

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

[2011] NZERA Christchurch 118
5290579

BETWEEN

KARINA KNEDLER
Applicant

A N D

FLIGHT CENTRE (NZ)
LIMITED
Respondent

Member of Authority: Philip Cheyne

Representatives: Mary-Jane Thomas and Rebecca McLeod, Counsel for
Applicant
Daniel Erickson, Counsel for Respondent

Investigation Meeting: 17 & 18 February 2011 at Invercargill

Further Information: 1 August 2011 from the Respondent

Determination: 4 August 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Karina Knedler worked for Flight Centre from August until October 2009 when she was dismissed for alleged serious misconduct. Ms Knedler says that there was no serious misconduct and that she has been unjustifiably dismissed. There is complaint about Flight Centre's investigation and a challenge to the substance of the dismissal.

[2] Flight Centre says that after a full and fair inquiry it justifiably concluded that Ms Knedler had breached trust and confidence. Concerns arose when Flight Centre learnt that Ms Knedler apparently was employed elsewhere at the time that she had applied for and commenced employment with Flight Centre, contrary to the answers Flight Centre says that Ms Knedler gave it when she was interviewed for the position with Flight Centre.

[3] To resolve this problem I will explain how the problem arose and explain what Flight Centre did to investigate its concerns. I will then apply the statutory test for justification of Flight Centre's decision to dismiss Ms Knedler. It is helpful first to explain how Ms Knedler came to be employed with Flight Centre.

Ms Knedler's employment with Flight Centre

[4] Ms Knedler worked for Pak'nSave in Invercargill from December 2008 until August 2009. There is a dispute in the evidence about when and how Ms Knedler's employment at Pak'n'Save ended to which I will return later. Ms Knedler says that she handed in her resignation on 3 August 2009 and it is undisputed that she actually finished work there in mid August 2009.

[5] On 3 August 2009 Ms Knedler completed an on-line form expressing an interest in employment with Flight Centre. She also provided a CV. Neither document referred to her employment at Pak'nSave.

[6] Rebecca Bakker works for Flight Centre and at the relevant time was a recruitment consultant for the company. She conducted telephone interviews with Ms Knedler on 4 August and 5 August 2009. There is a dispute in the evidence about whether Ms Knedler told Ms Bakker that she was not employed and (in response to a specific question) failed to mention her employment with Pak'n'Save. In any event the interviews were obviously positive and Ms Knedler was invited to attend at Flight Centre's Invercargill premises on 7 August 2009 for what is called an in store assessment (ISA).

[7] Andrew Parke is employed by Flight Centre and at the time was Area Leader for the lower South Island based in Dunedin. Tracey Brown is now in that role but at relevant times was Team Leader of the Invercargill branch responsible for the day to day running of the branch and management of the staff. They were involved in Ms Knedler's ISA and as part of the assessment process they interviewed her at a nearby café. There is a dispute in the evidence about this interview to which I will return.

[8] Also on 7 August 2009 Ms Knedler completed a Flight Centre application form. It included a section headed up *Reference Details* which asks for details of *Current Employer* and *Previous Employer*. Ms Knedler did not write anything into the former section and wrote *Curves* and other related information in the latter

section. She also signed a declaration to the effect that the information provided was true and correct. The declaration includes the statement *Flight Centre Limited reserves the right to summarily terminate your employment if you have misrepresented fact in this disclosure statement....*

[9] Ms Knedler must have impressed the interviewers because after her ISA she was offered a fulltime position with Flight Centre subject to satisfactory reference, police and credit checks. Ms Bakker did the reference check and arranged the other checks. The credit check was satisfactory but it appears that Flight Centre never did the police check, a fact that came to light as part of the Authority's investigation. Meantime Ms Knedler underwent Flight Centre induction and training in Christchurch and then commenced work in Invercargill on 31 August 2009

[10] Ms Knedler signed an employment agreement on 20 August 2009. Clause 17.1 states *During your employment with the Company, you will not (a) Engage in any secondary employment without first obtaining written approval from the Company's Managing Director.*

[11] It is common ground that Ms Knedler performed her work to Flight Centre's satisfaction.

