

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 7/10  
5155393

BETWEEN                      HAYDEN COURTNEY  
   Applicant  
  
AND                                SUPER CHEAP AUTO (NEW  
   ZEALAND) PTY LTD  
   Respondent

Member of Authority:        Dzintra King  
  
Representatives:              James Parlane, Counsel for Applicant  
   John Rooney, Counsel for Respondent  
  
Investigation Meeting:        29 October 2009  
  
Submissions received:        1 December 2009 from Applicant  
   24 December 2009 from Respondent  
  
Determination:                13 January 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicant, Mr Hayden Courtney, claims that he has been unjustifiably disadvantaged by the respondent, Super Cheap Auto (New Zealand) Pty Ltd (“Super Cheap” or “the company”). Mr Courtney seeks compensation.

[2]     Mr Parlane maintained that the employment agreement was defective in that it lacked a provision for disciplinary procedures or how to deal with issues of misconduct. It was claimed the employer had been over zealous and intimidatory in the manner in which the investigation to which Mr Courtney was subjected had been carried out.

**Background**

[3] Mr Martin Robb is the Store Manager for the Cambridge store where Mr Courtney was employed Assistant Store Manager.

[4] Mr Courtney took leave from 22 December to 27 January 2009. He asked to be paid all his holiday pay before going on leave. Prior to his departure he put an Enforcer bike on hold for himself. Ms Zoe Christensen, the 3IC manager at the Cambridge store, put the bike away for Mr Courtney and completed the sale transaction, using Mr Courtney's eftpos, and attached the sale docket to the bike.

[5] Mr Courtney returned to work on 27 January, a week earlier than he had intended to return.

[6] In the course of monitoring the stock level of bikes Mr Robb noted an Enforcer bike had been returned in the system. He located the bike Mr Courtney had bought but the sale docket had been removed. A refund needed to be authorised by himself, Ms Christensen or Mr Courtney. He spoke to Ms Christensen and Mr Courtney.

[7] He was told there had been a mix up regarding Mr Courtney's holiday pay and he had been short of money so Ms Christensen had authorised the bike refund. Mr Courtney said he still wished to buy it so it was left out the back on hold. Mr Robb agreed to this.

**Removal of Bike**

[8] On 14 February Mr Robb noticed that the bike had gone from the back dock. He looked up the system and there should still have been one bike in stock. He asked Ms Tracy Sheldon, the cashier, if she had seen the bike leave the store. Ms Sheldon told him that Mr Courtney had taken the bike and given it to an older man. Mr Robb asked if either Mr Courtney or the person to whom the bike had been given had paid for it. She said "no", but thought Mr Courtney had it under control.

[9] Mr Robb contacted Mr Angus McDonald, the Area Manager, and Mr Mike Ley, the Lead Risk Investigator. He told them the bike was missing and asked their advice. He was asked to send an email report, which he did on 20 February.

[10] Mr Ley checked the electronic stock levels against the physical stock level and confirmed that one bike was missing. He also checked the disposals and lay buys. This revealed nothing.

### **The company's investigation**

[11] Mr Ley met with Mr Robb and then spoke to Ms Sheldon who had been present at the time the bike was removed from the store. She reiterated what she had told Mr Robb.

[12] Mr Ley then interviewed Mr Michael Bryant, a part-time employee. He said he had been working on the POS at the time that Mr Courtney had asked for the refund and he processed the refund.

[13] On 26 February he spoke to Mr Anthony Message, a full time retail assistant. Mr Message knew Mr Courtney had bought a bike which had been refunded but nothing else.

[14] Mr Ley interviewed Ms Christensen, who had authorised the refund. She knew nothing about the bike leaving the store.

[15] During the course of the investigation Mr Robb told the staff that an investigation was being carried out and that Mr Courtney had been suspended. Staff were told the matter was confidential and they would face disciplinary action if they talked about it.

### **First interview with Mr Courtney**

[16] On 26 February Mr Ley interviewed Mr Courtney. Mr Robb was present. In his witness statement Mr Courtney said he had been accused of stealing the bike.

