Determination Number: CA 108/06
File Number: CEA 470/04

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE

BETWEEN	Karin Hubber (Applicant)
AND	Air New Zealand Limited (Respondent)
REPRESENTATIVES	Jeff Goldstein, Counsel for Applicant Kevin Thompson, Counsel for Respondent
MEMBER OF AUTHORITY	Paul Montgomery
INVESTIGATION MEETING	11 October 2005
DATE OF DETERMINATION	25 July 2006

DETERMINATION OF THE AUTHORITY

The employment relationship problem

[1] Ms Hubber alleges she has been disadvantaged in her employment by the unjustified action of her then employer in issuing her with a final warning on 5 August 2004. The respondent says it acted appropriately in investigating the incident in question and that the warning was justified in the circumstances. It declines to offer the remedies sought by the applicant.

The facts

[2] There is little disagreement over the facts in this matter. Ms Hubber, at the relevant time, had worked for the respondent for over 25 years and held the position of Duty Terminal Manager. Her record was that of a loyal and conscientious employee with no cautions or warnings.

[3] On 1 April 2004 Ms Hubber and a group of family and friends were booked on the airline service to Fiji. On 31 March 2004 the applicant checked the members of the group in, issuing boarding passes and six baggage tags for the group's luggage. Ms Hubber held the baggage tags and took them home that evening. The following day Ms Hubber brought the tags back to the airport and they were attached to the baggage at the check-in counter. Further tags were issued for additional bags by the customer service agent who completed the group's check-in procedures.

[4] On 3 May the applicant, now back at work, received a letter from Ms Garrett, the Acting Airport Manager, who alleged the check-in procedures for the trip were incorrect. On 5 May the applicant, supported by a colleague Ms Stocker, met with Ms Garrett and Ms Lai, from Human Resources. The applicant was given an unsigned and unnamed statement from a Mr Spensley. Ms Hubber told the respondent's representatives that staff had frequently checked themselves in,

and later that day and on 7 May Ms Garrett interviewed a number of staff on this particular point. Essentially, staff recorded that staff did check themselves in on occasions.

[5] On 12 May a further meeting was held and at that meeting Ms Hubber asked for all documentation relating to the inquiry. This was provided to the applicant in a letter of 14 May 2004.

[6] On 20 May a further meeting took place. The applicant, Ms Stocker and Mr Couch (at that time a barrister) attended and for the company Ms Garrett, Ms Lai and Ms Reid, counsel for the respondent were present. This meeting concentrated on the allegation that Ms Hubber had breached the Code of Conduct and had not followed proper procedures in the incident. The applicant gave the company several examples of staff checking themselves in.

[7] Later, on 1 July 2004, a meeting involving the same people took place. Ms Garrett told the meeting that the company accepted that at times staff did check themselves in and turned to the allegation that Ms Hubber had taken bag tags off the airport site.

[8] The applicant says this was a change of focus to the inquiry. The respondent says it was always part of the inquiry and, having dealt with the check-in issue, turned its attention to the second aspect of the inquiry.

[9] On 2 August 2004 Mr Couch wrote a letter to Ms Garrett seeking clarification of the issues outstanding in the inquiry and setting out the relevant section of the Passenger Handling Manual which Ms Hubber understood she was said to have breached. That same day Ms Garrett replied that the issues as set out by Mr Couch were the ones concerning the respondent and confirmed that the applicant was not in breach of that section of the Manual, but that she had breached other sections.

[10] A further meeting took place with the same participants on 5 August 2004 during which Ms Hubber gave Ms Garrett three examples she was aware of, including actions by Ms Garnham and Ms Ashcroft. The respondent says these two people were not mentioned at this meeting. The applicant and her representatives say they were mentioned.

[11] The respondent, at that time, did not follow up and investigate the three incidents cited by the applicant, and Ms Garrett issued a final warning after finding Ms Hubber had been in breach.

The investigation meeting

[12] The Authority was assisted by evidence from the applicant herself, her partner Mr Shalders, Ms Stocker, Ms Garnham, Ms Ashcroft and Mr Couch. For the respondent I heard evidence from Ms Garrett. I thank the witnesses for their openness with the Authority and for their professional manner despite obvious differences. I also record the Authority's appreciation of the assistance at the investigation meeting by counsel and for their detailed final submissions.