How Flight Centre's concerns arose

[12] On 16 September 2009 Ms Brown received text messages from a family friend who works at Pak'nSave asking whether she had a new staff member called Katrina who had previously worked at Pak'n'Save. Ms Brown knew nothing of Ms Knedler's previous employment there so it took several text messages and a discussion before it became clear to her that the family friend was referring to Ms Knedler. Next morning Ms Brown went to Pak'nSave with a photo of Ms Knedler and the family friend confirmed it was the person who had been working at Pak'n'Save. Ms Brown spoke to Pak'n'Save's security guard (John Adcock) and was taken to see the operations manager who took her through to meet with the owner/operator Bryan Dobson. From these exchanges Ms Brown gathered the following story (as set out in a later memo):

She [Ms Knedler] was employed there as a duty manager with the roster of 4 days on and 4 days off. After she started she told them that she had found a lump on her leg and needed to get it checked, this lead to getting it removed eventually. They said they felt sorry for her regarding this but she seemed to be coping well with it. Then she came to them saying she had had a scan and they found a lump on her back and then 5 lumps in her breast 2 in one and 3

in the other one, she was very upset by this. She told them they had to be removed and had was undergoing chemo.

On the 10th August she called in sick and this was the day that we offered her the job. Then she told them she had been accepted to have the operation in Dunedin and was going up on the 24th August (the day she was flying to Christchurch for us for training). She asked them if they were willing to give her time off and keep her job open for 3 months while she had the operation and recovered from the surgery. They gave her this time off.

She had told them that she would be having the op then coming home for a week and back to have the reconstruction surgery done.

They said that she never actually resigned from her job as she asked to have the 3 months off. They also said they employed someone else to cover on a temporary basis until Karina returned.

[13] After her discussions at Pak'nSave Ms Brown returned to Flight Centre and phoned the company's HR manager who advised her to sit down with Ms Knedler and get her side of the story. After lunch on 17 September 2009 Ms Brown took Ms Knedler to a local café for this conversation. It is common ground that nothing was said to Ms Knedler to put her on notice that there was the potential for any disciplinary action against her. Indeed Ms Brown's evidence which I accept is that she told Ms Knedler how much she valued trust and honesty, that she had heard some things regarding Ms Knedler that she would like to clear up and did Ms Knedler have any idea what Ms Brown might have heard. Ms Knedler said she could not think of anything and Ms Brown told her that she had heard that she was still employed at Pak'n'Save but was on leave due to breast cancer. The balance of the discussion is summarised below.

[14] Ms Brown made some notes during her discussion with Ms Knedler. Her evidence is that she got Ms Knedler to read through the notes and sign them to confirm them as accurate. Ms Knedler's evidence is that she was asked to sign the notes to confirm her attendance at the meeting. The point is of some significance because Ms Knedler now disputes some of what the notes record her as saying. I prefer Ms Brown's evidence that she asked Ms Knedler to read the notes and sign them to confirm their accuracy, in the process of which Ms Knedler asked for a minor change. That finding is based on the probabilities of the situation and my assessment of Ms Brown's reliability generally as a witness. To summarise, I accept Ms Brown's evidence that Ms Knedler said that she did two shifts of four days temping at Pak'n'Save; that there were contractual issues with Pak'n'Save; that she finished in July; that there had been cancer taken off her leg in July; that she left Pak'n'Save

because of too much rumour and gossip; and that she did not include Pak'n'Save on her CV as it was a short term job and company policy precluded references for staff with less than 12 month's service.

[15] During the discussion Ms Knedler asked Ms Brown what would happen and whether she would lose her job. Ms Brown said that she did not know but had to send a summary through to head office. Again I prefer Ms Brown's evidence that when Ms Knedler heard this she told Ms Brown that she had in fact signed a contract with Pak'nSave in December 2008 commencing a full time role as Duty Manager.

[16] After the two women returned to the branch Ms Knedler spoke to her fiancée (now her husband, Leith Swinney) and her father by phone and then said some more to Ms Brown. She told Ms Brown that she had left Pak'nSave for lifestyle reasons and because the job was not for her; that there had been lots of rumours about operations and chemotherapy; that Mr Dobson (Pak'nSave's owner/operator) had made her life a living hell over a contractual issue; and that she had tendered her resignation officially at Pak'n'Save well before starting at Flight Centre.

