

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 289/09  
5138604

BETWEEN OWEN GORDON FRENTZ  
Applicant

AND HIREQUIP LIMITED  
Respondent

Member of Authority: Dzintra King

Representatives: Mark Sweetman, Counsel for Applicant  
Ralph Webster, Advocate for Respondent

Investigation Meeting: Auckland 26 June 2009

Submissions Received: 8 July 2009 from Applicant  
27 July 2009 from Respondent

Determination: 19 August 2009

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The applicant, Mr Owen Frentz, says he has been unjustifiably dismissed by the respondent, Hirequip Limited. Mr Frentz was employed by Hirequip as the Assistant Branch Manager of the Manukau Branch in the Northern Region from 1 October 2007. At the Manukau Branch of Hirequip there are two departments: a workshop and a hire centre. They are in different buildings and operate as separate entities. Mr Frentz worked in the hire centre and Mr Jason Langlois, the Branch Manager, was Mr Frentz's boss. He also worked in the hire centre.

**Missing Cheque**

[2] On 8 February 2008 Ms Candace James, the office administrator for the workshop, forwarded a petty cash reimbursement form to the Hirequip National Support Office in Sylvia Park Road. About four to five weeks later she telephoned

the accounts department of the National Support Office to ask where the cheque had got to. The office telephoned her back to tell her that NZ Couriers had delivered the package on 15 February at 10.03am to the Manukau branch and that she had signed for it.

[3] The delivery slip from NZ Couriers shows that the parcel in question was signed for at 10.03:39am by Candace. Ms James said that the signature was not hers and she wasn't at the premises at the time. The company made no attempt to ascertain who had signed for the parcel. Mr Frentz was not asked if the signature was his nor was he asked to write the name "Candace" to see if there was any similarity.

[4] Mr Dale Lilley, the General Manager Northern, said the company had approached the Manukau branch of Westpac Bank where the cheque had been cashed. The bank informed the company that they could not provide any further evidence of documentation about the cashing of the cheque unless the Police were involved. The company then involved the Police.

[5] The Police were given a photograph of the person who had cashed the cheque – it was a photo of Mr Frentz.

### **Police Interview**

[6] 28 April 2008 Mr Frentz was called to a meeting at about 10.30am by Mr Langlois. When he went to the meeting he was told there were two Police officers who wanted to talk to him. One of the Police officers told him that they were there to discuss a cheque that had been sent by Hirequip National Support Office to the branch for Ms James on 15 February 2008. Ms James is responsible for the petty cash cheques, invoices and all other administration for the workshop.

[7] Mr Frentz says he was told by the Police that a courier parcel addressed to Ms James, which contained a cheque, had been delivered to the branch by NZ Couriers on 15 February 2008 at 10.03am. Mr Frentz was asked whether he knew anything about that cheque. He told the Police he did not. He was then asked whether he would have cashed the cheque and pocketed the money.

[8] Mr Frentz told the Police he had cashed a cheque for Mr Langlois before but would need to know what the dates were of the cheque that was being referred to. He was told that the cheque was for \$416.20 and was cashed on 15 February 2008.

Mr Frentz again said he had cashed cheques before and the money had gone straight into the petty cash box but he no idea about this particular cheque. The Police then asked what the procedure was for cashing cheques. He told them that the cheques were given to him by Mr Langlois. Mr Langlois told him that it was a petty cash cheque and that he was to go and cash it. He then either put the money in the petty cash tin (to which he and Mr Langlois had keys), handed it to Mr Langlois or Mr Langlois had told him to put it on his desk.

[9] He was then asked who the cheques were made out to. Mr Frentz replied that they were for Hirequip, however he never looked at them, he just went to the bank and did what he was told to do. He would not know if he had been asked to cash a cheque for the workshop.

