



# New Zealand Employment Relations Authority Decisions

You are here: [NZLII](#) >> [Databases](#) >> [New Zealand Employment Relations Authority Decisions](#) >> [2018](#) >> [2018] NZERA 306

[Database Search](#) | [Name Search](#) | [Recent Decisions](#) | [Noteup](#) | [LawCite](#) | [Download](#) | [Help](#)

---

## Verrall v The Apothecary Licensed Eatery Limited (Auckland) [2018] NZERA 306; [2018] NZERA Auckland 306 (2 October 2018)

Last Updated: 10 October 2018

### IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2018] NZERA Auckland 306  
3023555

BETWEEN WARREN VERRALL Applicant

AND THE APOTHECARY LICENSED EATERY LIMITED

Respondent

Member of Authority: Nicola Craig

Representatives: Roland Samuels for the Applicant

Ray Parmenter for the Respondent

Investigation Meeting: Submissions received:

Date of determination:

2 July 2018

At the investigation meeting and 3 July 2018 from the Applicant

2 October 2018

### DETERMINATION OF THE AUTHORITY

**A. Warren Verrall was not unjustifiably dismissed by The**

**Apothecary Licensed Eatery Ltd.**

**B. The Apothecary Licensed Eatery Ltd is ordered to pay a penalty of \$1,000.00 to Mr Verrall for its breach of the duty of good faith, within 21 days of the date of this determination.**

**C. A timetable is set for submissions on costs, in the event that the parties are not able to resolve the issue themselves.**

[1] On 23 February 2017 Warren Verrall started work as a chef for The Apothecary Licensed Eatery Limited (The Apothecary or the company). The Apothecary operates as a restaurant and bar.

[2] On 7 November 2017 Mr Verrall received a letter alleging that he had stolen food items from The Apothecary kitchen. A meeting was later held and Mr Verrall was dismissed on 10 November 2017 for stealing the missing stock. Mr Verrall denies that he took the stock from the kitchen and claims that he was unjustifiably dismissed. The Apothecary claims that the dismissal was justified.

[3] I held an investigation meeting was held on 2 July 2018 and heard from Mr Verrall and Ted Waters, the sole director and

majority shareholder of The Apothecary. I also heard evidence from The Apothecary's administrator/accounts person and the sous chef.

[4] As permitted by [s 174E](#) of the [Employment Relations Act 2000](#) (the Act) this determination has not recorded everything received from the parties but has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter, and specified orders made as a result.

### Issues

[5] The issues for determination are:

(a) Did the Apothecary's unjustified actions cause a disadvantage to Mr

Verrall? This claim concerns the same facts as the dismissal claim. (b) Was Mr Verrall unjustifiably dismissed?

(c) If Mr Verrall has established any personal grievances, what remedies

(if any) should he be awarded?

(d) Did the Apothecary breach its duty of good faith to Mr Verrall, and if so, should it be subject to a penalty?

### The black rubbish bag

[6] On Monday 6 November 2017 Mr Verrall worked during the day as the sole chef at the Apothecary, along with two other employees. There was a front of house staff member, who also did some early baking in the kitchen, and the front of house supervisor, who assisted with some of the dishes in the kitchen. Mr Verrall undertook some additional duties, due to the kitchen hand being absent that day. This included the taking out of rubbish to the skip bins outside. The Apothecary was not open in the evening that day.

[7] Around 2.30pm Mr Verrall took out two black rubbish bags and put them in one of the rubbish skips out the back of the premises. Between 3.00 and 3.30pm Mr Verrall finished sweeping up. He left the kitchen, carrying another black rubbish bag as well as his black sports bag.

[8] Mr Verrall was walking towards the back entrance of the Apothecary, when he met The Apothecary's administrator who was coming into premises for the first time that day. The administrator saw Mr Verrall also pick up his knife briefcase, which was black with a silver frame. They greeted each other and Mr Verrall went outside.