[17] Debbie MacDonald is Flight Centre's HR Manger. Ms Knedler had a discussion with her on 18 September 2009. After then, probably on 21 September 2009, Ms Knedler provided Flight Centre with a copy of a letter of resignation dated 3 August 2009 which she said had been given to Mr Dobson in August 2009. Flight Centre also accessed several non-work emails that Ms Knedler had sent from her Flight Centre computer including an email to Maria Dudley, the person Ms Knedler gave as a referee prior to her employment with Flight Centre. Ms MacDonald tasked Ms Bakker with checking Ms Dudley's bona fides as the direct supervisor of Ms Knedler in her former employment at *Curves*. Ms Bakker was told by the owner of *Curves* that Ms Dudley and Ms Knedler were friends and both of them reported directly to the owner.

Flight Centre's disciplinary investigation

[18] Ms MacDonald wrote to Ms Knedler on 28 September 2009 requiring her to attend a disciplinary investigation meeting to explain various issues and concerns set out in the letter. To summarise, Ms Knedler was asked to respond to possible breaches of honesty, trust and confidence arising from her failure to disclose her employment with Pak'n'Save and misrepresenting her referee's position with *Curves*,

and a breach of clause 17.1 of the employment agreement arising from secondary employment with Pak'nSave without Flight Centre's approval. The letter set out details of the allegations including reference to Ms Knedler's personal emails with Ms Dudley.

[19] This letter drew a response dated 29 September 2009 from Ms Knedler's solicitor who asked for Ms Knedler's file and other relevant materials to be provided prior to any meeting. A request was also made for Ms Brown not to be involved in any decision regarding the disciplinary investigation because of her alleged friendship with several of the people from Pak'nSave who were the source of allegations against Ms Knedler. Ms McDonald replied by email and letter providing file material and responding to the issue about Ms Brown's involvement. Ms MacDonald got Ms Bakker to write a statement about her involvement with the recruitment of Ms Knedler and Ms Brown to write a statement about the recruitment and how the concerns came to her attention. These statements were included in the materials provided. Following this correspondence it was agreed to reschedule the disciplinary meeting for Monday 5 October 2009.

[20] Present at the meeting on Monday 5 October 2009 were Ms Brown, Mr Parke (Area Leader), Susan Matson (Flight Centre's Peopleworks Leader, by phone), Ms Knedler and her lawyer. Ms Brown took notes during the meeting and later typed up those notes. There was little challenge to those notes as an accurate account of the discussion during the meeting and I accept them as substantially accurate. To summarise (but not necessarily in sequence): Ms Knedler said that she had resigned from Pak'nSave on 3 August 2009 before she had applied for the Flight Centre position; she denied telling Mr Dobson that she had breast cancer and asking for 3 months leave without pay; she denied sending the text messages about breast cancer seen by Ms Brown; she said that she had returned Pak'nSave's property to Mr Dobson; she said that there were employment issues with Mr Dobson causing him now to jeopardise her subsequent employment; she said that she had told Ms Bakker that the employment was less than 12 months duration and not full-time and Ms Bakker advised her that it was not necessary to include details of short term employment; she explained that was why she also did not mention the Pak'nSave employment when asked by Ms Brown and Mr Parke during the ISA; she said that Ms Dudley was known to her, that they were workmates and that Ms Dudley was promoted and was not a close friend despite being invited to her wedding (the

invitation had been mentioned in emails); and she said in response to a comment about discrepancies in the date of an operation to remove a lesion on her leg that she got confused over dates and should not be expected to remember exact dates off the top of her head. The meeting ended with Mr Parke to consider Ms Knedler's explanations and advise her lawyer of the outcome while Ms Knedler remained on garden leave for Monday and Tuesday.

[21] Following this meeting Mr Parke discussed the situation with Ms Matson and his own manager. He decided to *sleep on it* until the next day. On 6 October Mr Parke decided to dismiss Ms Knedler. He rang her lawyer and followed up with a letter confirming the reasons for the dismissal. That letter reads:

Dear Karina

TERMINATION OF EMPLOYMENT FOR SERIOUS MISCONDUCT

This letter follows our investigation into allegations relating to breaches of honesty, trust and confidence that must exist in an employment relationship with Flight Centre. Flight Centre confirms that you have been summarily dismissed as a result of the finding that you breached the trust and confidence of Flight Centre. The basis for the dismissal has been summarised in this letter.