What Mr Courtney was told was that the company was investigating the removal of a bike without permission or payment.

[17] Mr Courtney said his father had picked up the bike and paid for it. Mr Ley asked Mr Courtney who could confirm that his father had paid for the bike. Mr Courtney said Mr John Graham had been on the counter at the time.

[18] Mr Courtney refused to provide his father's details so that Mr Ley could verify what had been said.

[19] After the interview Mr Ley spoke to Mr Graham. He said he had had nothing to do with the sale of the bike and had not been working on the day in question.

[20] At about 3.50pm Mr Courtney asked to speak to Mr Ley. He said he was unhappy with the way the inquiry was being conducted and the accusations that had been put to him. Mr Ley said the matter could be clarified if the father was contacted. Mr Courtney refused to provide contact details but would not say why.

[21] On 27 February Mr Ley attempted to contact Mr Courtney on his two mobile numbers. He sent a text asking that contact be made but heard nothing.

### **Meeting with Mr Courtney Senior**

[22] Mr Ley then ascertained Mr Courtney Senior's details from the company's list of emergency contacts in the HR file. He called the father and explained that he had been speaking to his son about a missing bike. He told the father that the son had refused to provide him with contact details. The father said that was strange but he was happy to speak to Mr Ley.

[23] Mr Ley went to Mr Courtney Senior's house on 2 March.

[24] Mr Courtney said in his brief that as soon as his father was told of the mistake he went to the shop and paid for the bike. This is incorrect. Mr Courtney phoned the store and said there had been a mix up with his father about payment and then paid for the bike with a credit card.

[25] On 2 March Mr Courtney Senior told Mr Ley he had not discussed the matter with his son. He told Mr Ley he had the bike but had no idea it had not been paid for. Mr Ley took a handwritten statement.

### **Formal disciplinary process**

[26] Upon his return to Cambridge he met with Mr Matthew Northway, the Area Manager (Central New Zealand), and Mr Courtney. Mr Northway read out a letter dated 2 March 2009 to Mr Courtney. This asked him to attend a formal meeting and said he would be suspended on pay while the investigation was carried out. Mr Courtney was suspended for two and a half days, not the several days, if not weeks, to which he referred in his brief.

[27] On 4 March a formal meeting was carried out. Mr Angus McDonald, the Area Manager (North) came to New Zealand to conduct the meeting. Ms Angela Murdoch (People Relations Coach) took notes. Mr Courtney attended with his lawyer, Ms Jennifer Raleigh-Bryant. Mr Courtney was provided with copies of the written statements and time to read them before the meeting began.

[28] Ms Raleigh-Jones suggested some of the questions were not necessary and that the company was trying to intimidate Mr Courtney. Mr Courtney provided an explanation, which was that he had assumed his father had paid for the bike and his father had thought he had.

[29] Ms Raleigh-Bryant said there had been a mutual misunderstanding about the payment.

[30] The meeting was adjourned and it was determined that Mr Courtney had knowingly or unknowingly allowed company property to be removed without payment, which was a breach of his responsibilities as Assistant Store Manager. The company decided there was insufficient evidence to show that the bike had intentionally been taken without payment being made and that Mr Courtney's explanation seemed plausible.

[31] It was determined that Mr Courtney be provide with counselling in relation to the breach and no further action was taken. Mr McDonald phoned Ms Raleigh-Bryant who asked to be told the outcome on the phone. She said Mr Courtney was enthusiastic to return to work.

[32] Mr McDonald then met with Mr Courtney who agreed that he had breached his responsibilities as a store manager and he accepted counselling. Mr Courtney returned to work the next day. Mr Courtney was also required to complete the Loss Prevention Module of Getting into Gear again.

## **DECISION**

[33] When I asked Mr Parlane to identify what was the nature of the loss of benefit that his client had suffered as a result of the investigation (which was allegedly demeaning and domineering), he told me it was that Mr Courtney might not gain a promotion as his record was tainted. He said he could not quantify the losses but also complained that Mr Courtney had been dealt with in front of his colleagues. While other employees were aware of the investigation the proceedings were conducted in private.