[9] What later became a critical issue is what happened to the rubbish bag. Mr Verrall says that he proceeded to put the rubbish bag in one of the rubbish skips outside, then put his own bags in his car and drive off. Mr Verrall identified a skip in a photo of the outside rear of The Apothecary, as the one he used. However, later in evidence he accepted that he may have got that wrong and it was a different skip from the photo shown which belonged to the company.

[10] The administrator was suspicious about the rubbish bag. She was not aware at that point that the kitchen hand was away that day. Mr Verrall carrying the rubbish was therefore notable to her. The bag looked heavy her, but only half full, as Mr Verrall was holding it half way up the bag. Shortly after Mr Verrall left the building, the administrator also went out of the back door. There are a few stairs from the backdoor to the footpath.

[11] Mr Verrall's car was parked perpendicular to the footpath, directly outside the back entrance. The administrator says that she saw Mr Verrall coming from the direction where the rubbish bin was, but still carrying the rubbish bag. She saw him go up to his car, leave the knife briefcase on the roof while he opened the car and put the sports bag and the rubbish bag in his car. The administrator was several metres from where Mr Verrall was.

[12] Unbeknownst to Mr Verrall, Mr Waters had become increasingly concerned about stock, particularly food, going missing for the prior two or three months. He had decided to tackle the situation. Some more informal stock taking had previously been occurring undertaken by another staff member but Mr Waters and Mr Verrall both agreed that that process was not very accurate.

[13] Mr Waters discussed the situation with the administrator and decided to implement a careful stock take process. Mr Waters approached the sous chef for assistance. This was because Mr Waters found the sous chef, who had previously run his own food businesses, to be details focused and have a good understanding for food control and costings. The sous chef had already produced some spreadsheets for Mr Waters. Mr Waters' assessment was that the sous chef was the employee with the most skills to do the job.

[14] The sous chef was asked to concentrate on the high value protein items as these appeared to have been going missing previously. A full inventory would be completed at a later time. Mr Waters and the sous chef agreed that the sous chef would run an on-going monitoring of stock.

[15] The first stock take was undertaken after the kitchen had closed on Sunday 5

November 2017. On Monday 6 November 2017 the sous chef came in after Mr Verrall had left, to carry out another stock take. He discovered that various items were missing since the stocktake the evening before which seemed more than would be anticipated.

[16] He spoke to the administrator and together they identified what missing from Monday's stocktake, compared to Sunday's one. They then printed out a computerised sales report which provided a detailed list of all the items purchased that day. They created a list of missing food items, referring to quantities and containers. The food was a 1 kg pack of bacon, 3 kg of chicken breasts, 4 beef burger patties, a pack of squid and a 1 litre contained of smoked salmon.

[17] The administrator was concerned that the rubbish bag she had seen Mr Verrall carrying could have contained the missing food. She emailed Mr Waters, setting out what stock was missing and what she had seen, in terms of Mr Verrall putting the rubbish bag in his car. She described the staffing that day and notes that the front of

house supervisor had also seen Mr Verrall leave with a black rubbish bag when he left the kitchen.

[18] Mr Waters considered Mr Verrall's action suspicious and was concerned that he might have used the rubbish bag to take the stock out to the car. He proceeded to seek legal advice.

### **Suspension**

[19] On 7 November 2017 Mr Verrall received an email attaching a two page letter from Mr Waters.

[20] The letter outlines the background of stock going missing and the stock-take undertaken. A list of the five food items, including the amounts and/or container types is included. The stock take list itself was not. Possible suspension on pay is mentioned for discussion.

[21] The letter advises Mr Verrall that theft is serious misconduct and if established to Mr Water's satisfaction, there is a risk of summary dismissal. Mr Verrall is also advised to consider taking advice and having a representative at an upcoming meeting. The meeting was to occur on Thursday or Friday that week, with a particular time suggested.

[22] Mr Verrall was angry and upset. He decided to go into The Apothecary to try to sort things out that afternoon. Mr Waters was not present but the administrator was.