The allegations were set out in a letter to you on the 28th September 2009 and included that there were discrepancies in your employment history that indicated you were still employed with Pak'n'Save; that you were taking 3 months leave from Pak'n'Save, purportedly, due to health reasons (breast cancer) and in the meantime had actually gained employment with Flight Centre on the 24th August 2009. Flight Centre were concerned that your actions you had:

- *Breached honesty, trust and confidence in our employment relationship.*
- *Breached clause 17.1 of the employment agreement by not disclosing and gaining approval from Flight Centre for secondary employment at Pak'n'Save.*
- *Breached trust and confidence by misrepresenting your referee's position in your previous company.*

Following your receipt of our letter on the 28th September 2009, we received correspondence from your representative, Miriam Sinclair (Preston Russell Law), on the 29th September to which we replied and set a meeting for the 5th October 2009 so you had the opportunity to respond to the allegations.

You provided a detailed explanation in response during our meeting. In summary:

- *You denied that there was any breach as you do not have on-going employment with Pak'n'Save and have not worked for Pak'n'Save since August 2009.*
- *You claimed you had handed in your resignation to Pak'n'Save on the 3rd August, discontinuing all employment.*
- *You stated you had never suffered from breast cancer.*
- *You stated that you felt there was no reason to detail your employment with Pak'n'Save as you had told Rebecca Bakker of your part-time employment*

and she had stated “not to worry as it was not full-time and it was less than 12 months”.

After our meeting, I reviewed all relevant information provided by Tracey Brown, Rececca Bakker, Debbie MacDonald and yourself as well as taking into account your responses in the meeting on the 5th October. I find major inconsistencies in the initial meetings and the meeting on 5th October to be great enough to give me reason to cast doubt on the truthfulness of your explanation.

Some of the inconsistencies we find are:

- *On 17th September Tracey Brown conducted an initial meeting with you following communication from Pak’n’Save that you had secondary employment with them and were on sick leave from Pak’n’Save for 3 months. You have stated and signed a document confirming that you worked only 2 shifts equating to a total on 8 days with Pak’n’Save that finished in July 2009.*
- *In July you had treatment to remove a cancerous growth from your leg with a follow up appointment booked for 24th September 2009.*
- *Later in the discussion you contradicted your initial statement telling Tracey you had signed a contract with Pak’n’Save in December 2008 and started working there full-time.*
- *You stated you had never suffered from breast cancer, although Pak’n’Save had clearly been led to believe your three 3 month leave period was to seek treatment for this.*
- *On the 5th October you said that “this guy (Brian) made me apply for 2 hours of leave; why would I think he would let me have 3 months”. You later said “I only had 2 days sick leave and that was for the days of my surgery”. I asked what dates they were, to which you took a while to answer. You reviewed your notes and then said that they were 27th and 28 January 2009. When I questioned you about your meeting with Tracey where you stated you had the operation in July 2009 and today had said it was January 2009, your response was that you had only been out for a coffee meeting and did not have the exact dates and shouldn’t be expected to remember every exact date off the top of your head. Your medical notes sent to Debbie MacDonald outline your health issues occurring in October 2008. I find the inconsistencies in these dates too great to be plausible.*
- *After our meeting on 5th October, I made further inquiries with Rebecca Bakker. Her process is thorough and she enquires about all work history no matter the length or whether it is part-time or full-time. I can see Rebecca has enquired and put notes on your last documented role being Rico Systems: which was less than 12 months and part-time.*
- *Tracey Brown and I were both present at your In-store Assessment with Invercargill Flight Centre on 7th August 2009 and were lead to believe that you were not currently employed. You commented you had been setting up home in Invercargill and Tracey vividly remembers commenting how lucky you were not to be working. I understand there were ill feelings in your working relationship with Pak’n’Save and you may not have chosen to use them as a reference, I would still expect you to have the role on your CV. I consider a CV to be a document we can use to gain a thorough understanding of an applicants employment history and skill set.*
- *Another inconsistency surrounds the return of property to Pak’n’Save. In your response to questions on 5th October, you stated that Bryan contacted you on 9th August asking for property to be returned to Pak’n’Save. You said you were in the middle of packing and shifting so would have to search around for the keys and everything then. Yet, on 1st October, a courier arrived at Invercargill Flight Centre with a letter from Pak’n’Save regarding*

the return of their property. You refused to take the letter and told the courier to deal with your lawyer. This date on 1st October is in line with Pak'n'Save's understanding that you were still employed with them. They only requested return of property after the situation of secondary employment with Flight Centre came to light.