[34] Mr Parlane maintained that clause 20 of the employment agreement did not permit the employer to carry out an investigation. This is headed "*Employment Relationships, Grievances and Disputes*". Mr Parlane maintained that the agreement did not permit the employer to proceed to a disciplinary investigation but that the matter had to go to the Authority and that the company breached its agreement by proceeding with an investigation.

[35] Mr Courtney told me there was no communication with him before the investigation commenced and that he felt the way it was conducted was not appropriate and was very intimidating and he was very embarrassed.

[36] He felt harassed because his father's details were sought. Mr Courtney said he was far from happy about the way he was being treated by Mr Ley so why should he have gone out of his way to assist him. He felt he wasn't being treated with respect so he did not need to go out of his way to talk to his father. An employee has an obligation of good faith which requires him to be communicative with his employer.

This matter could have been resolved much sooner had Mr Courtney provided his father's details when they were sought.

[37] I asked Mr Courtney how the investigation could have been conducted so that other staff were not aware of it when their input was required. He was unable to answer this. He was upset that there no offer of anything had been made and that there had been apology regarding the manner in which the interviews had been conducted.

[38] Mr Parlane maintained that the company went on a process of intimidation and investigation that relentlessly investigated the employer's allegations which were later found to be without substance. He claimed the company "plotted to obtain evidence of dishonesty", that the company should have involved the police and that the employer was a bully.

[39] The company was entitled to carry out an investigation once it was ascertained that a bike was missing. Mr Parlane's argument that the employment agreement prevents this from happening as it does not have within it a disciplinary process and that therefore any employment relationship problem has to be referred to the Authority is misconceived. It is not the function of or within the jurisdiction of the Authority to carry out disciplinary investigations. It is the Authority's function to determine whether or not the employer has carried out a fair and reasonable process and made a fair and reasonable decision. The carrying out of a disciplinary process and investigation is for the employer not for an outside agency.

[40] In order to ascertain what had happened and who had been witness to what it was necessary for the company to interview staff. I am satisfied that this was done as discreetly as possible. I accept the evidence that staff were told that the matter was confidential and they were not to speak about it.

[41] Mr Courtney acknowledged during the investigation meeting that the matter would have resolved quickly if he had co-operated with regard to contact with his father.

[42] Once the company ascertained that Mr Courtney senior had not paid for the bike and had no idea that was the case it was entitled to arrange a disciplinary interview.

[43] The assertion that his chances of promotion have been damaged is not borne out by the evidence. Had there been evidence to that effect it would have been difficult to escape the conclusion that Mr Courtney was the author of this misfortune. Had he carried out his obligations as an employee and ensured that payment for the bike had been made before it left the store this situation would not have arisen.

[44] No employee will find an investigation into allegations of poor performance or the possible committing of a misdemeanour a pleasant experience. As noted, Mr Courtney did not assist the process by his refusal to supply information.

[45] I am not satisfied that the manner in which the investigation and the disciplinary meeting were carried out was intimidatory, bullying or that it constituted harassment of any sort. Mr Courtney was asked to answer questions that were legitimately put to him. He was not threatened or abused.

[46] The sole remaining issue is the suspension. There was no contractual provision for suspension and Mr Courtney was not given an opportunity to comment on the suspension before it was effected. Mr Courtney gave no evidence about the effect of the suspension.

[47] While technically the suspension was unlawful it is difficult to escape the conclusion that Mr Courtney brought it entirely upon himself. Had he co-operated with his employer by giving his father's details the matter would have been resolved before the company reached the point of suspending Mr Courtney.

[48] Mr Courtney contributed to the situation by failing to carry out his duties as Assistant Store Manager in an appropriate manner. He should have ensured that payment was made for the bike before it left the shop.

[49] Mr Courtney is not entitled to any remedies.

**Costs**

[50] If the parties are unable to resolve the issue of costs memoranda should be filed within 28 days of the date of this determination.

Dzintra King

Member of the Employment Relations Authority