[23] Mr Verrall confronted the administrator in the very small office set in under the stairs. He was trying to convey that he did not think stock was missing and that he did not take stock from the kitchen. However, he did so in a very loud and angry manner. The administrator was shocked and upset by his manner. She tried to de-escalate the situation, as she was concerned for herself and also that other staff and customers nearby would hear.

[24] Mr Verrall mentioned checking the company's CCTV footage cameras and the rubbish bins. The administrator thought at the time that as Mr Verrall had just come through the back entrance, where the bins were, it would have been hard to know if something was not just put in there by him.

[25] At the Authority's investigation meeting Mr Verrall stressed that for him the most important thing was for the front service fridge to be checked, as he had divided and repackaged some stock the day before and left it in that fridge. He says he told the administrator that on 7 November 2017. She thought he made some mention of checking other fridges. Although it was understandable that Mr Verrall was upset, I do not consider that he was able to convey his concerns at this time in a clear manner. Eventually he left the premises.

[26] At some point during the afternoon Mr Verrall texted Mr Waters objecting to the suspension and saying he had not stolen anything. He confirmed that the proposed meeting time was acceptable.

[27] Mr Waters emailed in return noting the text and saying that in "that informal setting, I am unable to reach any conclusion about the justification or otherwise of the suspicions I have about you". Mr Verrall was informed that he is suspended for up to five working days while the disciplinary process is undertaken.

### **Phone call to Mr Verrall's former employer**

[28] Mr Waters telephoned the owner of another eatery, a few kilometres nearby the Apothecary, where Mr Verrall had worked at some point previously. There was a lack of clarity about when this occurred, but it appears to have been at some point after Mr Waters was aware of the stock take results of 6 November 2017 and before the decision to dismiss was made.

[29] Mr Waters did not know the person in charge of the other eatery and had not sought any authorisation from Mr Verrall to speak to him. Nor had he let Mr Verrall know that he intended to make contact. Mr Waters says that he had never been in this situation before and wanted to cover every possible area to ensure he was coming to the correct decision.

[30] Mr Waters had heard another former chef from the other eatery calling into question Mr Verrall's credibility. Mr Waters phone the person in charge, saying that The Apothecary was experiencing food shrinkages which had not been experienced before Mr Verrall's employment. He denies questioning Mr Verrall's honesty or integrity. The person in charge of the other eatery indicated that he had not had any concerns about Mr Verrall removing product without authorisation.

[31] Mr Waters did not convey this conversation to Mr Verrall. Rather Mr Verrall was contacted by the person in charge of the other eatery to tell him what had occurred.

### **Disciplinary meeting on 9 November 2017**

[32] Mr Waters took the administrator to the meeting to take notes. Mr Verrall brought his father as a support person.

[33] At the meeting Mr Verrall described what he recalled happening on 6

November 2017, in terms of putting his knife brief case on the roof of his car and unlocking the driver's door, before opening the passenger door on the same side and putting his belongings in.

[34] Mr Verrall provided some possible explanations regarding three items on the list, but said that he did not know about the squid. At the investigation meeting he offered some information about the squid but accepted that he was not sure if he mentioned that information at the 9 November meeting. No mention is made of the bacon.

[35] In Mr Verrall's witness statement he said that (on 9 November 2017) he provided an explanation for all the items missing, but at the Authority's investigation meeting it was clear that although he had explanations for some of the items, there were some gaps.

[36] In the meeting notes Mr Verrall makes reference to the number of bags he put into the skip earlier and them being put under a cake box. In contradiction, Mr Verrall said at the investigation meeting that he had put the cake box into the last rubbish bag. He could not recall whether he had said at the 9 November meeting to Mr Waters that the cake box could be seen protruding from the rubbish bag.

