

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 34/08
5052265**

BETWEEN PETER STOTT
 Applicant

AND REDVALE CANINE CENTRE
 LIMITED
 Respondent

Member of Authority: Leon Robinson

Representatives: Douglas Cowan for Applicant
 Paul Tremewan for Respondent

Investigation Meeting: 5 February 2008

Determination: 7 February 2008

DETERMINATION OF THE AUTHORITY

The problem

[1] Mr Peter Stott ("Mr Stott") claims that he was unjustifiably dismissed. Redvale Canine Centre Limited ("Redvale") says Mr Stott's summary dismissal for gross misconduct was justified. The parties were unable to resolve the differences between them by the use of mediation.

The facts

[2] Mr Stott commenced employment with Redvale as its Kennel Manager on 25 October 2004. The terms of Mr Stott's employment were recorded in a written individual employment agreement signed by both parties ("the IEA").

[3] As Kennel Manager, Mr Stott was permitted to reside in a dwelling owned by Redvale situated onsite at its impounded dog facility. The Authority finds this tenancy was not a term of his employment but rather was a residential tenancy under the *Residential Tenancies Act 1986*.

[4] Redvale's General Manager Mrs Vicky Brodeur-Muir ("Mrs Brodeur-Muir") gives evidence that on 23 May 2006 she met with an employee Leianne Westwood ("Ms Westwood"). Mrs Brodeur-Muir tells the Authority she made notes of the meeting which she has transcribed and produces to the Authority.

[5] Mrs Brodeur-Muir says Ms Westwood was upset and was crying and shaking. According to Mrs Brodeur-Muir, Ms Westwood told her that she was concerned about what Mr Stott would do to her. She said he had a terrible temper and she was frightened of him as everyone else was. Eventually she told Mrs Brodeur-Muir of a corgi dog docket number 72509 impounded on 27 April 2006 which had been organised to be adopted out to the Humane Society and was scheduled for a vet check on the morning of 10 May 2006. Ms Westwood told Mrs Brodeur-Muir that Mr Stott had taken the corgi off the morning vet check list because he had not completed the paperwork and adoption pack. She explained that Mr Stott had then telephoned Animal Control Services Limited and advised the administration person "Jay" that the corgi had been euthanased because it had failed the vet check. This advice was untrue and Mr Stott knew it was Ms Westwood told Mrs Brodeur-Muir. Ms Westwood explained that Mr Stott had then said Ms Westwood could take the dog as there was no paperwork and she was to put the corgi on the boarding side so that officers and management were less likely to see it.

[6] Ms Westwood then told Mrs Brodeur-Muir that on Sunday 21 May 2006 she saw the corgi was still in the boarding kennels so she took it up to Mr Stott's onsite residence and spoke to his wife Mrs Lee Stott ("Mrs Stott"). According to Ms Westwood she asked Mrs Stott what she should do with the corgi as it had no paperwork and Mr Stott had lied to the Animal Control Services Limited about it being euthanased. She told Mrs Brodeur-Muir she had also told Mrs Stott she did not want to be involved in any lies. Mrs Stott had said she would phone Mr Stott who was away on leave.

[7] Ms Westwood told Mrs Brodeur-Muir, Mrs Stott later told her that Mr Stott had said to hide the corgi in the garage by his house which Ms Westwood said she did. When Mrs Brodeur-Muir asked Ms Westwood why she had done so Ms Westwood said she did not know what else to do and Mr Stott was her boss.

[8] On 22 May 2006 Mr Stott left a telephone message on the work phone advising Ms Westwood to get the corgi out of Redvale by tomorrow and clean up the pen in the garage.

[9] Mr Stott had completed an Animal Control Officers Impound Report by endorsing the document with notation that the corgi dog had been euthanased on 10 May 2006. The Authority is advised that it was only Mr Stott who euthanased the dogs. The Authority also accepts that the corgi dog in question was not listed to be euthanased on 10 May 2006, but rather, was listed for a morning vet check. The Animal Control Services Limited administration person "Jay" documented on an office copy of the Impound Report advice from Mr Stott that the corgi dog had been euthanased.

