

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** Karen Monk (Applicant)  
**AND** New Zealand Lotteries Commission (Respondent)  
**REPRESENTATIVES** Paul McBride and Melanie Brewer for Applicant  
Les Taylor and Megan Richards for Respondent  
**MEMBER OF AUTHORITY** P R Stapp  
**INVESTIGATION MEETING** 3 & 4 May 2005 and 9 June 2005  
**DATE OF DETERMINATION** 1 August 2005

DETERMINATION OF THE AUTHORITY

*Employment relationship problem*

1. Karen Monk was a computer operator working for the New Zealand Lotteries Commission (NZLC) in Wellington and held the position of shift supervisor from 26 January 1988 until 16 July 2004.
2. Ms Monk worked shifts. She was rostered to work 40 hours a week. She was rostered on Saturday 13 March to work from 2pm to 11 pm and on Sunday 14 March to work 11.30am to 7.30pm.
3. Ms Monk had a written employment agreement (July 1988). A one way mileage allowance is paid for shift work. There is no written policy. She says she was paid a mileage allowance if the start or finish times of her shift, or both, fell outside normal office hours. She was paid one way only for travel between her home and work. The respondent says it was only payable one way where public transport was not available.
4. On Saturday 13 March Ms Monk took a colleague Rob Brewer, computer operator, to work from her house, and took him as far as her home after their shift where he used his car to go home.

5. There was a major problem at work during that shift where Mr Quinton Hall the Chief Technology officer was called in from a dinner function. He says he questioned Ms Monk about whether it was necessary for her and Mr Brewer to be at work. He says Ms Monk replied that *[she] and Rob had travelled in the same vehicle and therefore one of them could not leave alone*. Ms Monk denies saying this.
6. On Sunday, 14 March 2004 Ms Monk was rostered to work 11.30 am to 7.30 pm. She was driven to work by her partner in their own car, which he was going to use. At the end of the shift she had a ride home in Mr Brewer's vehicle. She claimed the mileage allowance for the day. She says that she had no idea Mr Brewer claimed the allowance for the shift but she claimed it for the use of her car.
7. On 15 April 2004 Quinton Hall raised an allegation with Ms Monk that she claimed an allowance she was not entitled to, and that she acted together with another employee, where each of them claimed an allowance they were not entitled to. Also in attendance was Catherine McIntyre, the Corporate Services Manager. Ms Monk was handed a letter (produced with the allegations).
8. She provided an explanation in a letter dated 21 April 2004 (produced).
9. She was then required to attend a meeting that occurred on 27 April 2004. She would have preferred to have a representative present but went unaccompanied to the meeting attended by Quinton Hall, and Warren Salisbury the Deputy Chief Executive, and Steve Macauley the IT Manager Gaming Systems, and Catherine McIntyre. At this meeting she was given another letter. In that letter a new allegation of serious misconduct was added, concerning her use of the internet.
10. A dispute has arisen in regard to what the applicant says happened at this meeting and how she was dealt with. She says she was in effect suspended when Mr Salisbury told her to take annual leave, although she suggested she had a couple of days to work out her shift. Mr Salsibury says that she was placed on special leave. She says she was subsequently escorted out of the premises by Mr Macauley.
11. The next meeting occurred on 30 April 2004. In attendance were Quinton Hall, Catherine McIntyre, and Trevor Hall the Chief Executive, and Paul Pringle the Commission's lawyer, and Alan Cressey Ms. Monk's lawyer, and Ms Monk. This meeting involved a discussion over the mileage claim and the internet usage. Ms Monk explained the mileage claim and how she understood it applied. During the discussion Ms Monk raised the matter of Quinton

Hall drinking before he came on the shift that night she was at work to explain that she did not say, as he alleged that *[she] and Rob had travelled in the same vehicle and therefore one of them could not leave alone..* The meeting became acrimonious. Issues arose about the conduct of Alan Cressey and Trevor Hall during the meeting. Also in dispute is whether Mr Hall unilaterally suspended Ms. Monk. She never denied using the computer but did deny using it to trade on *trademe*.