[37] Mr Waters found Mr Verrall's comments at the 9 November 2017 meeting regarding the cake box confusing. When asked whether he or the administrator had asked Mr Verrall to explain, Mr Waters thought that they had asked him to repeat what he meant about the bags. Mr Verrall indicated that the bags were under a cake box.

[38] The skip appears from the photo to be around the two cubic metres size or a little larger. I am not satisfied that Mr Verrall could correctly identify The Apothecary's bin, throwing into question which bin he put the rubbish into. This was not his usual job so it would not be surprising if he used someone else's bin. The photo, albeit from a different time, show at least four skips in close proximity. Mr Verrall's father in a note about the disciplinary meeting refers to a bin labelled with a waste disposal company's name, which is actually a third bin, different from the ones identified by his son and Mr Waters.

[39] At the 9 November 2017 meeting Mr Verrall asked whether (food from) sales during Monday had been taken into account and was told that they had. He also asked and was told who had undertaken the stock take and when. He is recorded as saying that if another chef had done it he believed it would be inaccurate as in Mr Verrall's experience that chef conducted audits over a couple of days.

[40] At the meeting Mr Verrall asked Mr Waters to check the 6 November 2017

CCTV footage of the rubbish bins outside The Apothecary's premises, and the rubbish itself. He accepted that Mr Waters had told him at the meeting that the cameras did not show what Mr Verrall seemed to think that they showed. However, Mr Verrall seemed to retain some dissatisfaction or disbelief regarding that position.

[41] At the investigation meeting Mr Verrall gave evidence, in response to questions from his representative, about his reasonable financial position whilst employed and a family member with a farm providing him with large quantities of meat. The implication was that he would have no reason to have taken stock from The Apothecary. However, there was no suggestion that these matters had been raised with Mr Waters at the time.

[42] The suspension was continued from the meeting onwards, whilst the next step was considered.

### **Mr Water's further investigation and decision-making**

[43] Mr Waters says that with notes having been taken at the disciplinary meeting, he chewed over what was raised and had another meeting with the administrator. He put Mr Verrall's claim that she must have been mistaken about what she saw. The administrator maintained that she had definitely seen Mr Verrall put the rubbish bag in his car.

[44] Over that week Mr Waters had asked the administrator a number of times about what she had seen. She remained confident that she had seen Mr Verrall put the rubbish bag in his car. She continued to maintain this position having heard Mr Verrall's description of what he says happened, and at the Authority's investigation meeting.

[45] Mr Waters also checked with the sous chef about whether the front service fridge, where Mr Verrall said he had put repackaged products, was checked as part of the stock take. The sous chef confirmed that it was. Mr Waters says that he went through the whole list of missing items with the sous chef again, after the meeting with Mr Verrall. Mr Waters was satisfied that there were items missing. The question then was who took them.

[46] Mr Waters says that he considered the possibility that someone other than Mr Verrall could have taken the items. However, he rejected that as there was no evidence of anyone else removing items whereas there was the administrator's evidence of Mr Verrall putting the rubbish bag in his car. Mr Waters considered that Mr Verrall's bags were not kept in the kitchen, the implication being that it would have been easier or less obvious to put food in the kitchen into a rubbish bag, than taking his sports bag into the kitchen. Mr Verrall spent almost all his shift in the kitchen.

[47] Mr Waters considered that Mr Verrall was the only person who had worked entirely in the kitchen. Mr Waters decided to prefer the administrator's evidence and that Mr Verrall had therefore lied about not putting the rubbish bag in the car. Mr Waters considered that the lie was designed to mislead him as he assessed whether Mr Verrall had stolen the stock. Mr Waters concluded that he had lost trust in Mr Verrall and could not have him working in the business. He decided to dismiss him with immediate effect.

### **Notification of dismissal**

[48] Mr Verrall said in his witness statement and maintained initially at the investigation meeting that he had not received either any minutes of the 9 November

2017 meeting, nor any letter telling him that his employment was terminated. He accepted that the dismissal letter was addressed to his residence. However, he said that he only got those two documents when he received the bundle of documents in

this proceeding. Particularly as Mr Waters had not verbally informed Mr Verrall of the outcome, the absence of a letter of termination would be a serious matter.

