

BETWEEN TRACEY CRAWFORD  
Applicant

AND M TOROK HOLDINGS LIMITED  
Respondent

Member of Authority: Leon Robinson

Representatives: Rowland Ingram for applicant  
Mark Torok for respondent

Determination: 26 March 2007

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**DETERMINATION OF THE AUTHORITY**

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[1] Ms Tracey Crawford ("Ms Crawford") asks the Authority to investigate her claim that she was unjustifiably dismissed on Friday 19 November 2004 from her employment as a hairdresser at M Torok Holdings Limited's Sharing Shed. She asks the Authority to resolve the problem by making formal orders in her favour for reimbursement and compensation.

[2] M Torok Holdings Limited initially defended Ms Crawford's claim contending she was an independent contractor and not an employee. The Authority has previously determined Ms Crawford was an employee.

[3] The parties were unable to resolve the problem between them by the use of mediation.

**The facts**

[4] Ms Crawford commenced employed with M Torok Holdings Limited in November 2002. At the time her employment ended, she worked at the company's Kelston salon.

[5] At about 5.45 pm on Friday 19 November 2004 as Ms Crawford was closing the salon, Mr Mark Torok a director of M Torok Holdings Limited ("Mr Torok") entered the salon.

[6] Mr Torok said he wanted to have a word with Ms Crawford. He had with him a computer printout which detailed sales transactions for two particular days 5 November 2004 and one other. The printouts apparently showed the use of the "no sales" key on the salon till for the days in question. Mr Torok asked Ms Crawford to explain why she had more "no sales" under her name than anyone else. Ms Crawford replied that there were probably lots of reasons why she would use the "no sales" key on the till. She asked Mr Torok *"what are you getting at Mark?"*. Mr Torok then briefly showed the computer printout he had to Ms Crawford but only, the Authority finds, momentarily.

[7] Mr Torok went on to explain he had video surveillance footage which showed a client standing at the counter at the time the "no sale" key was used. He asked Ms Crawford to explain. She said she could not off the top of her head. She said she was not a thief if that was what Mr Torok was suggesting. She explained the key was used to remove cash to obtain change.

[8] According to Ms Crawford, and the Authority accepts, Mr Torok said *"what we can't work out is, we think you've been stealing money, pinching money out of the till, but the cash ups are neither up nor down."* Ms Crawford also asked where the video camera was because she was unaware of its existence.

[9] Eventually, Mr Torok asked Ms Crawford for her salon keys. Ms Crawford says he also asked her to leave the premises. She says she asked him if he was firing her and he told her *"Yes"*. Mr Torok denies that statement. Ms Crawford then telephoned her partner Mr Dave Kjestrup ("Mr Kjestrup") in front of Mr Torok, to retrieve her telling him she had been dismissed. She left taking her personal belongings.

[10] Ms Crawford was out in the mall when Mr Kjestrup entered the salon and confronted Mr Torok. Mr Kjestrup asked Mr Torok what was going on. He says Mr Torok confirmed he had dismissed Ms Crawford for the theft of \$20.00 from the till. Mr Kjestrup says he asked to see the video surveillance footage but Mr Torok was unable to oblige without the required equipment. Mr Kjestrup continued to remonstrate with Mr Torok maintaining Ms Crawford had not stolen any money. The exchange became heated and was punctuated with unpleasant language and the Authority finds, threats. Mr Kjestrup eventually left the salon dissatisfied.

**The merits**

[11] The Authority determines Ms Crawford's position is the more meritorious.

[12] Ms Crawford had held the keys for the Kelston salon for many months. She had opened and closed the salon. Mr Torok tells the Authority he asked for the keys because he no longer trusted Ms Crawford. He denies dismissing her and says she simply did not return to the salon when she was rostered to do so the following Tuesday. The Authority finds that Mr Torok did dismiss Ms Crawford. When he demanded her keys, he was sending her away. That sending away constitutes a dismissal. Although he denies he expressly dismissed Ms Crawford, his exchange with Mr Kjestrup proceeded on that basis.

[13] The dismissal was not justifiable. Mr Torok had not given Ms Crawford any advance notice of the matters he confronted her with when she was dismissed. A person who is at peril of punishment is entitled to be heard in their own defence. That right of natural justice or at the very least, human courtesy, was not extended to Ms Crawford. Nor did Mr Torok permit Ms Crawford an opportunity to enlist support or take advice about what he presented her with. He afforded her none of the minimum requirements of procedural fairness. A fair and reasonable employer would have done so.

[14] As for a good reason to dismiss, Mr Torok is required by law to have convincing and compelling evidence or information of serious misconduct by Ms Crawford before he was entitled to dismiss her without notice. He had conducted no enquiry at all that involved Ms Crawford sufficient to support a finding of serious misconduct. It was unfair to ambush Ms Crawford with the allegations against her without presenting her with the suspicions in a way which was fair to her and which allowed her to understand precisely what she was being accused of. Having completely failed to conduct a fair process in that fashion, his decision to dismiss was unfair and cannot be justified.

[15] I must now separate out Mr Torok's decision to dismiss and evaluate it against the specified objective standard of what a fair and reasonable employer would have done in these circumstances. Standing back and assessing matters objectively from the perspective of a fair and reasonable employer in these prevailing circumstances, I conclude that M Torok Holding Limited's decision to dismiss Ms Crawford was not what a fair and reasonable employer would have done.

### **The Determination**

[16] For the reasons set out above, I conclude Ms Crawford was unjustifiably dismissed. Ms Crawford has a personal grievance arising out of her dismissal and she is entitled to remedies in settlement of it.

[17] Having made that finding and in considering both the nature and the extent of the remedies to be provided, I am bound by section 124 of the Employment Relations Act 2000 to consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly. I find there was no blameworthy conduct on Ms Crawford's part that would constitute contributory fault. There is therefore, no basis for reducing the nature and extent of remedies to her.

[18] Ms Crawford seeks reimbursement of lost wages. She says she felt so intensely humiliated by her dismissal that she could not obtain alternative employment in hairdressing. She says she could not rely on a verbal reference from Mr Torok to obtain another hairdressing position. Over the Christmas period in 2004 she worked as a mail sorter for New Zealand Post and earned \$1,802.99. She says she could not find other work after that position. Her partner Mr Kjestrup has supported their family on his income since that time.

[19] She says she applied for other positions advertised in the Western Leader suburban newspaper but was not successful. I am satisfied that Ms Crawford did take steps to mitigate her losses in the period after her dismissal. I award her three months lost wages in the gross sum of \$5,025.01. **M Torok Holdings Limited is ordered to pay to Tracey Crawford the gross sum of \$5,025.01 as reimbursement of lost wages.**

[20] Ms Crawford says that her relationship with Mr Kjestrup nearly broke down because of the stress of her dismissal and the financial impact losing her income had. She says she lost a great amount of confidence because of the dismissal. She claims \$15,000.00 compensation. Her evidence does not support an award of that level. I accept however, that the stigma of dismissal in the nature of theft did cause her stress, anxiety, hurt and humiliation. I make a modest award of compensation having regard to her evidence and the particular circumstances of her dismissal. **M Torok Holdings Limited is ordered to pay to Tracey Crawford the sum of \$5,000.00 as compensation.**

**Costs**

[21] In the event that Ms Crawford has incurred costs of professional representation and she wishes to claim a contribution to those costs, the parties are encouraged to resolve that question between them, but failing such agreement, Mr Ingram is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Mr Torok is to lodge a memorandum in reply thereafter but within 28 days of the date of this Determination. I will not consider any application outside that timeframe.

Leon Robinson  
**Member of Employment Relations Authority**