

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Mark Peter Reid (Applicant)  
**AND** Adventure Education Training Ltd (Respondent)  
**REPRESENTATIVES** Mark Peter Reid - In person  
Ani Bennett - For the Respondent  
**MEMBER OF AUTHORITY** Ken Anderson  
**INVESTIGATION MEETING** 7 December 2004  
**DATE OF DETERMINATION** 18 April 2005

**DETERMINATION OF THE AUTHORITY**

**The Employment Relationship Problem**

[1] Adventure Education Training Limited (“the Company”) provides largely for underwater diving instruction. Mr Reid was employed as a Manager at its Hamilton site. He also provided diving training. On 16 July 2001, Mr Reid was dismissed. He says that that the dismissal was unjustified and seeks that the Authority finds that he has a personal grievance and award him various remedies.

The Company says that the dismissal of Mr Reid was justified on the grounds that he was involved in serious misconduct because he:

- (a) Claimed payments that he was not entitled to;
- (b) Directly disobeyed management instructions pertaining to a complaint made against him; and
- (c) Used business phones for unauthorised personal toll calls.

The Company also says that Mr Reid owes them money and they seek an order for repayment.

**Background**

[2] Mr Reid started his employment in June 2000, in the position of Assistant Manager Training and Business. As well as conducting diving training, he was responsible for the day to day management of the Hamilton site and the supervision and administration associated with the three full time and two part time staff based at the site. Mr Reid was also responsible for ensuring that the paper work pertaining to the payments due to him, and the other dive instructors, was correct, before being forwarded to the Company’s Head Office located at Tauranga.

- [3] In order to complete a diving course, students are required to complete a variety of components that make up the various parts of the course. Upon the student completing the components of each part of the course, and upon the appropriate paper work being approved, the dive instructor is subsequently paid by the Company.
- [4] At time of Mr Reid's dismissal, Mr Warren Haydock was the Facility Manager and was responsible for the Tauranga, Hamilton and Manukau facilities operated by the Company.
- [5] In mid-2001, Mr Haydock was advised by the Administration Officer at the Hamilton site, Ms Rebekah Andrews, that she suspected that Mr Reid had submitted false certification or payment forms pertaining to the completion of training for some students. Ms Andrews had conveyed to Mr Haydock that she believed that Mr Reid had claimed payment for some students that had not completed their training.
- [6] The receipt of this information prompted Mr Haydock to conduct an inspection of the payment forms that Mr Reid had submitted to the Company. It was discovered that Mr Reid had claimed approximately \$1,800.00 in payments for students that had not in fact completed their training.
- [7] The evidence of Mr Haydock is that while he was checking the dive course payments for Mr Reid, he also reviewed the overall outgoings for the Hamilton site and discovered that there were excessive telephone phone bills, for the land line and Mr Reid's cell phone. Mr Haydock says that most of the phone calls were made outside work hours, that is, on weekends or at night. He further says that there were also "hundreds" of text messages sent from Mr Reid's cell phone.
- [8] Mr Haydock also discovered that Mr Reid had ordered a "substantial amount" of dive gear through the Company's dive gear supplier. Mr Haydock says that he was aware that the dive gear was not for students and was for Mr Reid's personal use. The problem that Mr Haydock had was that the dive gear had been billed to the Company and had not been put on Mr Reid's account.
- [9] Finally, Mr Haydock reviewed the till receipts for the Hamilton transactions. He says that he noticed that there had been shortfalls on some days and assessed that there was approximately \$200 missing.
- [10] There was another matter that had arisen earlier. This was in regard to a complaint that had been made by one of Mr Reid's dive course students, about the manner in which he was conducting the course. The complainant had made it clear to Mr Haydock that she did not want Mr Reid to know that it was her who had made the complaint. This had been conveyed to Mr Reid by Mr Haydock. However, subsequent to Mr Haydock raising the complaint with him, Mr Reid deduced who the complainant was and approached her directly. The complainant then objected to Mr Haydock as she was most unhappy that her confidence had been breached.

### **Meetings with Mr Reid**

- [11] Mr Haydock met with Mr Reid in early July and expressed his concerns about the above matters and advised him that a formal meeting would take place to discuss the issues in more detail and to receive an explanation from Mr Reid.
- [12] A formal meeting with Mr Reid took place on 13 July 2001. The matters discussed were:

- (a) Personal telephone calls;
- (b) payment claims for instructor fees; and
- (c) disobeying a direct instruction – relating to the student complaint.

- [13] Mr Reid gave explanations to the matters raised with him and the meeting concluded on the understanding that Mr Haydock would give due consideration to the explanations and advise as to his decision as to the appropriate disciplinary action.
- [14] Following consultation with Mr Scapens, the Director of the Company, Mr Haydock decided that because the explanations given by Mr Reid were not convincing, his employment should be terminated. This was conveyed to Mr Reid at a meeting on or about 16 July 2001 and confirmed in writing, albeit the letter is undated.

## **Determination**

- [15] Mr Reid says that his explanations as to his actions should have been accepted by the Company as being reasonable. However, I do not find that to be so.
- [16] Having viewed the evidence available to the Authority and listened to Mr Reid and Mr Haydock, I find that the decision to dismiss Mr Reid was an action open to a fair and reasonable employer. I find that Mr Haydock conducted a fair and reasonable investigation, put the findings of that investigation to Mr Reid for his explanations, gave appropriate consideration to the explanations, and found them wanting.
- [17] Mr Haydock gave three grounds for the dismissal of Mr Reid. The matter of Mr Reid discussing the issue with the person whom had made a complaint against him was one of those grounds. I have to say that I found that the overall evidence presented to support this particular ground was, on its own, not sufficient to justify the dismissal of Mr Reid . However, on the matter of the claims for payments for training that was not completed and the excessive use of the Company's phones, those matters were clearly serious misconduct that warranted dismissal.
- [18] I find that the dismissal of Mr Reid was justified and he does not have a personal grievance. Therefore, the remedies that he seeks are not available to him.

## **The Counterclaim**

- [19] The Company claims that Mr Reid owes the sum of \$441.16. The sum originally owed by Mr Reid was assessed at \$3,264.73, but as provided by the terms of Mr Reid's employment agreement, the sum of \$2,823.57 was retained from the final payments due to him and so the residue is \$441.16.
- [20] There was also the matter of another sum amounting to \$2,531.25 related to the purchase of a Poseidon regulator and the balance of Instructor Trainer Course fees. However, the Company appears to concede that this sum cannot be totally verified as still owed and a claim is not before the Authority.
- [21] Mr Reid does not challenge the Company's claim against him and the evidence supports it.

Mr Reid is ordered to pay to Adventure Education Training Limited the sum of **\$441.16**.

**Costs**

[22] Costs are reserved. The parties are invited to attempt to reach a resolution of this matter. In the event that a resolution is not achieved, submissions can be made to the Authority for an order.

**Ken Anderson**  
**Member**  
**Employment Relations Authority**