[10] He was then asked if all the cheques went through his manager first. He replied that all the petty cash cheques did. The Police then told him Mr Lilley had checked the accounts and there was no deposit for \$416.20 in the petty cash for their branch. Mr Frentz said he did not know about that but that the procedure for getting petty cash if it was required was for Mr Langlois to fill out a form, which was then sent to Head Office by facsimile or email. Head Office then wrote out the cheque and sent it to the branch by courier with Mr Langlois' name on the bag. Whoever did the banking got the cash and put it in the petty cash tin. Mr Frentz said he could only presume it was the same for the workshop.

[11] Mr Frentz said he had signed for courier packs in the past as had most of the staff. However he did not know what was in them.

[12] He then told the Police that Mr Langlois had to balance the petty cash when a cheque was cashed and that all the courier packs that had seen had had Mr Langlois' name on them; if the courier pack had Ms James' name on it, the courier pack would go to Ms James' office.

[13] Mr Frentz told the Police that he did not remember a specific cheque because he did not look at the dollar values when he cashed them for Mr Langlois. The Police then asked where the money would be once the cheque had been cashed. He replied that it would be in the petty cash and as far as he was aware he had not cashed the cheque. He told the Police he had known Mr Langlois longer than the time he had

been working at Hirequip and that if Mr Langlois had given Mr Frenz the cheque he would have asked about it if he did not get the money.

[14] Mr Frenz was then shown a photograph of himself at the bank. The photograph had the date 15 February 2008 and time 3.13:44pm on it. Mr Frenz said that it was him in the photo but he did not know how he got the cheque because he simply did not remember. He was then asked whether he had cashed it and he said he did not recall. The Police then told him that the cheque was addressed to Ms James. Mr Frenz told the officer that he would give the cheques addressed to Mr Langlois to Mr Langlois and the cheques addressed to Ms James to Ms James.

[15] The Police asked where the money was and he told them he did not know. The Police told him that the petty cash had been checked and there had not been any deposit for \$416.20 into it since the cheque had been cashed. Mr Frenz told the officer he could not answer that. Mr Frenz said he could not remember cashing the cheque and he did not know what he did with it other than what he would have always done.

[16] Mr Frenz was advised that he was under arrest. Mr Frenz was charged with dishonest use of a document for pecuniary advantage. He was then released on bail.

[17] Mr Langlois picked him up from the Police Station and told him he did not believe he had stolen the money. Mr Langlois then told him there was a meeting scheduled for the next day with himself and Mr Lilley.

### **Hirequip Meeting 29 April 2008**

[18] On 29 April Mr Frenz was picked up from his home by Mr Langlois, who took him to a meeting at the Mt Wellington branch of Hirequip. There was no mention of the possibility of representation or a support person.

[19] Mr Lilley told him that it was a “please explain” meeting. He told Mr Lilley and Mr Langlois the same thing he had told the Police the day before. He said to them that if they said he had cashed the cheque he must have, but he did not know what had happened to the money.

[20] He was then handed a pre-written letter dated 29 April 2008 signed by Mr Lilley which informed him that a disciplinary meeting was scheduled for 5 May 2008.

The first line in the letter states “*Further to our conversation today, I am concerned that this may have been an act of dishonesty...*” The meeting had not yet concluded yet the letter seemed to make reference to a meeting that had already taken place. The letter goes on to say that the issues that concern the employer are conduct involving dishonesty and any other act which has the effect of seriously damaging the relationship of trust and confidence.

[21] He was also given another pre-written letter, also dated 29 April 2009, also signed by Mr Lilley informing him of his immediate suspension for “*cashing a cheque made out to Hirequip ASW.*” Mr Frenz said this was confusing to him because he was also asked to cash cheques made out to Hirequip and had cashed similar cheques in the past.

[22] It is difficult to escape the conclusion that Mr Frenz was being accused of theft.

[23] After the meeting Mr Langlois took him home again. Mr Langlois asked him what he thought of the situation and Mr Frenz said it was clear to him that he was going to lose his job. Mr Langlois said he would try not to let that happen.

