

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Ruth Sullivan (Applicant)

AND Navigant New Zealand Limited trading as TQ3 Navigant
(Respondent)

REPRESENTATIVES Scott G Wilson, Counsel for Applicant
Andrew Flexman, Counsel for Respondent

MEMBER OF AUTHORITY Helen Doyle

INVESTIGATION MEETING 3 May 2006

DATE OF DETERMINATION 14 July 2006

DETERMINATION OF THE AUTHORITY

The Employment Relationship Problem

[1] The applicant, Ruth Sullivan, was employed as branch manager of the respondent's, and its predecessors, Christchurch office in early February 1997 until she was summarily dismissed from her employment effective from 28 June 2005.

[2] The respondent, Navigant New Zealand Limited Trading as TQ3 Navigant ("TQ3 Navigant"), is principally a corporate travel service provider.

[3] Ms Sullivan was dismissed from her employment with TQ3 Navigant as a result of travel arrangements she made in her capacity as branch manager in May 2005 for 32 veterans whose travel costs were to be paid by a charitable trust known as Our Heroes Charitable Trust ("the Trust").

[4] The 32 sponsored veterans ("sponsored veterans") travelled with a tour party made up of 143 world war II veterans and supporters to Northern Italy ("the Trieste trip"). Ms Sullivan accompanied the group during the Trieste trip in May 2005 undertaking an organisational and supportive role.

[5] TQ3 Navigant was concerned that Ms Sullivan authorised the payment of the international air fares for the Trieste trip on 13 May 2005 before funding for the sponsored veterans was received in full. It was understood there would be no extension of credit by TQ3 Navigant for the sponsored veterans and that there was to be full payment before departure.

[6] Whilst sufficient funds were in the account to cover the cost of the international air tickets there was no additional money to cover accommodation, food and transport costs for the sponsored veterans when they arrived in Italy. There was a shortfall of about \$4,500.00 for each sponsored veteran. The departure date for the Trieste trip from Auckland was 21 May 2005.

[7] I shall refer to the trustee who had overall responsibility for organising the trip and funding for the veterans on behalf of the Trust as X. TQ3 Navigant and Ms Sullivan had previous dealings with X when earlier veteran trips had been organised by Ms Sullivan in conjunction with X to commemorate the 60th anniversary of the Battle of Monte Cassino in Italy and the Return of the Unknown Warrior in Wellington. X was also the majority shareholder and managing director for a group of related companies who did business with TQ3 Navigant.

[8] X was viewed by TQ3 Navigant as an *extremely slow payer*. There had been an issue of late payment of some monies by X from the 2004 Monte Cassino trip. The money had eventually been paid some seven months after that trip.

[9] It was not until 16 May 2005 that the General Manager of TQ3 Navigant, Andrew Bowman was aware that X was not in a position to pay the full amount owing by the departure date for the sponsored veterans.

[10] Initially Mr Bowman was not prepared to accept X's commitments to make payments at a later date. He advised Ms Sullivan by way of email on 17 May 2005 that they could only proceed with the sponsored veterans who had paid in full before departure. Ms Sullivan emailed Mr Bowman expressing that she thought that was *too tough* and that *X had always paid eventually*. Ms Sullivan also advised Mr Bowman that a decision not to extend credit could do TQ3 Navigant significant damage in the marketplace and she told him that there was significant media interest in the Trieste trip.

[11] There was also an issue as to whether the international airline tickets were refundable. At that time Mr Bowman understood from Ms Sullivan they were not refundable. In any event even if they had been refundable Mr Bowman was concerned about the impact on TQ3 Navigant's relationship with Thai Airlines if they attempted to cancel a large group days from departure.

[12] Mr Bowman balanced the risk to TQ3 Navigant of extending credit so that the sponsored veterans could proceed with the Trieste trip with not proceeding. He felt that the company had no option at that late stage when the problem came to its attention but to extend credit to enable the sponsored veterans to travel. Mr Bowman communicated with X about a payment proposal. Mr Bowman said that it has not been an easy process to recover the money from X and TQ3 Navigant had to commence summary judgment proceedings to recover a final balance of \$53,392.00.

[13] TQ3 Navigant say that it was Ms Sullivan's actions that put it in the position of having no option but to extend credit and that it was fair and reasonable for it to conclude in the circumstances that her actions constituted serious misconduct for which dismissal was the right sanction.