The issues

[13] In this matter the Authority is required to resolve the following issues –

- Did the respondent, following the complaint of Mr Spensley, conduct a fair and full inquiry into the allegations that Ms Hubber had breached the Code of Conduct and/or the Passenger Handling Manual; and

- Having conducted an inquiry, was it open for the respondent to issue a final warning to the applicant in all the circumstances; and

- Was in all the circumstances Ms Hubber treated significantly differently from others who had removed baggage tags from the airport; and

- In the event that Ms Hubber succeeds in her claim, what, if any, remedies are due to her?

The legal principles

[14] In his submissions Mr Goldstein correctly identified the two primary cases in respect to disadvantage and the appropriate tests to be applied; *Alliance Freezing Company (Southland) Ltd v NZ Engineering IUOW* [1990] 1 NZLR 533 (CA) and *BP Oil New Zealand Ltd v NID Distribution Workers etc IUOW* [1989] 3 NZLR 580 (CA).

[15] Mr Thompson concurred that the first case established that a warning could amount to a disadvantage and cited *Northern Distribution Union v BP Oil Ltd* [1992] 3 ERNZ 483 (CA) as the appropriate test. Further, Mr Thompson relied, on the point of correct procedure, on *NZ (with exceptions) Food Processing etc IUOW v Unilever New Zealand Ltd* [1990] 1 NZILR 45-46. He also referred the Authority to a range of other cases which have been of assistance, in particular, *North Island Wholesale Groceries v Hewin* [1982] 2 NZLR (CA) 176.

[16] On the issue of disparity, counsel referred the Authority to three other cases he considered relevant.

Discussion and analysis

[17] The facts are largely agreed. The respondent, having received a serious complaint involving a senior staff member was obliged to make inquiries into the incident. It did so, and in the course of that inquiry questioned a number of other staff members. That process led to the company accepting that self check-in was a relatively common practice and dropped that issue from its inquiry. That left the issue of the removal of baggage tags from the airport. The applicant, on 5 July 2004 says she named two persons she knew to have removed tags from the airport, and proposed that this too was a relatively common practice. The respondent did not accept the applicant's explanation and position on this specific issue.

[18] Even if Ms Garnham and Ms Ashcroft were mentioned in connection with the baggage tags at the 5 July meeting, two alleged incidents do not establish a common practice of baggage tag removal, and would, in my view, have added little of substance to the respondent's inquiry and thus not materially affect the outcome.

[19] The issue of disparity of treatment was not put to the company until a personal grievance was lodged. While this is not unusual, in this case the applicant had undertaken to provide further information to the company. However, none was provided by the date specified by the company, and the respondent proceeded to decide to issue the warning.

[20] I detected an undercurrent of antipathy towards the applicant by Mr Spensley, apparently based on some historical Union - non-Union issues. I am of the view, not having heard from Mr Spensley in person, that a considerable degree of the hurt felt by Ms Hubber relates to workplace tension, not directly connected to the facts of this matter before the Authority.

The determination

[21] While I accept that the applicant was embarrassed by the respondent's inquiry into the allegations, I do not accept that such embarrassment can be laid squarely at the employer's feet. If there was, as Ms Gough said, *an orchestrated campaign* against the applicant, it was not one waged on her by the respondent.

[22] I find that the applicant was not unjustifiably disadvantaged in her employment as the finding of misconduct in respect to the luggage tags was open to the respondent following a full and extensive inquiry. In particular, the applicant clearly accepted during the company's inquiry that taking baggage tags off site was a breach of protocol. Her evidence to the Authority was that had she known then that disciplinary action could follow, she would not have taken baggage tags home.

[23] I find there was no disparity in the respondent's treatment of Ms Hubber. The incidents cited by the applicant in respect to others removing baggage tags were simply allegations, and the applicant undertook to provide further information on this issue. She failed to do so. The respondent was, in my view, entitled to proceed to impose what it regarded as an appropriate sanction.

[24] I find that in all the circumstances, the decision to issue the applicant with a final warning was a justifiable option available to the respondent, an option falling short of the ultimate sanction of dismissal.

[25] To her credit, Ms Hubber has never claimed that the reason for her resignation is rooted in this matter, but rather that other opportunities were available to her; opportunities she preferred to pursue.

[26] I find that Ms Hubber does not have a personal grievance and the Authority is unable to assist her further.

Costs

[27] At the request of counsel, costs are reserved.

Paul Montgomery
Member of Employment Relations Authority