied that she had rung on the free items and said she had no knowledge of them being rung on at all. She could offer no explanation for what had happened. Mr Deacon proceeded to dismiss her.
- [3] Ms Quintal continues to deny any knowledge of how the free items came to be rung on. She says that the company should not have assumed the wrongdoing was hers after she had given it three and a half years of good service. She believes Mr Deacon's inquiry did not go far enough and now thinks that that he should have considered the possibility that someone with technical knowledge created the appearance that free items had been rung on using her code.
- [4] The issues for determination are:
- Whether the respondent, through Mr Deacon, conducted a full and fair inquiry into the matter;
 - Whether on the basis of this inquiry it was open to him to conclude that there had been serious misconduct;
 - Whether, in all the circumstances, dismissal was justified.

Was there a full and fair inquiry?

- [5] In around mid-February 2004 it became apparent to both Mr Deacon and Ms Quintal that the food costs for her store had recently risen beyond what would be expected for the level of revenue being generated. This could have meant that there was an excessive wastage that stock was being stolen, or even, although this was unlikely, that cash was being taken from the till. The problem had been masked for a time by correspondingly high figures for “theoreticals” (the amount of food that should have been used based on what had been rung onto the till.) Wastage was very unlikely to be the cause of the high food costs when theoreticals were also high. For “theoreticals” to be consistently inflated required a deliberate act on someone’s part, probably through high levels of discounting.
- [6] The following month Mr Deacon consulted the relevant reports to check the level of discounting in the store and found that a “free item” code was being used at a very high rate. This code had been used in connection with a promotion where customers got a voucher for a free large pizza if they had to wait more than fifteen minutes for their order. If they returned to present the voucher, the pizza would be rung through in the normal way and the free item code would be used to result in a zero balance.
- [7] However, the promotion had ended over two years before. If an old voucher turned up, a store manager had the discretion to honour it, but it was becoming increasingly rare for this to be necessary. There was no reason why the free item code should still be in regular use. The information about the use of the free code was readily available from the regular reports that Ms Quintal was required to review in her role as a store manager however she told me that she had never picked it up. She concedes that if she had spotted it alarm bells should have rung.
- [8] Mr Deacon discussed the situation with another Area Manager who advised that he should look at the actual dockets for days where there was a high use of the free item code. The system retained individual dockets for two weeks so Mr Deacon selected two days in the previous fortnight (7 and 8 March) on which there had been high use of the free item code.
- [9] When he went through the dockets for 7 March he found that 139 free items were rung up for 129 pizzas sold using Ms Quintal’s pass code. At the relevant time only Ms Quintal and a kitchen hand were at work, and the kitchen hand had not been trained to use the till. Only staff who had been trained and authorised to use the till were assigned a personal pass code which was to be kept strictly confidential even from management. On 8 March Ms Quintal was again at work when a further 117 free items were rung through using her code.
- [10] On the morning of 21 March Mr Deacon called Ms Quintal and requested her to attend a meeting with him. He told her it was to discuss the use of the free item code, that it was a serious matter and that she had the right to bring a representative.

Meeting, 21 March 2004.

- [11] Ms Quintal elected not to bring a representative. She told me that she did not realise that her job could be in jeopardy and that she would have brought someone with her if she had. Mr Deacon told me that Ms Quintal had been trained in the conduct of disciplinary meetings as part of her responsibilities as Store Manager. She had conducted two or three such meetings while in the role. He felt confident that she knew what to expect.
- [12] Present as a witness and to assist Mr Deacon was the manager of the respondent’s other Whangarei store.

- [13] Mr Deacon showed Ms Quintal the relevant reports and receipts and told her:
- That the free code was being used at extremely high rates in her store;
 - That it should no longer be in use;
 - That on 7 and 8 March free items had been rung up using her personal pass code;
 - That on both occasions she was one of only two on duty in the store, and was in charge.
- [14] Ms Quintal was of course already aware that Mr Deacon had been trying to ascertain why food costs were high. He now told her that he was concerned that the use of the free item code had falsely increased the theoretical cost of sales and masked the fact that food costs were so high. He said if the free item code had been rung through by mistake there would not be a corresponding high rate of food usage. He was concerned that the free item code was being used to manipulate the food costs to cover up the theft of stock.
- [15] Ms Quintal responded that she did not use the free item code and had been at the rear of the shop doing stock take at the times in question. She did not know how the items had been rung on or who by, but thought perhaps an off-duty staff member may have entered the store and done it while she was away from the counter. She said that other employees had used her pass code in the past and this could have happened again. (She was aware however that it was strictly prohibited for a pass code to be disclosed to any other person.)
- [16] The meeting lasted about half an hour but Ms Quintal did not offer anything further by way of explanation. Mr Deacon told her that this was potentially serious misconduct and could lead to dismissal. A record of the meeting was prepared and signed by Ms Quintal, Mr Deacon, and the other store manager who was present.
- [17] Ms Quintal told me that despite being advised that she could bring a representative she did not realise that the meeting would be disciplinary in nature. She said she was unprepared to make a full response, especially to the documents Mr Deacon presented. She says she was disadvantaged by not being told of the allegations in advance. However, she agrees that by the end of the meeting she knew what the allegations were and that dismissal was a possibility.
- [18] Following this meeting Mr Deacon and Ms Quintal met with the assistant manager and shift supervisors and asked them if they knew anything about the high level of use of the free item code. None admitted to knowing anything. Mr Deacon also asked the kitchen hand if he had used the till or seen anyone else come in to the shop on 7 March. He said no to both questions.
- [19] At some stage Ms Quintal also suggested that Mr Deacon interview another staff member to whom she had given the computer codes. Computer codes were also meant to be kept confidential but Ms Quintal had disclosed them at the suggestion of the IT support people at Head Office (IT support was not outsourced) because she did not have good IT skills and the person concerned did. He helped her when there were computer problems.
- [20] Ms Quintal now says she thought that this person could have used the computer codes to obtain staff pass codes including hers. Mr Deacon disputes that she expressly asked him to speak to this person although he recalls Ms Quintal saying he had the computer codes.
- [21] Mr Deacon told me he worked on the basis that someone must have stood and entered the 139 free item codes. He knows of no other way that the receipts could be generated and says the till system was independent of the office computer so there was no way to hack into the till system. (Ms Quintal herself does not know of any other way it could be done although she now says that it should have been explored.) Mr Deacon could not see how anyone (even if he or she had the