[10] Ms Westwood explained to Ms Brodeur-Muir that she did not want to get into any further trouble and she was sorry she did not inform management earlier but she was scared of Mr Stott and was afraid of what he would do and say to her when he returned. Mrs Brodeur-Muir said there would be further investigations and asked where the corgi was. Ms Westwood told her it was in the boarding kennels.

[11] Ms Westwood now resides in Australia and does not give evidence to the Authority. The Authority accepts that the above account is what Mrs Brodeur-Muir was told by Ms Westwood. Both Mr and Mrs Stott adamantly deny the account.

[12] Although not in his prepared witness statement, Mr Stott tells the Authority Mr Kenneth Muir Redvale's Manager ("Mr Muir") telephoned him on the evening of Sunday 4 June 2006. He tells the Authority that Mr Muir was unhappy with the telephone message Mr Stott had left for Ms Westwood. Mr Stott says Mr Muir informed him there would be a disciplinary meeting the following day.

[13] Mr Muir tells the Authority he had telephoned Mr Stott on the evening of 24 May 2006. That is the day after Ms Westwood confessed to Mrs Brodeur-Muir. The Authority prefers Mr Muir's evidence that he told Mr Stott they had discovered the dog documented as having been euthanased had not been. Mr Stott denied any knowledge of efforts to conceal the dog. Mr Muir also informed Mr Stott that staff

had informed management that he was using dog food from Redvale for his own dogs and that he was encouraging other staff to do the same. Mr Stott said he did use dog food from the kennels but not much. Mr Stott denied any knowledge of the allegedly concealed dog despite both he and Mr Muir being aware of the telephone message Mr Stott had left in relation to it.

[14] Mr Muir says and the Authority accepts, he told Mr Stott there would be a disciplinary meeting on his return to work on 5 June 2006 where they would discuss the allegation that Mr Stott had falsely reported the dog to have been euthanased. The Authority finds that Mr Muir told Mr Stott his employment could be in jeopardy, and asked whether Mr Stott would like a support person present to which Mr Stott said No.

[15] The Authority accepts Mr Muir's evidence that the following day he telephoned Mrs Stott and asked her not to go into the kennels because he had received a complaint that she had abused a staff person. Mrs Stott confirms this request.

[16] Mr Stott met with Mr Muir and Mrs Brodeur-Muir on the morning of 5 June 2006. On the way into the meeting and again when at the meeting, I find that Mr Stott was asked whether he wished a support person present. Mr Stott says that he said that his representative could not attend until the following day but he was told the meeting would still go ahead. It may well have been very difficult for Mr Stott to have obtained assistance on a statutory holiday, but having accepted Mr Muir's evidence, it must be established that Mr Stott had ample opportunity to make appropriate arrangements.

[17] Mrs Brodeur-Muir says she took notes of the meeting but agrees they are not full comprehensive notes of all that was discussed. Her transcribed notes record that Mr Stott was informed the purpose of the meeting was to hear his explanations in relation to company property being allegedly misappropriated, namely the corgi dog recorded as euthanased on 10 May 2006, and dog food. Mrs Brodeur-Muir tells the Authority she asked Mr Stott if he would like a support person present but that he declined and asked that they "get on with it".

[18] Mr Muir gives evidence he told Mr Stott that a staff member had informed them that Mr Stott had not wanted to adopt the corgi to the Humane Society and that he had informed the staff member that he had fixed the paperwork and had moved the dog to the boarding side of the kennels. It was also said that Mr Stott had told the staff member that she could have the dog.

[19] The Authority accepts the weight of evidence that Mr Stott said he had done nothing wrong and could not remember. He initially denied any knowledge of the dog in question but later said he had not prepared the paperwork for adoption by the Humane Society so it was easier to say the dog was dead. Both Mr Muir and Mrs Brodeur-Muir say that Mr Stott admitted he had made a mistake and asked for another chance.

[20] At the conclusion of the meeting Mr Stott was directed to return to work. Mr Muir and Mrs Brodeur-Muir considered matters for about 45 minutes. They say they decided to investigate further the allegation about missing dog food. As for the allegation concerning the corgi, they decided they could not accept Mr Stott's explanation. They also took into account his previous record, recent instances of misconduct, warnings, and his initial denial and then admission. They decided that he had acted inappropriately as manager.