[14] Ms Sullivan says that her dismissal was unjustified. She says that her actions did not constitute serious misconduct, that she sincerely believed that X would make payment in full before departure on 21 May 2005 and it was on that basis that payment of the airline tickets was authorised. She says that dismissal was not the action that a reasonable employer would have taken in all the circumstances.

[15] Ms Sullivan seeks lost salary for the period 28 June 2005 until 3 May 2006 less earnings during that period in the sum of \$38,234.41. The claim at paragraph 3.2 of the statement of problem for prospective loss of earnings beyond the date of the investigation meeting was withdrawn. Ms Sullivan also seeks compensation in the sum of \$20,000.00.

The individual employment agreement, position description and material policies

Individual employment agreement

[16] Ms Sullivan was party to an individual employment agreement (“the agreement”) with TQ3 Navigant which was signed on 21 February 2005.

[17] The agreement provided Ms Sullivan receive an annual income of \$72,000 and an entitlement to join a healthcare scheme. Ms Sullivan also received other non cash benefits such as car parking.

[18] Clause 4 of the agreement provided:

This agreement incorporates the policies and procedures as contained in our intranet, INTERCOM, under Policies.

[19] Clause 25 of the agreement about discipline and dismissal provided for summary dismissal in the event of serious misconduct. There was reference to what types of conduct serious misconduct included. One of the bulleted points was *Wilful failure to follow specifications of company policy as outlined in the Corporate Standards/Procedures Guide.*

Position Description

[20] Ms Sullivan’s position description provided key accountabilities for the branch manager role. These included financial management, client relations, sales, process management and quality control and communications and reporting.

Relevant Policies

[21] TQ3 Navigant did not have a credit policy until early 2005. I heard from the Human Resource Manager, Gillian Cooper about the development and subsequent circulation of the policy in late March 2005 to all managers and advice that it would be posted on the company’s intranet. It would appear that the policy was posted on the company’s intranet in early April 2005. The material part of the policy is as below:

Credit Policy

1. Terms of Trade

The company’s standard terms of trade require receipt of client funds prior to any payments being made to suppliers (including ticket issuance) and/or document despatch unless the individual or company has been approved to be provided credit.

[22] The other policy that was referred to by TQ3 Navigant was the Discounts and Incentives Policy with respect to shares in the group of companies of which X was managing director. These shares were gifted to Ms Sullivan after she organised an earlier Monte Casino trip in 2004 in conjunction with X.

[23] This gift of shares to Ms Sullivan was not discovered by Mr Bowman until after Ms Sullivan’s employment was terminated. Ms Sullivan said that she was open about the shares with others in the office and that it was her understanding if a free trip or reward is given outside the office it is for the employee to keep. Ms Sullivan said that she had no real idea how many shares are involved or if they are of any value.

[24] The policy provided that in terms of gifts from clients they should be discussed with the employee's manager.

The Issues

[25] The issues for determination are the following:

- What were the reasons for Ms Sullivan's dismissal?
- Was TQ3 Navigant's decision to summarily dismiss Ms Sullivan justifiable in all the circumstances at the time the dismissal occurred – 103A of the Employment Relations Act 2000?
- If Ms Sullivan's dismissal was unjustified then what remedies is she entitled to and is there an issue of contribution?

What were the reasons for Ms Sullivan's dismissal?

The disciplinary process

[26] When Ms Sullivan returned from the Trieste trip in early June she received a letter from Mr Bowman dated 9 June 2005 requesting her to attend a disciplinary meeting. Mr Bowman said that the primary allegation that Ms Sullivan was facing was that written, amongst other matters, in the first paragraph of that letter:

.....at the point where you fully disclosed the extent of the funding situation it was, for a number of reasons, beyond the point where the company had the opportunity to cancel the tour.

[27] Ms Sullivan was advised in the letter that she was entitled to representation and that the allegations set out were serious and may justify dismissal if established.

