

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 90/09
5124652

BETWEEN RAUKURA HAUORA O
 TAINUI TRUST
 Applicant

AND JUANITA NATHAN
 Respondent

Member of Authority: Marija Urlich

Representatives: Richard Harrison, for Applicant
 Louise Darroch, for Respondent

Investigation Meeting: 25 September 2008

Further information and 1 October, 16 and 22 December 2008
submissions received:

Determination: 26 March 2009

DETERMINATION OF THE AUTHORITY

[1] Raukura Hauora O Tainui Trust operates a number of medical centres in South Auckland. At the end of a consultation patients go to the reception area where they pay for the services have received. Payment is made in the usual way – eftpost, credit card, cheque or cash. At the end of the business day, or the following morning, the cash and cheques are banked. This matter is before the Authority because none of the cash or cheques received by the Trust’s Trust Health Clinic between July 2007 and February 2008 and its Clendon Clinic from late November/early December 2007 and February 2008 have been banked and cannot be accounted for.

[2] Ms Nathan was employed as a clinic co-ordinator and team leader for receptionist and administrative staff Following an investigation into the missing money the Trust dismissed Ms Nathan by letter dated 29 February 2008. The Trust

says Ms Nathan has misappropriated those funds and now seeks orders to recover those funds from her.

[3] Ms Nathan denies she misappropriated the missing money. She says her duties were unclear, that the Trust's systems around cash handling were lax and that, in any event, she did not do the banking. By way of counterclaim she says her dismissal was unjustified and seeks remedies in relation to that claim.

[4] To determine the claim brought by the Trust I must determine whether Ms Nathan misappropriated the unaccounted for funds. To determine Ms Nathan's counterclaim I must first look at whether her personal grievance was raised within the statutory timeframe. If I find she did not raise her personal grievance within the statutory timeframe then that is the end of the matter – that claim cannot proceed. If this issue is resolved in Ms Nathan's favour then a timetable for investigating the substantive claim will be made.

[5] The parties have not attended mediation because Ms Nathan did not attend the scheduled mediation.

[6] Ms Nathan was not in attendance at the scheduled start of the investigation meeting. As she had not advised the Authority she would be late a support officer telephoned to inquire as to her whereabouts. Ms Nathan said she thought the meeting was scheduled the following day. When she was told this was not the case she said she would be there as soon as possible. The start of the meeting was delayed to accommodate Ms Nathan's late attendance. Subsequent to the meeting the parties provided further information and submissions.

Is Ms Nathan responsible for the missing funds?

[7] Ms Nathan started working for the Trust as a receptionist in July 2004. Her role expanded and at the time of her dismissal she held the position of clinical coordinator and team leader. She was a longstanding and trusted employee with extensive knowledge of the clinics' administrative systems. Her seniority amongst staff is demonstrated by their respectful use of the title "Aunty".

[8] Ms Nathan did not have a job description. It is disputed between the parties as to whether she had adequate training in Medtech, the patient management system operated by the clinic.

[9] Ms Nathan accepts she held a leadership role in the reception and administration areas of the clinics but she does not accept that she was responsible for the banking. She says the banking was part of the receptionist role, she was not a receptionist and therefore not responsible for the banking. She relies on the receptionist job description which provides:

Duties

...

6. Case Management
 - Reviewing and balancing cash at the end of the day
 - Preparing and banking cash
 - Managing petty cash according to delegations

[10] The Trust says that in its investigation into the unaccounted monies the receptionists said:

- they prepared the daily banking by counting the cash and cheques and reconciling those sums with the electronic record;
- sometimes the daily takings did not balance;
- a hand written reconciliation, including the amount of cash and cheques taken, was written on the computer sheet, and placed in a plastic bag and handed to Ms Nathan who then, as the receptionists understood, banked the funds;
- a copy of the reconciliation sheet was placed in a folder which was kept on the reception desk (The folder containing the reconciliation sheets has not been able to be located).

[11] The Trust accepted what the receptionists said - that Ms Nathan purported to do the banking. The Trust also relies on Ms Nathan's dealing with the banking deposit book; the banking deposit book was in Ms Nathan's control, that the only deposits made during the period in question were made by Ms Nathan and Ms Nathan took the banking deposit book with her when she took annual leave in early 2008.

[12] Ms Nathan says she did not control the banking deposit book. She says it had no particular location and that any number of staff members had access to it. She says she accidentally had the banking deposit book with her during the period of annual leave, that she was unaware that she had the banking deposit book with her and returned it when the query as to its whereabouts was raised and she located it.

[13] To establish the claimed loss the Trust relies on its computer system set against its banking records. The computer system relies on the accurate manual entry by staff of method of payment and amount. There are no invoices or receipts tracing the cash or cheque payments. The reconciliation sheets have not been located. The Trust acknowledges that the quantified loss may not be the amount actually misappropriated. To remedy this, the Trust has invited the Authority to set a percentage reduction as it sees fit.

[14] It is fundamental to a claim of this nature that the loss of the unaccounted for sums are proved. I am not satisfied that the loss has been proved to the degree of necessary specificity. The Trust says the evidence points to Ms Nathan's actions as the reason for its inability to be exact in its claim. Such a finding may be open to the Authority however, given the disputed evidence as to who did the banking and the lack of clear lines of responsibility in the Trust's systems it is not a finding I am able to make.

Did Ms Nathan raise her personal grievance within the statutory time limit?

[15] Ms Nathan says she raised her personal grievance within the 90-day statutory timeframe. I do not accept this occurred. There is no evidence that Ms Nathan communicated to the Trust that she was dissatisfied with her dismissal and intended to pursue a personal grievance.

[16] Ms Nathan has provided an undated and unsigned letter which raises a personal grievance. She could not say when the letter was posted to the Trust. The Trust has checked its records and advises it did not receive this letter. The most likely scenario is that the letter was drafted and never sent.

[17] The Trust acknowledges it received a letter from the Labour Inspectorate concerning wages and holiday pay owed to Ms Nathan. It says the letter does not raise a personal grievance. I accept that is the case.

Determination

[18] I accept the Trust has suffered the loss of substantial sums received which are unaccounted for. The claim against Ms Nathan of misappropriation of funds is very serious and requires clear evidence in support. Ms Nathans' employment agreement does not provide that she was responsible for daily banking. There is no direct evidence that she was responsible for the banking other than that of the receptionists who said they handed the daily takings for what they believed was banking purposes. There is no accurate record of the sums received.

[19] Ms Nathan has not raised a personal grievance within 90 days. She is time barred from pursuing her claim of unjustified dismissal.

Costs

[20] Costs are reserved. If the parties wish a timetable for the filing of costs to be set they should make application for such within 21 days of the date of this determination.

Marija Urlich

Member of the Employment Relations Authority