#### **Hirequip Meeting 5 May 2008**

[24] Mr Frenz took Mr Carwyn Johansson, the Assistant Manager of the Henderson Branch of Hirequip, as his support person. Mr Lilley and Mr Langlois were present at the meeting representing the company. Mr Lilley took notes. Mr Frenz was again asked to explain the events relating to the cheque that was cashed on 15 February 2008. Mr Frenz once again said he would only repeat what he had said the week before: that he did not have any recollection of the event.

[25] Mr Langlois told Mr Lilley that as Mr Frenz’s manager he was ultimately responsible for the money and he would pay it back then and there. Mr Lilley declined this offer. Mr Langlois then proceeded to give Mr Lilley a glowing reference for Mr Frenz in regard to his work. Mr Frenz said it was very confusing because Mr Langlois was part of a team investigating him for allegedly stealing the money.

[26] Mr Johansson told Mr Langlois and Mr Lilley that Mr Frenz would never have stolen money.

[27] Mr Frentz said he asked Mr Lilley what the company's procedures were for banking petty cash cheques. He asked that question because he knew that there were several other employees besides himself and Mr Langlois who could receive cheques if he and Mr Langlois were not there and cheques for the hire division arrived at the branch. Mr Lilley said the manager was ultimately responsible for the procedures and he did not have anything in writing to show him.

[28] The meeting adjourned. He was then told by Mr Lilley that he needed to speak to Mr Brian Stevens, Hirequip's CEO, and also to the company's employment relations person.

[29] The meeting was then reconvened and Mr Lilley told him that the decision regarding the matter was ultimately his and he was terminating the employment. He received a letter from Mr Lilley several days later, dated 5 May 2008, the same day as the day of the meeting. The letter states:

*Unfortunately your actions have led to a breakdown of our trust and the confidence we have in you.*

[30] Any member of staff can sign for a courier package. The letter also says:

*You admitted it was you that cashed the cheque once you were presented with the photographic evidence ... and cannot recall to date, what happened to the money once the cheque was cashed by yourself.*

[31] Mr Frentz said he was unclear whether he had been dismissed for cashing the cheque or for stealing the money. He said the company seemed to be saying that because there was a photograph of him cashing the cheque, that the money was not accounted for and that he could not remember what he had done with the money after cashing the cheque, the only conclusion was that he had stolen the money. He unfortunately did not remember the events of that day because of the time it took for the investigation to commence, and because it was something he would do without giving much thought to it.

[32] At the hearing Mr Frentz said he would go to the bank most days to do banking.

[33] The letter ended by stating that the missing money would be deducted from his final pay; however that was not done. Mr Frenz said he had never said he did not cash the cheque, but merely said that he did not remember if he had cashed the cheque. When he was shown the photograph he said he must have done so; however that did not mean that he had stolen the money. If he had cashed the cheque he believed he would have given the money to Mr Langlois or put the money in the cash box or perhaps left the money on Jason's desk, as that was what he had asked him to do. He would not just go and cash a cheque unless he was asked to do so.

### **Subsequent Events**

[34] Mr Frenz appeared in the Manukau District Court on 1 May 2008 where he pleaded not guilty to the charge of using a document for pecuniary advantage pursuant to s.228 of the Crimes Act 1961. He was remanded at large to appear again on 28 May 2008 and then remanded again to appear on 5 August 2008. When he appeared again on 5 August the charges against him were dropped and there was no conviction.

[35] Mr Frenz said that as a result he was unemployed for three months, as he was unable to get work while the Court case was pending. His health deteriorated badly. He was prescribed sleeping pills by his doctor and lost weight due to his loss of appetite caused by the stress of the events.

[36] In his spare time Mr Frenz taught karate and was a volunteer for the Civil Defence First Response Team. Due to the events he felt obliged to stop doing those things during that time because of the embarrassment and humiliation and potential damage to his character. He did not feel he could teach people or be involved in civil defence if his character was in question. He stopped teaching karate but the civil defence team insisted he stayed involved and they were not concerned about the events or his involvement in the team.

