

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

[2011] NZERA Christchurch 7  
5288603

BETWEEN                      DIANNA ROBYN LITTLE  
Applicant  
  
AND                              SILVER SERVICE SKIPS LTD  
Respondent

Member of Authority:      M B Loftus  
  
Representatives:            Dianna Little (assisted by Vaughan Edmonds), the  
applicant in person  
John Te Amo and Ann Te Amo, for the Respondent  
  
Investigation Meeting:      29 June 2010 at Christchurch  
  
Submissions received:      On the day of hearing  
  
Determination:              14 January 2011

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicant, Dianna Little, claims that she was unjustifiably dismissed from her employment with the respondent, Silver Service Skips Limited.

[2]     She seeks \$25,000 as compensation for humiliation and to have her name cleared. There is no wage claim and Ms Little was advised that even if successful, this determination will not, given the tests applied, include a declaration of innocence.

**Identity of the Respondent**

[3]     The proceedings were originally lodged against Mr John Te Amo, a Director of the Silver Service Skips Limited but both he and Ms Little agree that the company was the employer. They agreed, at the commencement of the investigation meeting, that the pleadings be amended accordingly.

## **Background**

[4] The respondent company operates a waste disposal business and engages staff to perform a range of associated duties. Ms Little was employed to drive one of the respondent's three trucks and perform general yard duties such as sorting rubbish for recycling.

[5] Ms Little says that while commencement time was flexible and advised the day before, she normally commenced work around 8.00am. Mr Te Amo disagrees, saying that the start time was 8am unless agreed otherwise. Irrespective of which is correct, there is no doubt that Ms Little arranged a late start for Monday 19 October 2009 and expected to be at work between 9 and 9.30am.

[6] She says Mr Te Amo telephoned around 9am and asked where she had left the truck's isolation key. Ms Little says she told Mr Te Amo that she never removes the key which is located in the vehicles tool box. Mr Te Amo thought the call was around 8am and while his recollection of what was said differs, the gist is similar.

[7] When talking about the isolation key the parties are referring to a 'kill switch' which immobilises the vehicle when not in use. Ms Little states that other drivers normally remove the keys but that upon commencement Mr Te Amo had told her not to and this was her normal practice. Mr Te Amo agrees that the key should stay with the truck in question. He states it is the "yard truck" and should be available for use by employees other than Ms Little.

[8] Mr Te Amo says that after speaking to Ms Little he rang a mechanic who had worked on the truck on the previous Friday after Ms Little had left. The mechanic advised that the key was absent then. Mr Te Amo then went to look for the key and, as part of that search, emptied the tool box. He then asked another employee to repeat the search. They failed to find the key.

[9] Ms Little also conducted an unsuccessful search after she arrived at work. A replacement unit was ordered and installed allowing Ms Little to get on with her work. Mr Te Amo says that as far as he was concerned that was that; the issue had

been addressed and fixed. His concerns about Ms Little revolve around subsequent events.

[10] Ms Little says that after lunch she walked around the truck and saw a colleague (Adam) with his hand in the tool box and that another employee (Vinnie) was behind him looking about. She says she told them there as no point looking there as she had already done so.

[11] Ms Little says that when she finished for the day she went to put the ignition key in the tool box as was her normal practice and found the isolation key was there. She says she told a colleague, Daniel, who advised her to tell Mr Te Amo. While Ms Little says she found the key in the tool box, the message she left for Mr Te Amo advises:

*Hi John, it's Di. You wouldn't believe it, but I found the switch, the kill switch, it was sitting right at the front on the ground, so yeah, just letting you know.*

[12] Ms Little puts the obvious conflict (tool box or ground) down to her “*use of the wrong words*”. She remains adamant that notwithstanding the message, she found the key in the tool box. It appears that she immediately told a further colleague (Gary) of her find and he is clear that she said she found the key in the tool box. He expresses his surprise as he was the employee who had looked there earlier (see 7 above).

[13] Ms Little says that at the time she though nothing of Adams actions but she later formed the view that Adam was putting the key back and that Vinnie was acting as a look out. Mr Te Amo claims, and a note prepared by Daniel appears to confirm, that she and Daniel discussed her suspicions the following day and that Daniel then advised Mr Te Amo that Ms Little though she was being “*set up*” by her colleagues. It was this conversation that alerted Mr Te Amo to the inconsistency about where the key was found.