pass code) could have had time to enter the shop and ring on 139 items without being seen. Neither Ms Quintal nor the kitchen hand recalled any other staff member coming into the shop on the relevant day. He told me that because of all this he saw no purpose in interviewing other staff to see if anyone had access to Ms Quintal's pass code.

[22] After this Mr Deacon returned to Auckland where he considered the information he had and discussed it with the General Manager of Pizza Hut. Late in the day on 22 March Mr Deacon asked Ms Quintal to travel down to Auckland the next day to attend a further disciplinary meeting to discuss the use of the free item code. He reiterated that it was serious, that she could bring a representative, and that she could be at risk of dismissal.

Second Meeting 23 March 2004.

[23] Ms Quintal told me that it caused her some inconvenience to have to travel to Auckland and she felt that management should have come up to Whangarei to see her. However, she went as requested. This time she did bring one of her shift supervisors as support.

[24] On behalf of the company, the meeting was attended by Mr Deacon and the Operations Assistant. Mr Deacon went over what had been discussed at the previous meeting and again put the documents to her for comment. He asked Ms Quintal if she had anything further to say before he made his decision. She did not. He and the Operations Assistant then left the room for a brief discussion. Mr Deacon also spoke again with the General Manager. All agreed that there was no proof that Ms Quintal had stolen anything. However all felt that there had been a serious breach of management duties in respect of cash and inventory management, with a consequent loss of confidence in Ms Quintal as a manager.

[25] Mr Deacon prepared a standard letter of dismissal, went back into the room and dismissed Ms Quintal.

Determination

[26] Ms Quintal has pointed out two main areas of concern in relation to Mr Deacon's inquiry.

[27] The first relates to the meeting of 21 March. She says she was not specifically told it was disciplinary in nature and was given no advance warning of the specific allegations she was required to answer. She is correct on both counts. However, I do not consider that this has fatally flawed the inquiry because the respondent did not proceed to dismiss on the basis of her initial response. There is no dispute that by the end of the first meeting Ms Quintal knew that her job was on the line. She had the details of the allegations. She knew when she was called to the second meeting that it was disciplinary in nature. On 23 March, after she had had time to reflect on what had been put to her, she was given a further opportunity to respond to the same allegations. She had no further information to provide to the investigation and continues to have nothing more to say.

[28] The second area of concern was that the crew member who had the computer codes was not interviewed. Again, however, I have concluded that this did not fatally flaw the investigation. It was reasonable, first, for Mr Deacon to dismiss the possibility that someone entered the store and rang the items on. Second, even in the remote event that this could have happened, Ms Quintal should not have made the codes available to him in the first place and it was not reasonable for her as store manager, to consider the IT support team at head office could authorise this.

[29] I am satisfied that Mr Deacon conducted a full and fair inquiry.

Was it open to the employer to conclude that there had been serious misconduct?

[30] As noted above, Mr Deacon did not feel that the explanation that someone had walked in off the street was credible. (Ms Quintal has now conceded this.) He also noted that even if that explanation had been accepted, it still remained that Ms Quintal had failed to supervise her cash register and had breached company policy by enabling others to use her pass code. The other explanation that Ms Quintal now suggests is that someone hacked in to the till system. She did not raise this at the time and Mr Deacon says he did not independently consider it because as far as he knows, it would not be possible. He rejected this as an explanation.

[31] There was no doubt that very high levels of free items were rung through using Ms Quintal's pass code when she was manager in charge of the store. Mr Deacon concluded that Ms Quintal had at the least failed to ensure the security of her pass code, failed to properly supervise and control the register/cash drawers, and failed to ensure that appropriate discounts were being applied. I accept that it was open to Mr Deacon on the information he had to reject Ms Quintal's explanations and proceed to these conclusions.

[32] Ms Quintal's job description provided that the purpose of her position was to "*manage a Pizza Hut store in accordance with Company Policies and Procedures.*" Her principal duties and responsibilities included ensuring that controls and procedures necessary to protect the safety of company funds and property were adhered to by all employees and directing management and staff to ensure that cash handling procedures were being followed.

[33] Mr Deacon decided that Ms Quintal's failures amounted to serious breaches of Ms Quintal's management duties and responsibilities under Restaurant Brand's cash handling procedures. I accept that it was open to him to reach that conclusion also.

Was dismissal justified in all the circumstances?

[34] Ms Quintal continues to be adamant that she did not ring on the 139 free items. However, her explanations were not reasonable. Unfortunately her steadfast denial in circumstances where the denial was not credible only served to further undermine the trust and confidence which the conduct had already damaged. No mitigating circumstances have been proposed for Ms Quintal's misconduct. In all the circumstances I am satisfied that the respondent was justified in dismissing Ms Quintal.

[35] Ms Quintal has not established that she has a personal grievance. I can do nothing further about her employment relationship problem.

Costs

[36] I leave it to the parties to attempt to resolve this issue for themselves. If this is not possible I require submissions no later than 28 days from the date of this dismissal.

Yvonne Oldfield,
Member, Employment Relations Authority.