

[4] On 10 January 2008 Ms Jones phoned Mr Hemi about the \$12 that was missing. Ms Jones said she wanted to sort out what had happened. Ms Debra Harvey, a court attendant, had also contacted Mr Hemi wanting the matter resolved. Both women denied that they were responsible for the missing amount and blamed each other

[5] Mr Hemi had a meeting with Ms Jones and Ms Harvey. Mr Hemi said Ms Jones was very agitated and removed her badge saying she would resign. Ms Harvey said Ms Jones took off her badge and slammed it down on the desk. Mr Hemi told Ms Jones to calm down and told Ms Harvey that she could leave.

[6] There was a discussion about what had happened on the day the money went missing and then Ms Jones raised the issue of the list of till discrepancies that was on display in the office. Mr Hemi said discussions about till discrepancies were routine and they tried to work out what had happened so that they could prevent a recurrence. Ms Jones agreed that there had been previous discussions with her about discrepancies.

[7] Mr Hemi said Ms Jones lost her cool and said she was going to walk out then and there. He told her not to be so hasty and that if she wanted to leave she had to give two weeks' notice.

[8] Ms Jones said that during the discussion Mr Hemi made it very clear that he did not believe her and threatened her with dismissal. Ms Jones said she was accused of making a mistake and intimidated into resigning.

[9] Ms Jones then wrote out her resignation and gave it to Mr Hemi.

[10] Mr Hemi said it was probably best that she gave notice rather than just walking out and he then raised concerns other staff about her. He said at that stage Ms Jones said she was not working in this fucking shithole any more and that she got the blame for everything. She pulled her name badge from her shirt and threw it across the room, then she went and got her keys and threw them back through the office door onto the desk.

[11] Mr Hemi said Ms Jones telephoned him later that night and said that under the circumstances she couldn't come back because she felt she would get the blame if anything went wrong.

[12] Mr Hemi said he understood from the way she had behaved and the way she had left that she probably wasn't coming back. Ms Jones said she would pick up her wages the next pay day and he told her she would get what she owed.

[13] On 17 January Ms Jones went in to ascertain why she had not been paid the full amount due. Mr Hemi explained that she was supposed to give two weeks' notice. Mr Jones said he had told his wife just to pay the money but Mrs Hemi had said she did not want to pay anything so they compromised and deducted one week when contractually they could have deducted two.

[14] The employment agreement contains a provision permitting the employer to deduct money from an employee's final wages if notice is not worked.

[15] Ms Jones says Mr Hemi agreed in the phone call that she could forgo working out her notice period.

[16] Ms Jones said that when she told Mr Hemi that she would not be coming back to work he said he had already come to that conclusion. Ms Jones took that comment as an agreement that she was not to return to work. She said nothing was said about deductions if she did not work.

[17] Mr Hemi's remark that he had already reached that conclusion did not constitute an agreement on his part to waive the notice period. It simply constituted an acknowledgement of Ms Jones' state of mind and intention not to return.

[18] Mr Hemi denied threatening her with dismissal. Having heard from the three people present at the meeting I find that Mr Hemi did not threaten Ms Jones with termination of employment.

[19] When an employee alleges there has been a constructive dismissal the onus is on the employee to show that a resignation in fact constitutes a dismissal, that is, a repudiation of the employment by the employer.

[20] Mr Hemi did not threaten to dismiss Ms Jones. Ms Jones was upset as she felt she was blamed for the missing \$12. It was at the request of Ms Jones and Ms Harvey that Mr Hemi had the meeting to endeavour to sort the missing money concern. Mr Hemi did not accuse Ms Jones of being responsible. The discussion did not get to that stage. Ms Jones was not constructively dismissed.

[21] Mr Hemi did not agree to waive the notice period and was entitled to deduct wages as he as he had Ms Jones' consent to do so.

[22] There is no issue of costs.

Dzintra King

Member of the Employment Relations Authority