[14] The following day Mr Te Amo and Ms Little discussed the issue and Ms Little advised him of her concerns. Mr Te Amo says he was now getting an uneasy feeling about team morale and decided to have a think about it.

[15] Ms Little says that a couple of days later (22 October) she arrived at work, greeted Mr Te Amo and another colleague, and was told by Mr Te Amo he wished to speak to her. Ms Little says that once they moved away from the other worker, Mr Te Amo told her that he was blaming her for the missing key as she was the last one to touch the truck, that he was suspending her and that he wanted her to return a phone and fuel card immediately. He then gave her a letter which reads:

*Dianna Little*

*I wish to advise that as of today the 22<sup>nd</sup> of October 2009 you are suspended on full pay until further notice, pending investigation into the immobilization of a company vehicle.*

*John Te Amo*

[16] Ms Little say she then went home crying.

[17] Mr Te Amo's recollection differs slightly. He says he told Ms Little that he was sending her home on full pay while he investigated what was going on and he thought the conversation took place on Wednesday (the 21<sup>st</sup>). He does, however, agree he handed the note over at the time and it says 22 October.

[18] A week then passed and Ms Little heard nothing from Mr Te Amo. She decided to seek assistance and phoned '0800 Sacked', an organisation offering assistance to dismissed employees. She spoke to Ms Shayne Boyce, asked her to find out what was going on, why was she suspended and to then give some advice as to how to proceed.

[19] Mr Te Amo confirms that Ms Boyce then rang him. He says Ms Boyce told him she was instructed to act on Ms Little's behalf and then asked what was going on. Mr Te Amo says he told Ms Boyce he had almost completed his investigation and that "*things were not looking good for Dianna*". He says Ms Boyce asked what evidence he had to reach that conclusion and they discussed the contradiction about where the key had been found. He says he then asked "*where too now?*" and Ms Boyce advised she was "*here to do a deal for Dianna*". Mr Te Amo says he asked what sort of deal and was told give two weeks pay and allow Ms Little to resign. He agreed!

[20] Ms Little says Ms Boyce called back about an hour after their first conversation and advised her of the deal. Ms Little says she told Ms Boyce that she (Boyce) had no authority to do the deal and that they then discussed whether or not

she really wanted to continue working for Silver Service. Ms Little says she advised she had no choice as she needed the income before reiterating that she “... *had not given permission to have me fired – just go back and find why I was suspended*”.

[21] That led to another phone call from Ms Boyce to Mr Te Amo, though this time she got an answer machine. Her message was transcribed:

*Hi John it's Shane [sic] Boyce here again, I've just spoken to Dianne and she is not at all happy with the arrangement I have just made on her behalf with you and she's angry so I hope that you've still got a copy of the recorded message (INDISTINCT) she was disputing that she said that and I think I've been fired and I just needed to advise you that, but I'm happy to talk to you again if you want to ring me on ..., yeah, cheers, (INDISTINCT) not accepting of that option, so if you can call me (INDISTINCT) considering a pursuing a personal grievance with someone else, yeah, I would like to talk to you, if you wouldn't mind calling me back, that'd be good...*

[22] Mr Te Amo's response was to summon Ms Little to disciplinary meeting to discuss “*inappropriate interference with company property and misleading explanation that affects my trust and confidence in you*”. The letter, dated 4 November, also advised that Silver Service had lost \$575.60 as a result of being unable to use the vehicle and having to replace the isolation unit.

[23] The meeting occurred on 6 November with Ms Little being represented by two of Ms Boyce's colleagues. Ms Little's recollection is vague. She says she reiterated her statement regarding where the key was found and was advised by Mr Te Amo that there was no evidence supporting my views. She says a brief note from Daniel was then read in which he comments about her advice that she had found the key and that she expressed concerns about Adam's behaviour the following day. Mr Te Amo then told her she was dismissed.

[24] Mr Te Amo's recollection of the meeting is sparse. He says Ms Little's explanation that she was not well educated and got the words wrong was totally unacceptable. He therefore dismissed her.

[25] When asked why, he commented that it was a case of “*all care, no responsibility*”. It was not just a simple case of a missing key but an instance of tampering with company property. Ms Little's actions interfered with the running of the business, resulted in a direct cost and there were concerns that her accusations

against Adam and Vinnie could adversely affect staff moral. He also made a comment that he had a deal with Ms Boyce and 'a deals a deal'.

### **Determination**

[26] Mr Te Amo accepts the company dismissed Ms Little. That admission brings a requirement that the company justify the dismissal.