[28] There were five specific allegations in the letter:

- *Similar issues arose in 2004 and I made it very clear that the situation could not be repeated.*
- *Your actions and judgment were grossly inadequate in light of problem encountered in respect of the 2004 veterans tour.*
- *You failed to ensure that adequate funding was in place before committing the company to making payments to suppliers.*
- *Your actions were in breach of the Credit Policy introduced in March 2005. It is expressly stated in the policy that credit can only be extended with necessary approval or payment is required up front.*
- *You effectively extended credit in a situation where you knew there was a high degree of risk of payment not being made on the due dates.*

[29] The disciplinary meeting was postponed from 14 June until 22 June 2005 at Ms Sullivan's request. Ms Sullivan was represented at the disciplinary meeting by Mr Wilson. Jim Roberts attended as representative for TQ3 with Mr Bowman and Ms Cooper. Ms Sullivan read from a written statement at the meeting and there was considerable discussion and an opportunity for explanations about the allegations following the reading of the statement.

[30] Ms Sullivan did not agree that she extended credit to X or the Trust in breach of the credit policy because there was enough money in the account to pay for the Thai airline tickets for the sponsored veterans at the time she authorised payment. Ms Sullivan did accept that the full tour payment was not there for the sponsored veterans when payment of the air tickets was authorised on May 13 but said that until 16 May 2005 she sincerely believed that the balance of payments would be made by the Trust.

[31] She said that she did not check whether the money had come in or not before authorising payment for the airline tickets. Ms Sullivan said to me that *with the benefit of hindsight* it would have been prudent for her to have checked if the money had been paid although Ms Sullivan did not accept any responsibility for the situation at the disciplinary meeting.

[32] At the conclusion of the disciplinary meeting TQ3 Navigant summarised its views and its preliminary findings in respect of the allegations. Ms Sullivan was told that TQ3 Navigant considered the matter amounted to serious misconduct and that dismissal remained a possibility.

[33] Mr Wilson asked for the preliminary findings to be made available in writing so that Ms Sullivan could comment on them and the meeting was temporarily adjourned so that Ms Sullivan could be provided with a written summary of the company's position. When that was provided it was then agreed at the conclusion of the meeting that Ms Sullivan would provide her response by midday on 23 June 2005.

[34] Mr Wilson provided a response by way of email dated 27 June 2005 to Mr Roberts in which he noted that Ms Sullivan had already fully detailed her position in respect of the allegations and has little to add except that the conclusions are not accepted. Mr Wilson pointed out in his email that one conclusion was inconsistent with TQ3 Navigant's position in respect of the allegation that was withdrawn. Mr Wilson pointed out the goodwill generated for the company by the veterans tours and the long hours Ms Sullivan worked to organise the tours. He said that Ms Sullivan had had eight years service and an exemplary record. He noted that Ms Sullivan's age would make it difficult for her to gain alternative employment.

[35] Mr Bowman then made a decision on 28 June 2005 to terminate Ms Sullivan's employment effective at 5pm that day on the basis that TQ3 Navigant no longer had trust and confidence in her as an employee. The decision was communicated to Ms Sullivan by letter. Mr Wilson received a letter by email the same date.

Conclusions as to the reasons for the dismissal

[36] The reasons for the dismissal were provided by letter dated 25 July 2005 from Mr Roberts in response to a request under section 120 of the Employment Relations Act 2000 from Mr Wilson. Paragraph 3 (a) to (h) set out the factual background or events as reasons for the summary dismissal and leading to the conclusion in paragraph 4 of the letter that:

The company concluded after a thorough investigation and a very long day discussing the issue with you and your client, that it had lost trust and confidence in your client. The company considers that its decision to terminate was one any fair and reasonable employer would have taken in the circumstances. Your client was in breach of the credit policy introduced in March, she misled Mr Bowman as to the funding arrangements and has placed the company at risk of substantial financial loss.

[37] I have also set out paragraphs 3 (a) – (h) of the letter because they provide background to the conclusions.