[49] Mr Verrall maintained that he was never told that he was dismissed, as a text from Mr Waters on 13 November 2017 only mentioned his final pay being ready, rather than dismissal as such.

[50] It was pointed out to Mr Verrall in cross examination that the dismissal letter and minutes were attached to the statement in reply, which he believed he had seen. He continued to deny that he had seen the minutes and dismissal letter until later.

[51] The Apothecary then provided an email dated 10 November 2017 at 4.26pm, attaching documents referred to as a letter of 10 November 2017 and minutes 9

November 2017. Mr Verrall said that he did not recall seeing that email and attachments.

[52] I am satisfied that Mr Warren did receive both the minutes and the termination letter on 10 November 2017.

[53] The dismissal letter sets out Mr Verrall's position that he did not take the rubbish bag to his car and casts doubt on the accuracy of the stock take. It describes what Mr Waters relies on, and concludes by dismissing Mr Verrall immediately.

### **Final pay**

[54] As referred to above, Mr Waters sent Mr Verrall a text message on the morning of Monday 13 November 2017 saying that he was getting a cheque ready for his final pay and asking him to pick it up and drop his keys off. Mr Verrall says that when he went in and spoke to Mr Waters, the latter said that he never wanted this to happen and he was keeping it quiet. Mr Verrall had not been given keys to the premises, so had none to return.

[55] Mr Verrall made mention of whether his final pay had been correct, however, he told the Authority that he was not pursuing that issue.

### **Disadvantage claims**

[56] Mr Verrall's representative claimed that aspects of the disciplinary procedure disadvantaged him. These include failure to give further consideration to Mr Verrall's

request to check the CCTV footage. However, I am satisfied that these are either without basis or are captured in the dismissal and good faith claims and do not need to be considered separately. For completeness I record that the suspension was not challenged and no aspects of unfairness in the suspension process were identified.

### **Dismissal**

[57] Under [s 103A](#) of the Act I need to consider 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 dismissal occurred. If there is more than one action which the employer could reasonably have taken, and dismissal is one of them, then the dismissal will be justified.

[58] In cases such as this the Authority's role is not to make a finding about the alleged offence. The focus in employment cases is whether the employer, having conducted a fair and reasonable investigation, genuinely believed that the employee had stolen or taken its property without authorisation. My consideration of the evidence is based on the balance of probabilities standard of proof, rather than the criminal beyond reasonable doubt standard.<sup>1</sup>

[59] I record that Mr Verrall very strongly denies that he stole food from The Apothecary kitchen.

[60] The Apothecary summarily dismissed Mr Verrall. I look at whether the conduct found by the employer as occurring was such a serious nature as to deeply impair the basic confidence which must exist between employer and employee.<sup>2</sup>

### **Investigation**

[61] Did The Apothecary, having regard to the resources available to it, undertake a fair and reasonable investigation?

[62] This was a relatively short process. However, that does not necessarily make it unreasonable. There was no request by Mr Verrall for additional time. Mr Waters had written evidence of the administrator and the sous chef's findings of missing food and the administrator's record of what she had seen with Mr Verrall and the rubbish

bag. He re-tested this evidence during the process.

<sup>1</sup> *Honda New Zealand Ltd v New Zealand Boilermakers' etc Union* [1991] 1 NZLR 392 (CA)

<sup>2</sup> *BP Oil NZ Ltd v Northern Distribution Workers Union* [1989] NZLR 580 (CA)

[63] Mr Waters did not interview the two other staff who were on duty that day. He saw the kitchen staff as being under suspicion for the stock shortages rather than front of house staff. The administrator had spoken to one of the other staff who confirmed seeing Mr Verrall leaving the kitchen with the rubbish bag. However, there was no dispute that Mr Verrall did this. There was no indication that they had any other useful information to offer and Mr Waters was concerned with keeping down the number of people who knew about the investigation. During the investigation Mr Verrall did not seek for them to be interviewed.