After considering the information gathered during the investigation, we conclude the number of inconsistencies in your responses bring into question your honesty and trustworthiness. Flight Centre places considerable trust in its employees and must have faith in their integrity to protect the interests of our business and our clients. We feel the trust and confidence we must have in our employment relationship has been irreparably damaged and are concerned of the risk to our business that would be occasioned by retaining you the company's employment.

We have made the decision to terminate your employment effective today's date. You will be paid all salary and other entitlements (such as accrued annual leave) due to you as of today.

Yours faithfully

FLIGHT CENTRE (NZ) LIMITED

[Signed]

Andrew Parke

Area Leader – South

Justification

[22] Whether the decision to dismiss Ms Knedler 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.

[23] As for how the employer acted, issue is taken with Ms Brown meeting with Ms Knedler on 17 September 2009 without cautioning her about the possibility of dismissal, Ms Brown's continued involvement in the disciplinary process despite Ms Knedler's opposition based on Ms Brown's alleged friendship with Mr Adcock and Mr Dobson and it is asserted that Flight Centre predetermined the decision to dismiss Ms Knedler.

[24] The only evidence of predetermination is Ms Knedler's evidence to the effect that her explanations were not properly considered and were improperly disregarded. I will return to this issue as part of considering the fairness of the employer's actions.

[25] There is no merit in the point about Ms Brown's continued involvement in the disciplinary process. Ms Knedler's lawyer wrote to Ms MacDonald on 29 September 2009 conveying Ms Knedler's understanding that Ms Brown was friends with Mr Adcock and Mr Dobson, both of whom were involved in the allegations about the circumstances of Ms Knedler's departure from Pan'n'Save, and asking that Ms Brown *not be involved in any decisions regarding [Ms Knedler's] discipline or continued employment with Flight Centre*. Ms MacDonald first replied by email explaining that Ms Brown was not a personal friend of either man, nor would she be the decision maker in any event. That was repeated in a letter dated 1 October 2009 which also made it clear that Ms Brown would attend the disciplinary meeting in her position as Ms Knedler's supervisor. That is what happened. Ms Brown also took notes at the meeting. The evidence is clear that Mr Parke not Ms Brown made the decision to dismiss Ms Knedler. The evidence is also that Ms Brown was not a personal friend of Mr Adcock and Mr Dobson. I find that there was no good reason to exclude Ms Brown was being part of the decision to dismiss Ms Knedler but, in any event, her involvement was peripheral.

[26] More must said about the 17 September 2009 meeting.

[27] By later on 16 September Ms Brown knew that the person her friend had mentioned probably was Ms Knedler. Ms Brown had been involved in Ms Knedler's employment and knew that there had been no mention of employment at Pak'nSave. Next morning she took a photo of Ms Brown with her to Pak'nSave to confirm that it was Ms Knedler who had worked there. Ms Brown then learnt from Mr Adcock about the supposed breast cancer, mastectomy and breast reconstruction surgery. Next Ms Brown heard from Mr Dobson that Ms Knedler had apparently requested and been granted three months leave without pay to recuperate. As Ms Brown put it in her evidence she was *extremely shocked*. There was a significant dissonance between what Ms Brown thought she knew of Ms Knedler's circumstances and history from her recent involvement in employing her and what she was being told by those she spoke to at Pak'n'Save. That is why Ms Brown *immediately telephoned ...Flight Centre's HR Manager*. The advice was to sit down with Ms Knedler and hear her side of the story. All that is the context for Ms Brown taking Ms Knedler to a local café for a discussion which started with Ms Brown emphasising how much she valued

trust and honesty. It is implicit in this if it was not already apparent from the context just described that Flight Centre had concerns about Ms Knedler's honesty which it wanted an answer to.