[21] Mr Stott was then informed that he would be dismissed immediately but with four weeks pay. He was asked to remove personal property from the kennels and vacate the rental property after four weeks.

The merits

[22] The Authority has no jurisdiction in respect of matters arising out of the residential tenancy agreement between Redvale and Mr Stott. For the avoidance of doubt, I find that the said residential tenancy and the contended issues arising out of it as advanced by Mr Stott, are not matters founded on the employment relationship and therefore, not within the exclusive jurisdiction of the Authority. Accordingly, I make no findings nor any determination in respect of the claims now made by Mr Stott arising under the residential tenancy.

[23] Redvale defends Mr Stott's claim against it pleading that Mr Stott's summary dismissal was a result of his "*misappropriating company property i.e. theft of a dog*". It justifies its decision to summarily dismiss Mr Stott because it says his actions constituted a blatant breach of company policy and procedures, and he had previously been spoken to about such policies and procedures. Ultimately it concluded that Mr Stott had destroyed the trust needed between employer and employee, and the relationship could no longer be continued.

[24] An allegation of loss and confidence and trust must always be objectively sustainable. I now scrutinise the pleaded justification for the summary dismissal by applying the statutory test of justification as prescribed by section 103A of the *Employment Relations Act 2000*. I regard various performance issues which preceded the summary dismissal as peripheral. This was not a dismissal on notice so previous instances of misconduct do not fall to be considered as to their justifiability.

[25] Redvale's amended statement in reply pleads that Mr Stott was dismissed as a result of misappropriating company property i.e. theft of a dog. I do not agree that Redvale had evidence of theft by Mr Stott. Mrs Brodeur-Muir's own notes of interview with Ms Westwood do not disclose theft by Mr Stott.

[26] I find that Redvale had evidence that the corgi dog due for a vet check on the morning of 10 May 2006 was taken off that list by Mr Stott. It also had evidence that the said dog was not due to be euthanased that day. It also had evidence of two Animal Control Officers Impound Reports, one of which recorded Mr Stott's advice to the administration person and the other with Mr Stott's endorsements that the dog had been euthanased. Because of these findings, Redvale was justified in concluding that Mr Stott had failed to follow procedures and more than that, he had deliberately falsified records knowing them to be untrue. These matters do not persuade me as sufficient evidence of "taking" by Mr Stott.

The determination

[27] So I conclude that a fair and reasonable employer would not have dismissed Mr Stott as having loss of confidence and trust in him by reason of theft by him of a dog. That being the contended justification for his summary dismissal, I find it

unjustifiable. The dismissal on the pleaded grounds of justification does not meet the test prescribed by section 103A of the *Employment Relations Act 2000*.

The resolution

[28] Having made those findings and in considering both the nature and the extent of the remedies to be provided, I am bound by section 124 of the *Employment Relations Act 2000* to consider the extent to which Mr Stott's actions contributed towards the situation that gave rise to the personal grievance, and if those actions so require, to reduce the remedies that would otherwise have been awarded accordingly.

[29] I find it established that Mr Stott falsely recorded that the corgi due to be checked by the vet on the morning of 10 May 2006 and adopted to the Humane Society was removed from that list by Mr Stott. I find it established too that Mr Stott endorsed documentation that the said corgi dog had been euthanased when he knew that to be false. He also communicated this false information to the records person knowing it to be false. These actions by Mr Stott are blameworthy actions. They are wholly causative of the summary dismissal on 5 June 2006. I find therefore that Mr Stott while having a personal grievance for unjustifiable dismissal, his own actions caused the situation leading up to it. As a matter of equity and good conscience he is not entitled to any remedies. **I reduce both the nature and extent of remedies to be awarded to Mr Stott by 100%.**

Costs

[30] In the event that costs are ought, I invite the parties to resolve the matter between them, but failing agreement, Mr Tremewan is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Mr Cowan is to lodge and serve a memorandum in reply thereafter but within 28 days of the date of this Determination.

Leon Robinson

Member of Employment Relations Authority