

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 193/10
5307405

BETWEEN KAPITI COAST DIESEL
 SERVICES LTD
 Applicant

AND ANNE DENISE GOODWIN
 Respondent

Member of Authority: G J Wood

Representatives: Grant Pearson for the Applicant
 Sharon France for the Respondent

Investigation Meeting: On the Papers

Submissions Received: By 18 November 2010

Determination: 30 November 2010

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant (Kapiti Diesel) claims that the respondent, Ms Anne Goodwin, was responsible for the unauthorised transfer of \$443,271.23 from its funds. Ms Goodwin accepts Kapiti Diesel's claims and evidence in this matter. She has been charged with criminal offences as a result of her actions and will accept the determination of the Authority based on the applicant's evidence.

[2] The applicant's evidence is to the effect that the owners of Kapiti Diesel employed Ms Goodwin, the sister of one of the owners, to help run their business, and in particular to manage all its accounts, including having the power to sign cheques without a second signature and to make electronic fund transfers.

[3] Earlier this year Kapiti Diesel's bank informed the company that it believed that Ms Goodwin had been paying company monies into her own accounts, but recording them as payments to legitimate suppliers. When confronted Ms Goodwin admitted that she had taken some money, but did not accept the sums suggested by Kapiti Diesel.

[4] I accept that of the \$452,521.64 which the bank has identified as potentially improper transfers, \$443,271.23 is not properly accounted for. Given that Ms Goodwin accepts this evidence, it is clear that, subject to jurisdictional constraints, Kapiti Diesel is entitled to recover those monies from her in the Authority, constituting as it does long term misappropriation of company monies on a large scale, between January 2003 and February 2010. Kapiti Diesel is also entitled to interest on the sum owing. The evidence indicated that the monies improperly transferred totalled the following:

Y/E March 2003	\$4,397.23
Y/E March 2004	\$14,563.72
Y/E March 2005	\$43,831.96
Y/E March 2006	\$71,373.49
Y/E March 2007	\$62,920.74
Y/E March 2008	\$84,762.64
Y/E March 2009	\$101,689.47
Y/E March 2010	\$59,731.98

[5] Section 142 provides for the limitation period for actions such as this. It states that:

No action may be commenced in the Authority ... in relation to an employment relationship problem that is not a personal grievance more than six years after the date on which the cause of action arose.

[6] A cause of action comprises the facts that entitle one person to sue another. In this case a cause of action arose each time Ms Goodwin wrongfully transferred monies from the company's accounts to her own account or accounts. The claims against Ms Goodwin were not commenced in the Authority until 28 May 2010. It therefore follows that the Authority has no jurisdiction to deal with unauthorised transfers that occurred before 28 May 2004. Unfortunately the Authority is therefore unable to require Ms Goodwin to repay the sums claimed in the years ended 2003 and 2004 and can only accept claims for the year ended 31 March 2005 from 28 May 2004 onwards. From the records supplied by Kapiti Diesel the claim for the year ended March 2005 must be therefore be reduced by \$6,144.93 to \$37,687.03.

[7] Interest is payable on all sums on an annualised basis at the rate of 5% for ease of calculation, and will be calculated to 30 November 2010. The sums of interest owing for each year are therefore:

Y/E March 2003	\$0
Y/E March 2004	\$0
Y/E March 2005	\$10,667.99
Y/E March 2006	\$16,653.81
Y/E March 2007	\$11,535.46
Y/E March 2008	\$11,301.68
Y/E March 2009	\$8474.12
Y/E March 2010	\$1991.06

[8] Kapiti Diesel also claims a penalty against Ms Goodwin for breach of her statutory duty of good faith. Such penalties apply if an employee fails to comply with the duty of good faith and that failure was deliberate, serious and sustained. The maximum liability is \$5,000, although a claim for more than one penalty against the same person may exist within the same employment relationship problem. Here only one claim for a penalty was made. In any such claim for a penalty the Authority may order payment to a Crown bank account or the applicant's own account.

[9] I accept that the unauthorised payments were deliberate, serious and sustained and indeed were at the highest level in terms of amount, and degree of breach of trust (involving a trusted employee and close family member taking money from his or her employer) that the duty of good faith envisages. It is apparent, in this forum at least, from Kapiti Diesel's evidence and Ms Goodwin's acceptance of it, that she has improperly transferred large sums of money over an extremely long period of time to accounts controlled by her. Clearly this is a deliberate, serious and sustained breach of the duties of fidelity and good faith to her employer, a company run by her brother and his wife. Thus the greatest sufferers in this have been Kapiti Diesel and its owners. I therefore consider this to be the sort of rare case whereby all of the penalty ought to be paid to the applicant. Furthermore the matter is of such seriousness that a penalty in the maximum amount of \$5,000 should be awarded.

[10] I therefore order the respondent, Anne Denise Goodwin, to pay to the applicant, Kapiti Coast Diesel Services Limited, the following sums:

Unauthorised transfers	\$418,165.35
Interest	\$60,634.12
Penalty	\$5,000.00

Costs

[11] Costs are reserved.

G J Wood
Member of the Employment Relations Authority