[28] Under the relevant employment agreement Flight Centre had to follow its Disciplinary Procedures *At any time should a matter arise which requires the Company to initiate ...disciplinary action.* That policy provides first for an initial investigation to determine whether a formal investigation should occur. In effect that is what Ms Brown was doing but she did not explain that to Ms Knedler at the start. Rather, she told Ms Knedler that she valued trust and honesty, that she had heard some things about Ms Knedler that she wanted to clear up and she asked if Ms Knedler had anything to tell her. Ms Knedler had to ask what Ms Brown had heard. Even then Ms Brown only related part of the story, following which Ms Knedler gave an explanation about only working two shifts temping at Pak'nSave and finishing in July. Ms Brown then asked if there was anything else that Ms Knedler wanted to say. Ms Knedler asked *Like what?* So Ms Brown referred to the alleged leave without pay because of breast cancer. That caused Ms Knedler to mention an operation to remove cancer on her leg and a breast biopsy that was clear and she explained further that she did not mention Pak'nSave on her CV because of it being a short time job and their policy of not giving references for short term employees. Then when Ms Knedler asked what would happen and if she would lose her job Ms Brown told her that she would be sending all the information through to head office. Ms Brown asked Ms Knedler to sign her notes to confirm their accuracy and Ms Knedler then told her that she had signed the contract and started with Pak'nSave in December. After the two women returned to the office and Ms Knedler had spoken on the phone to her husband and her father she had another brief discussion with Ms Brown to try and reassure her. Ms Brown reported these events to Ms Maconald the HR manager.

[29] S.4(1A)(c) of the Act requires an employer who is proposing to make a decision that is likely to have an adverse impact on the continuation of an employee's employment to provide them with access to relevant information and an opportunity to comment on that information before the decision is made. That statutory provision reinforces well established jurisprudence about the minimum requirements of fairness when considering whether to dismiss an employee. In *NZ (with exceptions) Food*

Processing etc IUOW v. Unilever New Zealand Ltd [1990] 1 NZILR 35, the Labour Court said:

The minimum requirements can be said to be:

- 1. Notice to the worker of the specific allegation of misconduct to which the worker must answer and the likely consequences if the allegation is established;*
- 2. An opportunity, which must be real as opposed to a nominal one, for the worker to attempt to refute the allegation or to explain or mitigate his or her conduct; and*
- 3. An unbiased consideration of the worker's explanation in the sense that that consideration must be free from predetermination and uninfluenced by irrelevant considerations.*

Failure to observe any one of these requirements will generally render the disciplinary action unjustified. That is not to say that the employer's conduct of the disciplinary process is to be put under a microscope and subjected to pedantic scrutiny, nor that unreasonably stringent procedural requirements are to be imposed. Slight or immaterial deviations from the ideal are not to be visited with consequences for the employer wholly out of proportion to the gravity, viewed in real terms, of the departure from procedural perfection. What is looked at is substantial fairness and substantial reasonableness according to the standards of a fair minded but not over-indulgent person.

[30] Ms Brown should have given Ms Knedler notice that she had information which if correct would mean that Ms Knedler had not been truthful about her employment history, she should have disclosed that information openly to Ms Knedler, she should have told Ms Knedler about the risk of dismissal and she should have done these things before asking Ms Knedler for any response. If Ms Brown did not know how to properly deal with the situation she should have been adequately advised by the HR manager. At first blush these are not *slight or immaterial deviations from the ideal*. The responses given by Ms Knedler to Ms Brown featured amongst the inconsistencies later relied on by Mr Parke in his decision to dismiss Ms Knedler for loss of trust and confidence.

[31] Ideally, a fair and reasonable employer would not have breached the principles expressed in *Unilever New Zealand Ltd* or the statutory obligation mentioned above, even at this early stage of the disciplinary process.

[32] *Rankin v Attorney General in respect of the State Services Commissioner* [2001] 1 ERNZ 412 is an example where the employer overcame some unfairness in its process by later dealing with matters in an open and fair manner. There is a

submission that, should the Authority find that the 17 September 2009 meeting was unfair, the *Rankin* approach should be applied in this case. It is necessary then to consider how Flight Centre dealt with the remainder of the disciplinary process.