12. Following the meeting Ms Monk provided a further explanation in writing about her computer usage.
13. The next meeting on 23 June 2004 involved different lawyers: Karen Spackman for NZLC and Paul McBride representing the applicant. Ms Monk provided a further response and tabled it. A request was made for Mr Pringle's meeting notes, but the Commission refused to provide them.
14. On 2 July 2004 Ms Monk was informed of the Commission's findings and its preliminary view that she should be dismissed from her position.
15. Ms Monk replied on 7 July 2004 in writing in regard to her view of the matter. She was then dismissed on 16 July 2004. The reasons were:
  - It being the case that Ms Monk said in her response that *"I have no trust and confidence in you as my employer"* and that the employer could no longer trust her, the employment relationship *"must finish"*.
  - A loss of trust arising out of Ms Monk's actions of serious misconduct.
  - *"The allegations relating to the mileage allowance amount to effectively stealing funds from NZLC"* where there was a clear and understood practice; and that she did not claim the allowance for 14 March for her husband dropping her off at work but getting a ride home with Mr Brewer and claiming the allowance for herself.
  - A conversation with Quinton Hall on the night of 13/14 March that was not true, and her raising a serious allegation against Quinton Hall as a senior manager that he was *"clearly under the influence of alcohol"*.
  - *Using the internet for personal use for at least 11 % of your work time"*.

***The issues in this matter***

16. Ms Monk has raised a personal grievance that includes challenging the way she was dealt with on 14 and 27 April 2004.
17. Did the employer have grounds to dismiss Ms Monk on 16 July 2004?
18. Did the employer follow a fair process to dismiss Ms Monk?

***How Ms Monk was dealt with on 14 and 27 April 2004***

19. Ms Monk has not established that her employer acted unjustifiably by meeting with her on 14 and 27 April when it put allegations to her in regard to the travel claim and her internet usage. The issues were put in writing and later formal disciplinary processes were followed that involved Ms Monk being represented.
20. It certainly appears that Ms Monk had numbers against her at the meeting on 27 April but, since the purpose of that meeting was to hand to her a letter with the additional allegation and give notice of more formal meetings to come, she was not disadvantaged except to the extent of not being able to work out her shift as she wanted to do.
21. Ms Monk was suspended from work on 27 April by Mr Salsibury's action of deciding she was to take leave. In effect Ms Monk was suspended on pay. There has been no financial loss except for overtime and allowances that are both discretionary and reimbursing in nature. She is critical of the way in which the respondent handled this and the loss of dignity she says she experienced by being escorted off the premises. The focus really goes on the substance of the issues. Ms Monk should have been entitled to notice and the offer of representation (given the seriousness of the allegations) about any leave and/or suspension required by her employer, and an opportunity to comment.

***The next meeting on 30 April 2004***

22. The Commission was represented by Mr Pringle: Ms Monk was represented by Mr Cressey. Trevor Hall attended for the first time. Two factual disputes arise from this meeting: who was responsible (Mr Cressey or Mr Hall) for any bad behaviour both sides say happened and was Ms Monk unjustifiably suspended by Mr. Hall?
23. I hold that the conduct of the parties and who was responsible is a red herring. The meeting was called so as to give Ms. Monk the opportunity to explain her position on two allegations,

which were taken seriously by her employer. Any untoward behaviour was corrected and the parties' rights preserved by the later involvement of lawyers, Karen Spackman and Paul McBride, in the next meeting held on 23 June. Ms Monk also had further opportunities to reply, which she did in writing.

24. I accept that, whatever Trevor Hall said to Ms Monk about being suspended, there were lawyers present and an attempt appears to have been made to correct the situation, and if it was of much concern to the applicant it should have been sorted out. It is not helpful for representatives/parties to engage in trench warfare, and use a situation to construct causes of action, when they should be trying to promote and support successful relationships instead. In any event, pending the investigation and disciplinary process, the applicant was already not at work but on pay and even paid a bonus. There was also an on going disciplinary process that Ms Monk was engaged in.

***Another meeting held on 23 June 2004***

25. The respondent provided Ms Monk with another letter dated 11 June that outlined the allegations against her. Mr Pringle's notes became an issue after Mr Cressey was denied them. I do not intend to pursue the matter of the notes since they relate primarily to the parties' disputes over Mr Cressey's and Trevor Hall's conduct on 23 June. Since I have held that nothing is going to turn on that there is no need for me to pursue the notes any further.
26. Another meeting took place on 23 June. At this meeting the applicant had the opportunity, on notice, to respond further to the travel allowance dispute and her usage of the internet. Ms Monk claimed that Quinton Hall was under the influence of alcohol while he was at work on Sunday 14 March 2004 so as to explain their different recollections as to what she said to him. He denied being under the influence of alcohol. She says that she did not say to Quinton Hall that Mr Brewer needed to stay until the end of the shift to get a ride home.
27. Following this meeting the applicant again replied in writing to the respondent's allegations.