- a. *In 2004 problems arose as regards funding for the Our Hero's Trust tour ("the tour") to Trieste. As a result of the problems your client was instructed not to advance credit in relation to Our Hero's Trust. [The 2004 tour was in fact the Monte Cassino trip].*
- b. *On 14 March 2005 your client sent an email to Andrew Bowman confirming her understanding that there was to be no credit extended and advising Mr Bowman that, unless X could come up with the required funding, she would need to tell the veterans that the tour could not proceed.*
- c. *On 1 May 2005 your client sent an email to Jude Beedie advising that X had promised to pay \$50,000 within a week and the balance within a fortnight. [Jude Beedie is TQ3's company finance manager].*
- d. *By 13 May 2005 X had failed to make the payments referred to in (c) above. However, your client then authorised the payments of airfares using the Veterans Affairs money on non-refundable tickets without having received adequate funding to pay for the rest of the package. That left TQ3 Navigant ("the company") in a particularly vulnerable position. The Our Hero's Trust tour was indeed a complete tour, including accommodation, tours and events at Trieste.*
- e. *On 17 May 2005 Mr Bowman emailed your client confirming that the company could only proceed to confirm travel arrangements for those veterans whose expenses had been paid for in full prior to departure. Your client replied urging Mr Bowman to accept an undertaking by X that funding would be made available, albeit after final travel arrangements had been confirmed. Mr Bowman again confirmed that all funding needed to be in place prior to departure.*
- f. *Mr Bowman was then made aware of the fact that the company was committed to non-refundable airfares meaning the tour had to proceed. This was despite the fact that other costs (accommodation, meals, tours and events etc) had not been covered. The Company was placed in the position of having to extend credit to pay for the rest of the tour if Our Hero's Trust did not come up with the funding, only agree to fly the veterans to Italy and then abandon them, or cancel the tour for those particular veterans.*
- g. *Your client's own correspondence and comments are testimony to the position that had she placed the Company, in that she accepted responsibility for it. It is only since that time that she has sought to resile and hold Mr Bowman responsible for the Company's decisions and X for Our Hero's Trust.*
- h. *Your client's actions have exposed the company to potential liability of \$160,000.*

[38] Mr Bowman told me the misconduct was that Ms Sullivan had exposed the company to a large level of debt and that he felt that she had deliberately misled him. Mr Bowman stated that they were equal factors in his decision to dismiss.

[39] There is a dispute whether the allegation that Ms Sullivan breached the credit policy was withdrawn at the disciplinary meeting. Mr Bowman and Ms Cooper, who took notes at the meeting, both said that allegation was not withdrawn. Ms Sullivan said that it was. I did not hear

evidence from Mr Roberts or Mr Wilson and the documentary evidence is not completely clear. There was agreement though during the disciplinary meeting that Ms Sullivan did not technically extend credit in breach of the policy because there were monies in place to cover the cost of the sponsored veterans' airfares. In any event the breach of the credit policy was relied on as one of the reasons for dismissal and I shall consider it as such.

[40] The reasons for Ms Sullivan's dismissal were that she breached the credit policy, exposed the company to a risk of substantial financial loss and misled Mr Bowman as to the funding situation with respect to the Trieste trip.

[41] Ms Sullivan put forward some other underlying motives for her dismissal but documentation provided at my request does not support that there was any such motive or predetermination of the decision to dismiss.

Was TQ3 Navigant's decision to summarily dismiss Ms Sullivan justifiable in all the circumstances at the time the dismissal occurred?

[42] In considering whether TQ3 Navigant carried out a full and fair investigation the focus should be whether the overall principles of fairness have been complied with, not in identifying procedural defects. Ms Sullivan was represented for the meeting and had an opportunity to provide explanations to the allegations in the letter of 9 June 2005 and her actions leading up to the authorisation for payment for the tickets.

[43] There is an issue as to whether an allegation that Ms Sullivan misled Mr Bowman about the funding was put to her during the disciplinary process, as fairness would require, for her to explain, refute or mitigate.

[44] The allegation that Ms Sullivan misled Mr Bowman was not a specific allegation in the letter of 9 June 2005. If as a result of the disciplinary meeting on 22 June Ms Sullivan's explanations led the company to form a view that she had misled Mr Bowman I would have expected that to form part of the preliminary views. At the end of the disciplinary meeting on 22 June Ms Sullivan was provided with a document headed *Summary of Position*. It is not alleged or concluded in that summary of the company's preliminary views that Ms Sullivan misled Mr Bowman about the funding.

[45] Mr Flexman submits that if I was to accept that Mr Bowman did not put or properly put the allegation to Ms Sullivan then that does not taint or undermine the dismissal as submitted by the applicant.

[46] The three reasons for the dismissal are based on the same action undertaken by Ms Sullivan, about which there is no factual dispute, that she authorised payment for airline tickets before payment for the balance of the tour for the 32 sponsored veterans was in place.

