

**YOUR ATTENTION IS DRAWN TO THE  
NON-PUBLICATION ORDER AT PARA [26]  
OF THIS DETERMINATION**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 272/08  
5117899

BETWEEN TATIANA STAVROVSKA  
Applicant

AND UNIFORM GROUP  
(AUCKLAND) LIMITED  
Respondent

Member of Authority: Alastair Dumbleton

Representatives: Applicant in person  
Justine Foden, advocate for Respondent

Investigation Meeting: 30 July 2008

Determination: 1 August 2008

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The Authority has investigated claims made by Ms Tatiana Stavrovska that she was constructively dismissed by Uniform Group (Auckland) Limited (“UGL”) and that she was not fully paid commission earned by her during her employment.

[2] Ms Stavrovska claims to recover \$10,000 as unpaid commissions and a penalty for breach of her employment agreement arising from the failure to pay. In relation to her claim of constructive dismissal, she seeks reimbursement of lost wages from 19 February 2008 when her employment ended, and compensation of \$10,000 for humiliation, loss of dignity and injury to feelings. She seeks a written apology for the behaviour of UGL’s managing director, Mr Ross Gordon.

[3] UGL entirely rejects the claims. It maintains that all commission due to Ms Stavrovska was paid to her when the employment ended. UGL rejects the claim that Ms Stavrovska was dismissed and maintains that she resigned of her own free will.

[4] Mediation was undertaken but did not resolve this employment relationship problem.

[5] Ms Stavrovska's employment commenced on 22 January 2007 and terminated on 19 February 2008 when she produced a predated typewritten letter of resignation during a meeting with Mr Gordon.

[6] Her remuneration for the position of Account & Business Development Manager, as well as salary included commission at 5%. Sales targets to be achieved and other criteria for commission were set out in her written employment agreement.

[7] In August 2007 the owners and managers of UGL, Mrs Adele Gordon and Mr Gordon, had identified areas of Ms Stavrovska's performance in which they considered she could improve. They engaged Ms Moira McGowan, a consultant and professional trainer of salespeople, to give Ms Stavrovska tuition and guidance to help her improve.

[8] In January 2008, Ms Stavrovska and a newly employed sales person were required to give Role Model Presentations to the Gordons as a training exercise. The Gordons were unimpressed with her first presentation and wrote to Ms Stavrovska requesting improvement, which she did show in subsequent presentations.

[9] On 29 January 2008 she was away from work. Mr Gordon was not satisfied with the way UGL had been notified of this absence without a reason for it being given, and he requested a meeting to discuss that matter. Ms Stavrovska was advised that the meeting was to be a disciplinary one. The meeting held on 12 February resulted in no disciplinary action being taken or threatened on that day. No conclusion or outcome in relation to the matter of her absence had been advised to Ms Stavrovska at the time of her resignation a week later.

[10] On 19 February 2008, a meeting was called by Mr Gordon with Ms Stavrovska to consider her training and development needs for improvement of her sales performance. Ms McGowan was retained again by UGL to attend the meeting in, I accept, a facilitatory capacity. She attempted in discussion to draw out from Ms Stavrovska any problems or obstacles she was encountering and any changes that she thought might help improve her performance.

[11] When the discussion reached an impasse, to move it forward and elicit a constructive response from her, Ms McGowan asked Ms Stavrovska what she would do if she were in UGL's shoes and was managing a person who had performance issues which the person blamed on the employer. Ms Stavrovska responded by saying that she would want that person to leave. This answer surprised Ms McGowan who checked that she had heard it correctly and then asked Ms Stavrovska "*where do we go from here?*"

[12] In response Ms Stavrovska produced an envelope containing her written resignation. As the letter had been dated 11 February 2008, she asked to change the date on it to 19 February. After making that change and initialling it, she agreed to leave immediately instead of working out the two weeks' notice given to UGL in her letter, and Mr Gordon agreed to pay her for the notice period and for outstanding holiday pay and commissions due.

[13] The evidence of Ms McGowan was that she had been surprised when the letter of resignation was produced at the meeting, although the date on it made her realise that Ms Stavrovska had decided before attending the meeting to resign.