[37] Mr Frenz is now re-employed. He was required to inform his new employer of events that had occurred in his previous job. The new employer had been very supportive and did not have any concerns him and had placed no restrictions on him. He was entrusted to handle client payments and had been promoted. He said he was very confused and very upset about the events leading up to his dismissal and how Hirequip came to their decision to dismiss him.

[38] Payslips provided by Mr Frentz show that for the pay period ending 31.08.2008 he had earned a total \$1,980.16 gross.

### **Decision**

[39] The test for justification is set out in s 103A Employment Relations Act 2000. The question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred

[40] In order to meet the test an employer must carry out a sufficiently thorough investigation which discloses all relevant information. Mr Lilley did not attempt to ascertain who had signed for the package containing the cheque. He did not interview other staff until after the police had been called and the interviewing appears to have been informal; no notes were taken. Mr Lilley did not ascertain that Mr Frentz did banking most days and so would be far less likely to recall the events of a particular day than if he went to the bank very rarely. Mr Lilley did not attempt to ascertain where Mr Frentz had been when the courier parcel containing the cheque was signed for at 10am.

[41] Mr Langlois said at the hearing he could not recall passing for the \$416 cheque to Mr Frentz. They were pretty busy around that time and he had received one of their own petty cash cheques around the same time, but he could not be 100% sure when he gave this cheque to Mr Frentz. It may have been on 13 February 2008. Generally he would check the amount of the cheque, but said it was not part of the procedure, but it was often something he would do. He could recall the cheque that he did give to Mr Frentz he received cash back from him, and placed that in the petty cash tin. This information was not elicited by Mr Lilley.

[42] Nearly three months had elapsed since the events in question. Mr Frentz was given a very positive reference during the disciplinary proceedings by Mr Langlois.

[43] At the hearing Mr Lilley said Mr Frentz was not dismissed for stealing the money but because he did not know what he had done with it and could not account it. The dismissal was a breach of trust and confidence not for dishonesty.

[44] There is a problem with this later justification. The Statement in Reply dated 10 October 2008 says:

*Mr Frentz was effectively dismissed for theft by a person in a special relationship. On 15 February 2008 Mr Frentz took a company cheque for \$416.20 to the Manukau branch of the Westpac bank. He cashed this cheque and retained the money for himself.*

[45] The letter of 29 April refers to dishonesty and the dismissal letter contained a requirement to repay the money.

[46] A dismissal for theft is a very serious matter. In *Honda NZ Limited v NZ Shipwrights Etc Union* [1990] 3 NZILR 23 the Court of Appeal endorsed the view set out by the Labour Court in *NZ Shipwrights Etc Union v Honda NZ Limited* [1989] 3 NZILR 82 that where a serious charge is the basis for the justification, then the evidence in support of it must be as convincing in its nature as the charge is grave.

[47] A fair and reasonable employer would not, in the circumstances of this, made a decision to dismiss. Mr Frentz has a personal grievance.

### **Remedies**

[48] A problem for Mr Frentz in terms of reimbursement of lost wages is that he was unemployed not because of the personal grievance but because of the criminal proceedings. I cannot make an order for reimbursement.

[49] It is clear that Mr Frentz did suffer a significant amount of humiliation and distress. It is also evident that some of that related to the arrest. The respondent is to pay the applicant the sum of \$4,000 pursuant to s 123 (1) (c) (i).

[50] I have considered the matter of contribution and have reached the conclusion that Mr Frentz did not contribute to the situation that gave rise to the personal grievance.

**Costs**

[51] If the parties are unable to resolve the issue of costs the applicant should file a memorandum within 28 days of the date of this determination. The respondent should then file a memorandum in reply within 14 days of receipt of the applicant's memorandum.

Dzintra King  
Member of the Employment Relations Authority