[64] Mr Verrall was critical of Mr Waters not checking the CCTV cameras despite being asked. The Apothecary provided the Authority with photographs of various parts of the premises including outside. There were also stills from CCTV cameras. The outside fixed position camera focused on the cellar doors, as there had been break-ins there. I am satisfied that that camera would not have assisted with identifying whether Mr Verrall went to the skip and put anything in, and what he put into his car. The inside CCTV camera would have shown Mr Verrall walking out with a rubbish bag in his hand, but that fact is not in dispute.

[65] Mr Verrall had not seen what the security cameras showed before. I understand him wanting the cameras checked, but do not consider that ultimately they showed anything of value to this matter. This was explained to, but perhaps not accepted by, Mr Verrall at the 9 November meeting.

[66] I conclude that, given the resources available to it, The Apothecary undertook a sufficient investigation as is required by [s 103A\(3\)\(a\)](#) of the Act.

### **Other aspects of the process**

[67] Mr Verrall was not provided with a copy of any statements from the administrator or the stock-take chef. However, the letter of 7 November 2017 listed in sufficient detail the items which the sous chef was unable to locate. The administrator's evidence was quoted from in detail the letter.

[68] I find that the letter sufficiently passed on to Mr Verrall what the employer's concerns were and what information it was basing those concerns on. The Apothecary.

[69] Although it clearly identified what was missing, The Apothecary did not give Mr Verrall a copy of the inventory or the sales report during the disciplinary process. He did not ask for those documents. He did ask questions about whether a comparison had been made with what was sold and was told that it had been. I am satisfied that the non-provision of those documents if seen as a defect it would be seen as minor and did not result in Mr Verrall being treated unfairly.

[70] Mr Verrall was invited to a meeting and told that he should consider taking advice and having a representative at the meeting. Mr Verrall was given a reasonable opportunity to respond to those concerns at the meeting.

[71] In a larger organisation, it would not have been ideal to have the administrator, who was a witness to the rubbish bag

incident, also making the list of missing products and taking the minutes of the 9 November 2017 meeting. However, given the size of the business, there were no other managerial or administrative staff members. Mr Waters also expressed concern about widening the pool of people who knew about the allegations. Mr Verrall did not make objection at the time about the administrator being in the meeting or taking notes. I do not see this as resulting in Mr Verrall being treated unfairly.

### **Mr Waters' belief**

[72] Did Mr Waters have a genuinely held belief Mr Verrall had stolen the food, having taken into account Mr Verrall's explanations? His belief concerned two issues; was the stock missing and were there sufficient grounds to believe Mr Verrall had taken it?

[73] Although the sous chef and the administrator were cross-examined with a view to challenging the validity and comprehensiveness of the stock take/inventory and the checking against the sales report, they stood their ground. Mr Verrall was critical of the stock-take on the basis that it did not cover many of the items used in The Apothecary's kitchen. The company said the focus was on high price items. I do not consider that the absence of all stock being considered in the stock take assists Mr Verrall's case.

[74] Mr Waters genuinely concluded that stock was missing.

[75] In the dismissal letter Mr Waters emphasises the issue of whether the rubbish bag was put in the car. He notes Mr Verrall's denial but does not accept it. Mr Waters does not see any valid reason for a rubbish bag, which had something in it, being put in the car. As Mr Verrall had denied putting the bag in his car, he offered no explanation for that occurring.

[76] Mr Waters questions who else could have taken the stock between the Sunday and Monday stock-takes. That of itself may not have been sufficient to justify his conclusion regarding Mr Verrall. However, he also had the administrator's evidence of a heavy rubbish bag being placed in Mr Verrall's car, with Mr Verrall denying that that occurred.