[27] The question of whether the decision to dismiss 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 ... occurred*" (section 103A of the Employment Relations Act 2000).

[28] Notwithstanding the letter of 4 November which states the disciplinary interview was to canvass two issues, the key's disappearance and the contradictory explanations, Mr Te Amo emphasised the key when asked why he dismissed. If that was the case, the investigation was far from complete.

[29] Essentially the company's position is that Ms Little misplaced the key and then tried to cover up with contradictory explanations. Ms Little's position is that she was the victim Adam's "set up". While there is both oral and written evidence that Mr Te Amo spoke to both Daniel and Gary, there is no evidence he approached either Adam or Vinnie. This must be considered a major omission given Ms Little's explanation and the fact Daniel's statement makes it clear she was suggesting she had been set up from as early as 20 October. The investigation must, in the circumstances, be considered incomplete.

[30] There is also the issue of the inconsistent explanation. Ms Little has, with only one exception, said she found the key in the tool box. The exception is the message left on Mr Te Amo's answer phone saying she found the key on the ground. The possibility she made a mistake should have been considered, especially as the message was left after she had, according to Gary's statement, already told him she had found the key in the tool box and shown him where. The possibility of a genuine error does not seem to have been explored with the reason being, in my view,

obvious. Mr Te Amo had closed his mind on the issue - there had been an inconsistency and that was that. I reach this conclusion given Mr Te Amo's own evidence about the conversation he had with Mr Ms Boyce and the conduct of the disciplinary meeting.

[31] That raises the question of why had he already closed his mind to the possibility. There are, given the evidence, two answers. First, Mr Te Amo was concerned that Ms Little's accusation of "set up" would affect staff moral and he said so. The problem with this is that there is no evidence he ever put that as a concern to Ms Little which, if it influenced his decision (and his evidence is it did), is a major deficiency. The second problem is the apparent failure to question Adam and Vinnie. Staff setting others up would normally have a far worse effect on moral than an accusation of such behaviour yet there is no evidence of an attempt to ascertain the veracity of the accusation. This is, as said earlier, a major investigative deficiency.

[32] The second influence on Mr Te Amo was his arrangement with Ms Boyce. While not his exact words, he as good as said he had a deal and was enforcing it. This suggests the disciplinary process was simply a case of going through the motions with a preordained outcome. Whilst arguably understandable, that was not the spirit in which the meeting should have been approached and, as a matter of law, it is totally inappropriate to enter such a meeting with a predetermined outcome and ones mind closed to any explanation that may be proffered.

[33] The conclusion that the investigation was far from complete and the outcome preordained must mean that the company has failed to justify the dismissal. That raises the issue of remedies.

[34] Ms Little sought compensation for humiliation (s.123(1)(c)(i)). There was, however, little evidence offered in support of her claim. That said, it was clear from Ms Little's demeanour that she was hurt by what occurred and her angst was confirmed by her desire to clear her name. I also conclude there must be some humiliation emanating from the significant deficiencies in the company's process and the failure to investigate the possibility that it was Ms Little who was the victim of wrongdoing. When I balance these factors I consider an award of \$5,000 appropriate.

[35] Ms Little sought no other remedy, with the notable omission being no claim for lost wages which normally delivers a greater recompense than an award for humiliation. Given that she was in receipt of external advice at the time the company was notified a grievance would be pursued, I consider the omission deliberate and that I am therefore precluded from considering such an award.

[36] Finally s.124 of the Act requires me to consider the question of whether or not Ms Little contributed to the situation in which she found herself. The answer must be no. At the heart of this matter was the key's disappearance, yet the investigations deficiencies mean that I have no idea where it actually went and how it got there. There can not, therefore, be any basis upon which I can attribute contribution.

### **Orders**

[37] For the reasons given the respondent, Silver Service Skips Limited, is ordered to pay to the applicant, Ms Little, the sum of \$5,000.00 (five thousand dollars) as compensation pursuant to section 123(1)(c)(i) of the Act.

### **Costs**

[38] It is normal that costs follow the event but both parties were unrepresented at the investigation meeting and both reside locally. That means that costs are limited to the \$70 filing fee incurred by Ms Little. In order to avoid additional effort or expense for the parties, I therefore choose to dispose of the issue and order the respondent to pay Ms Little a further \$70.00 (seventy dollars) as reimbursement of costs.

Mike Loftus  
Member of the Employment Relations Authority