[14] Mr Gordon's evidence was that when Ms Stavrovska produced her letter of resignation it had appeared to him that she had just been waiting for the best moment to resign. He denied that Ms Stavrovska had been pushed into resigning and said that the purpose of the meeting had been to consider her performance and ways in which it could be improved. The meeting had not been disciplinary in nature he said, and Ms McGowan had been retained to attend it as she was known to Ms Stavrovska from previous training work they had done together. It was felt that she could assist in finding a constructive solution to the performance problems.

[15] Ms Stavrovka told the Authority she had prepared the resignation letter earlier in February after meetings at which she had got no answers to issues she had raised. She agreed that she had not been asked to resign at any time by UGL or the Gordons. She felt however that the negative feedback that she was receiving from them indicated that they were trying to push her out of her job. I find that the “*negative feedback*” was the expression by the Gordons of concerns about her performance.

[16] Ms Stavrovka said that during the disciplinary meeting on 12 February she had alluded to having a resignation letter and she thought Mr Gordon would therefore have been aware of the letter’s existence before the meeting on 19 February. She did not and could not say that Mr Gordon had deliberately provoked her during the meeting into handing over the resignation letter, and I accept that without any invitation or request she spontaneously produced it in the middle of the discussion about how her performance could be improved.

[17] Ms Stavrovka accepted that Ms McGowan had been at the 19 February meeting for training and development purposes and that the objective of that meeting had been to find ways for her to improve her performance. She agreed that she had been planning to resign since the meeting held earlier about her failure to correctly notify UGL of her absence on 31 January.

[18] I reject the claim of Ms Stavrovka that she was dismissed constructively or otherwise. The circumstances in which I find she resigned from her employment do not give rise to any personal grievance claim as defined under the Employment Relations Act 2000. She gave her resignation freely although regretfully, no doubt anticipating that continuing for longer in the job would not satisfy her personal requirements for a successful employment relationship.

[19] I find there was nothing unreasonable or unfair in the way the disciplinary matter had been approached with Ms Stavrovsky earlier in February. No threats of possible action were made to induce the resignation, and the matter had not been concluded at all by 19 February because of Mrs Gordon’s absence for a time.

[20] Clearly there was dissatisfaction on both sides of the employment relationship about the way obligations were being discharged, but it was entirely reasonable for the employer to initiate discussion and seek ideas from Ms Stavrovka as to how

performance of the job could be improved for their mutual benefit. The motivation of UGL was the understandable desire to have a position of employment pay its way in the business. The level of sales achieved by Ms Stavrovska had naturally caused the Gordons to question the viability of her position if improvement was not made.

[21] Detailed evidence was given to the Authority by Ms Stavrovska and the Gordons as to the particular claims made for commission payments.

[22] I am satisfied that there is no basis on which the claim for those payments can succeed. It has been based on a misinterpretation of the criteria for the payment of commissions. Under clause 1 of Schedule 2 of the employment agreement, commission was payable “*on any new individual accounts introduced.*” Ms Stavrovska’s view was that if a particular school was already a customer of UGL but if she had made sales to that school of a new brand of uniform or clothing, those sales would constitute new business and entitle her to commission.

[23] I find that Ms Gordon is correct in saying that in the context of UGL customers, new business means a new school not already a client or customer of UGL placing an order for uniforms. The sales accounting system UGL operated did not show separate accounts for the same school based on brand differences in uniforms or clothing, and there were no separate customer numbers allocated within the same school.

[24] I find therefore in relation to the claim for unpaid commissions that the amount paid at the end of the employment, \$1,131.72, was correctly calculated based on the conditions or criteria set out in the employment agreement and also on the levels of sales achieved and paid up for by the client or customer.

### **Determination**

[25] The determination of the Authority is therefore that Ms Stavrovska’s claims are unsuccessful and no orders are required to be made against UGL.

[26] The Gordons produced a document headed *Full Report of Sales Comparison* which lists customers and sales made to them. That information is to remain confidential and I therefore order that the Report and contents of it are not to be published by any person, other than UGL, in any form. The order is made pursuant to clause 10 of Schedule 2 of the Act.

[27] The employer's costs of representation should be modest, as the investigation meeting last only about half a day and the Authority did not require the preparation of written statements from any of the witnesses. That is not to say the statements that were voluntarily provided were unhelpful. If costs are to be sought by UGL for its representation, a memorandum is to be sent to the Authority and to Ms Stavrovska with details of the claim. Ms Stavrovska may have 14 days from service of it in which to reply in writing to the Authority to the claim for costs.

A Dumbleton  
**Member of the Employment Relations Authority**