[33] Ms Knedler obtained some medical information and forwarded that with a copy of an unsigned letter dated 3 August 2009 to Flight Centre on 21 September 2009. The letter purports to be Ms Knedler's resignation from Pak'nSave. Ms Macdonald forwarded the resignation letter to Mr Dobson who later advised that he had never seen it before. Ms Macdonald sent Ms Knedler a letter dated 28 September 2009, summarised above, setting out fully the allegations against Ms Knedler. There followed exchanges between Ms Knedler's lawyer and Ms Macdonald by which Flight Centre commented on some of Ms Knedler's explanations and provided Ms Knedler with relevant file material. All this preceded the 5 October 2009 meeting with Mr Parke. By taking these steps I find that Flight Centre did meet the requirements set out in point 1 of *Unilever New Zealand Ltd* and its statutory obligations.

[34] I have reviewed the notes made by Ms Brown during the 5 October 2009 meeting. They reflect Flight Centre's position that Ms Knedler had a full and fair opportunity to refute the allegations and explain and mitigate her behaviour. A summary of Ms Knedler's responses is set out above so I will not repeat that here. Overall I find that Flight Centre did meet the requirements set out in point 2 of *Unilever New Zealand Ltd* and its statutory obligations.

[35] Overall, assessed against the standard of substantial fairness and reasonableness, I consider that Flight Centre has met the procedural requirements set out in *Unilever New Zealand Ltd*.

[36] As explained above I think that the remaining points are best considered as part of assessing whether the employer's actions were what a fair and reasonable employer would have done in all the circumstances at the time.

Flight Centre's actions

[37] I have already set out in full the letter of dismissal. I accept it accurately reflects Mr Parke's conclusions after considering what had been said by Ms Knedler in response to Flight Centre's concerns.

[38] Mr Parke rejected Ms Knedler's explanation that she had mentioned her Pak'nSave employment to Ms Bakker who then told her it was not necessary to include any reference to it in her application. That is the conclusion that any fair and reasonable employer would have reached. It was Ms Bakker's job to properly inquire into Ms Knedler's employment history. Her notes reflected her properly discharging these responsibilities. In addition Mr Parke relied on his and Ms Brown's recollection of what they had been told during the ISA by Ms Knedler about setting up home in Invercargill rather than working. Mr Parke concluded that Ms Knedler had misled them about her employment history. That too is the conclusion that any fair and reasonable employer would have reached.

[39] Mr Parke did not accept Ms Knedler's explanation about the circumstances of her departure from Pak'nSave. He noted the change in her story about the nature of the employment, as reflected in Ms Brown's notes of the 17 September meeting. There were different dates on different occasions given by Ms Knedler in relation to her surgery which did not match the medical records she had supplied. Pak'nSave's actions especially requesting the return of their property only after Ms Knedler's employment with Flight Centre came to their attention was consistent with her still being employed there (although on leave without pay) while working at Flight Centre. In light of these circumstances any fair and reasonable employer would have rejected the accuracy of Ms Knedler's explanations and concluded (as did Mr Parke) that she was still employed at Pak'nSave while working for Flight Centre.

[40] In the end Mr Parke felt he did not have to reach any conclusions about whether Ms Knedler's referee was a work colleague or her direct supervisor.

[41] These matters led Mr Parke to conclude that Ms Knedler's honesty and trustworthiness were brought into question and that the trust and confidence that Flight Centre needed to have in Ms Knedler had been irreparably damaged. These are conclusions that any fair and reasonable employer would have reached. Counsel for the respondent referred me to a number of cases where an employee's

misrepresentations about their employment history have been held to constitute serious misconduct. Counsel for Ms Knedler did not dispute the principles expressed in those cases. There is nothing about the present case that distinguishes it from the principles or the outcomes in those earlier cases. That all leads to the conclusion that Flight Centre's actions were what a fair and reasonable employer would have done in the circumstances.

Conclusion

[42] I find that Flight Centre justifiably dismissed Ms Knedler. She does not have a sustainable personal grievance.

[43] Costs are reserved. Any claim for costs should be lodged with the Authority and served on the other party within 28 days who may then lodge and serve a response within a further 14 days.

Postscript

[44] This determination has been delayed because the file and my hearing notes were trapped in the Christchurch Authority office until recently. I appreciate the patience shown by the parties over this time. I should note that I had done some work on this decision before 22 February 2011 so I did not need to start from scratch once the file became available.

Philip Cheyne
Member of the Employment Relations Authority