***The respondent advised the applicant of its findings on 2 July 2004***

28. These included a finding that Ms Monk had engaged in serious misconduct and the respondent had reached a preliminary decision to dismiss Ms Monk because she could not be trusted and sought her reply. Ms Monk was also given copies of statements from other employees about Quinton Hall's alleged demeanour on Sunday 14 March. She was told that her version (and Mr Brewer's) was at odds with the recollections of others. Instead of the

parties meeting again Ms Monk replied on 7 July because she thought her dismissal was a forgone conclusion.

29. I am satisfied that all the allegations were put in front of Ms. Monk. She had an opportunity to reply and was represented throughout the formal process that followed her being put on notice.

***The decision to dismiss Ms Monk and the reasons for it***

30. I conclude that the reasons relied upon by the respondent were the reasons advanced at the time of the dismissal (2 July and 16 July letters). The respondent has relied upon serious misconduct, ie
- Ms Monk claiming a mileage allowance that she was not entitled to for travelling from NZLC to home and not travelling in her own vehicle. The allegation that Ms Monk allegedly collaborated with Mr Brewer and each claiming a mileage allowance was found to be inconclusive.
  - Ms Monk using the internet during work time for personal use, and
  - NZLC losing trust and confidence in Ms Monk (2 July letter).
31. Both sides disputed the application of the allowance. That could reasonably have been a matter of a dispute, especially given the respondent's reliance on other employees' views on how it applied, by custom and practice, and the absence of a written policy.
32. Ms Monk explained that her allegation about Quinton Hall, being under the influence of alcohol, was to try and explain that she did not say Mr Brewer needed to stay until the end of the shift to get a ride home.
33. NZLC rebutted her allegation about Quinton Hall's demeanour by getting the opinions of others that were present that night, and decided Ms Monk was wrong. Ms Monk was on notice that the trust and confidence in her was being considered given she was not believed.
34. Despite the information and evidence about the opinions that other employees had about Quinton Hall's demeanour at work on the evening of 13 March he had been out to dinner and accepted he had a drink. Ms Monk was entitled to defend herself, which I find she did in regard to providing some explanation about why she and Quinton Hall had different recollections about what was said. A fair and reasonable employer could not have come to an

honestly held belief that she was acting maliciously, or deliberately, in making unfounded allegations, as accused by the respondent, since her response was part of an enquiry.

35. The next matter was the use of the internet.
36. Trevor Hall says he understood that the organisation regularly advised all staff about the Commission's email and internet policies and that all staff understood their usage would be measured and time spent on the internet monitored and disciplinary action taken on any breach of policy. Quinton Hall says Ms Monk was reminded of the Commission's policy. Ms Monk denied being informed of this during her time at work and could not recall being reminded, although an email was sent to staff reminding them of the terms of the policy. There is no record of her reading and replying that she understood the policy (document F produced).
37. There is a written policy document that says the use of the internet is for business purposes and personal use is not prohibited but should be kept to a minimum.
38. The respondent relies upon a finding from an investigation involving Quinton Hall and the Commission's computer provider that Ms Monk used 11% of her work time using the computer for personal use. At the same time another employee was also identified using the computer for personal use. She was warned because she was not a supervisor and had owned up. Ms Monk questioned the respondent's findings and queried the results partly because of Quinton Hall's involvement, where a conflict had arisen and she had obtained her own information from *Trademe*. The respondent subsequently accepted there were inaccuracies in its findings. Other information was also provided by Ms Monk that she says casts doubt on the employer's information about her usage of the computer. Her explanation of the information could have cast doubt on the amount of her usage of the internet, but not to deny that she had indeed used the internet for some of the time.

### ***Conclusion on the outcome***

39. NZLC could not have relied upon the travel allowance claims alone. It added a second allegation about the internet but did not rely upon that alone either. Further, the respondent took into account its findings that Ms Monk could not be trusted because of the allegation she made against Quinton Hall, being under the influence of alcohol, and did not believe her about what she told him in regard to Mr Brewer being at work. The respondent reached a conclusion that she could not be trusted because of that, and because of her behaviour, in responding and replying to the allegations.