[77] Mr Waters made a decision to accept the administrator's evidence over Mr Verrall's evidence. She had made an email record of her recollection of events within a couple of hours of the events occurring. Mr Waters tested her evidence on a number of occasions and she remained adamant about what she had seen. I found the administrator to be a credible witness and can see no basis on which to challenge Mr Waters' acceptance of her evidence.

[78] There was no suggestion either during the disciplinary process or through the Authority's process that either the administrator or the sous chef had any reason to lie or attempt to make Mr Verrall look guilty.

[79] Mr Waters concluded that he considers that Mr Verrall committed serious misconduct, and that the trust was gone.

### **Conclusion on dismissal**

[80] I conclude that having carried out a reasonable investigation, The Apothecary genuinely believed that Mr Verrall had stolen stock and undertaken the other steps outlined in [s 103A\(3\)](#) of the Act, it was justified in dismissing Mr Verrall from its employment.

### **Good faith**

[81] Mr Verrall is critical of several aspects of The Apothecary's process although some of these have dealt with under the consideration of the dismissal above.

However, there are some aspects of The Apothecary's actions which need to be addressed here.

[82] Mr Verrall asked the administrator on 7 November 2017 and at the disciplinary meeting, for fridges, particularly the service fridge, to be checked for the missing stock. His explanations as to what may have happened to some of the missing items was that he had unpacked and used part of, then re-packed some of the items, and put them in particular fridges. He says that this is the issue that concerned him the most of the things he was asking The Apothecary to do in its investigation.

[83] I am satisfied that in fact those fridges were checked and the missing products not found. However, The Apothecary failed to pass on that information to Mr Verrall and he was left with a sense that the investigation was inadequate and the missing products could have been identified if only his request had been complied with. The Apothecary failed to be communicative.

[84] Similarly, after meeting with Mr Verrall on 9 November 2017 Mr Waters followed up with the administrator to see if she had changed her position, having heard Mr Verrall's version of events. I am satisfied that she had not. However, the fact that this was discussed with her after the meeting was not made clear to Mr Verrall.

[85] Another issue is Mr Waters' contact with Mr Verrall's former employer. Mr Waters contacted the other eatery and made enquiries about whether there had been stock losses in the time which Mr Verrall worked there. Mr Waters says that he did not call into question Mr Verrall's honesty or integrity; however that was the implication of his actions.

[86] I consider that the Apothecary's actions in making contact with Mr Verrall's former employer to discuss stock losses in Mr Verrall's time in his former job, without Mr Verrall's approval or prior consent, or even informing him of the contact subsequently, was a breach of its duty of good faith. It was not open and communicative with Mr Verrall.

[87] Taking into account [s 4A](#) of the Act I regard this as an appropriate situation in which to impose a penalty. Considering the matters set out in [s 133A](#) of the Act I order that The Apothecary Licensed Eatery Ltd pay a penalty of \$1,000.00 to Mr Verrall for its breach of the duty of good faith, within 21 days of the date of this determination.

[88] Concerns were raised about the failure to provide the stock take inventory and sales report on which the missing items list was based, until shortly before the Authority's investigation meeting, despite earlier requests from Mr Verrall's representative. However, Mr Verrall was not an employee during this period and

good faith obligations do not continue after employment finishes.<sup>3</sup>

### **Costs**

[89] Costs are reserved. The parties are invited to resolve the matter.

[90] The parties have had mixed success in this case and should expect that to be reflected in the Authority's decision on costs, should it need to make one. If, having attempted to resolve the issue, a party wishes to apply for costs he or it shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. The other party shall have a further 14 days in which to file and serve a memorandum in reply. Submissions claiming costs must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

Nicola Craig

Member of the Employment Relations Authority

3 *Balfour v Chief Executive, Department of Corrections* [\[2007\] ERNZ 808 \(EC\)](#)

---

NZLII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#)

URL: <http://www.nzlii.org/nz/cases/NZERA/2018/306.html>