40. I conclude that a fair and reasonable employer could not have come to an honestly held belief that Ms Monk deliberately or wilfully or intentionally claimed an allowance, or set about with another employee, to claim a mileage allowance they were not entitled to. This is because the other employee was treated differently on the same issue considered as serious misconduct, although it distinguished Ms Monk's role because she was a supervisor. This is also because the entitlement to the claim could have been the subject of a dispute given that custom and practice applied and there was no written policy. There was no conclusive finding that they collaborated to claim the allowance.
41. A fair and reasonable employer could not have relied upon a conclusion that Ms Monk's use of the internet exceeded the personal use tolerated. This is because there is some doubt that she knew of the policy and that personal use of the internet, up until this matter, had been condoned. Further, Ms Monk cast some doubt on the effective results of the computer use enquiry so that a fair and reasonable employer could have accorded her some benefit of doubt.
42. A fair and reasonable employer would not have built a progressing disciplinary process in regard to trust and confidence issues where there was an attempt by Ms Monk to defend herself and provide an explanation why Quinton Hall might have said she said something that she vehemently denied saying, and where there was a dispute over the application of the allowance and the use of the internet could have related to performance in her work.
43. The parties' attention was diverted by the alleged conduct of Mr Cressey and Trevor Hall during the meeting of 23 June and the request that was denied for Mr Pringle's notes. Putting these to one side the applicant's conduct is otherwise relied upon by the respondent to establish a loss of trust and confidence in her. The respondent has relied upon her being wrong about her allegations about Quinton Hall and her comments and allegations throughout the investigation and disciplinary process. She was entitled to defend herself, where there existed a number of issues and disputes that lack sufficient evidence that she was being deliberately wilful and untruthful and that her allegations were without any foundation.
44. The issue of trust and confidence very much relied upon the issues associated with the travel allowance issue and the internet issue and the disciplinary meeting, particularly on 23 June, and the emergence of Ms Monk's attempt to explain why she disagreed with Quinton Hall's claim about what he said she said that it was not able to justify. The respondent has not made those points out sufficiently.

45. This problem has been made complex by the range of issues and credibility matters submitted to me to consider. I have endeavoured to pin point the actual issues and to this extent I have not needed to cover every single matter.
46. The applicant has a personal grievance. She was procedurally unjustifiably suspended (although a suspension could have happened given the issues raised at the time) and was unjustifiably dismissed. She is entitled to remedies.

***The remedies to resolve the personal grievance***

47. The remedies need to be considered in regard to mitigation and contribution. Ms Monk mitigated her loss of income, including training to drive taxis. Her loss is calculated from the date of dismissal, 16 July 2004 until the first date of hearing, 3 May 2005. This is 42 weeks assessed as \$46,477.12 after deducting income from Shrodoco (\$8,297.25) and taxis (\$1,269.49).
48. Ms Monk has referred to obtaining work at Shrodoco and training and driving taxis to mitigate her loss. Considering the income she received from these sources and the length of time without comparable income indicates to me that she could have done more to mitigate her loss. Therefore I have awarded her three months as she is entitled, plus another six weeks, being 18 weeks in total. She is entitled to \$19,918.76 loss of wages.
49. Was there any contribution? Ms Monk may have been expected to do more as a supervisor in regard to being clear about her travel allowance and to have asked about applying it (the same standard applied to Mr Brewer). She probably did not think to do so because she did not feel there was anything to ask about in applying the allowance, and saw that as the employer's responsibility. Given the existence of a genuine matter of dispute over the application of the travel allowance she can not be blamed for the situation. Also, she did use the internet for personal use. There is a policy about this but it has been affected by what has been allowed to occur and no written guideline existed on what constituted an unacceptable level of usage. Computer usage was of a concern to the employer and it was its responsibility to provide clarity on the rules. I assess no contribution by the applicant in the matter.
50. I also assess that there is no issue in lost benefits to claim redundancy payments. That was not an issue during Ms Monk's employment. But that there might be an issue about superannuation leave as requested is granted on the question of superannuation benefit.

51. I now turn to compensation. There were a number of matters leading up to Ms Monk's dismissal involving the meetings held on 14 and 27 April and 23 June that might have been upsetting for Ms. Monk. While the respondent got the procedure wrong in the way it suspending her, - her employer was justified in carrying out an investigation and disciplinary processes. The outcome as to standing her down for allegations of serious misconduct would have been the same. Therefore, I am not inclined to award compensation for that aspect of this matter on its own. However, I recognise that the culmination of all those matters and her dismissal has impacted on her. She says that her feelings were affected by her dismissal and the loss of her job she had had for 16 years and that there was a financial impact on her and her partner. Gary Fraser, Ms Monk's partner, gave general evidence to support her. She is entitled to compensation of \$15,000 for humiliation, loss of dignity and injury to feelings.
52. Costs are reserved.

P R Stapp  
Member of Employment Relations Authority