[47] TQ3 Navigant was required to make an assessment of Ms Sullivan's state of mind at that particular time. It needed to conclude whether Ms Sullivan deliberately misled Mr Bowman in the period leading up to and including authorisation of purchase of the tickets or whether she acted negligently or recklessly by authorising the purchase of airline tickets, simply relying on the earlier verbal advice from X that the money would be paid when he was known as a slow payer and not talking to Mr Bowman before authorising payment of the tickets.

[48] The evidence relied on in terms of the conclusion that Ms Sullivan had misled Mr Bowman was essentially that Ms Sullivan did not communicate with him between 1 and 16 May 2005 about the funding situation as she was required to do by virtue of her position description. Although

silence can in some circumstances constitute a misrepresentation I do not find there to be evidence to support a conclusion that Ms Sullivan deliberately misled Mr Bowman in the absence of the allegation being properly put and answered. Mr Bowman also said at the investigation meeting that there were the gifted shares, however as I understood his written evidence they were discovered after dismissal.

[49] There was certainly evidence that Ms Sullivan did not ascertain, or was reckless, as to whether funding was available for the full trip before authorising the purchase of international airline tickets. There is evidence that TQ3 Navigant felt they had no option because of Ms Sullivan's concerns about its reputation and the difficulty getting refunds of tickets but to extend credit to enable the sponsored veterans to travel. That had financial consequences for TQ3 Navigant. There is a considerable difference though between a conclusion that Ms Sullivan deliberately misled the company and a conclusion that she acted honestly but negligently or recklessly in exposing the company to a large level of debt.

[50] Mr Bowman reached the conclusion that Ms Sullivan misled him without first putting that allegation properly to Ms Sullivan so that she could answer it. This in my view is a serious failure and, although not the only reason for dismissal, must be one that goes to substance in these circumstances where the allegations arise from the same action.

[51] Had the allegation that she misled Mr Bowman been put Ms Sullivan would, in all likelihood, have been able to convince Mr Bowman that she had not deliberately misled him at that time. Instead Mr Bowman gave equal consideration to a conclusion that Ms Sullivan had misled him along with a conclusion that Ms Sullivan had exposed the company to a large amount of debt. A fair and reasonable employer would have put the allegation of misleading conduct to one side and considered whether Ms Sullivan had been negligent and if it considered that she had been negligent, then was it an action that would justify dismissal. I will consider what would have happened in those circumstances in terms of remedies.

[52] In conclusion however as to justification of the actions of TQ3 Navigant I find that the failure to put the allegation to Ms Sullivan that she misled Mr Bowman so she could answer it and the equal reliance on that matter with the other reasons for the dismissal were not what a fair and reasonable employer would have done at the time that the dismissal occurred.

[53] Ms Sullivan was for the reasons above unjustifiably dismissed.

[54] I now turn to the issues of remedies.

Remedies

Lost Wages

[55] Ms Sullivan gave evidence that she had applied for 82 different positions since July 2005 and provided a list of positions applied for. Ms Sullivan said that her age of 57 counted against her in terms of obtaining positions and that there were few senior positions in Christchurch. In September 2005 Ms Sullivan obtained some temporary work doing data entry and covered for an employee on parental leave.

[56] I am satisfied that Ms Sullivan did attempt to mitigate her loss by applying for 82 alternative positions. Mr Flexman said that the respondent does not accept age is a barrier. Regrettably Ms Sullivan found, and I accept, that in terms of her applications for alternative positions it was. Ms Sullivan also gratefully accepted work at a lower level and mitigated loss in that way.

[57] This is a case where I am prepared to exercise my discretion and assess an award in terms of lost wages in excess of three months. Ms Sullivan claims lost wages in the sum of \$38,234.41 which takes into account her earnings between the date of dismissal and the date of the investigation meeting. Subject to any contribution that I find her lost wages will be assessed on this basis.

Humiliation

[58] I am satisfied that Ms Sullivan was very distressed by her summary dismissal. She described after dismissal feeling too humiliated to leave home even to shop for food and that her self esteem was at an all time low. Ms Sullivan lives alone and said that she likes to work hard and pay her own way. She struggled financially as a result of the sudden loss of her salary. As a result of Ms Sullivan's high profile other people came to hear of her fate and that was also distressing for her. I would assess the level of compensation for humiliation, loss of dignity and injury to feelings of Ms Sullivan, subject to any finding I make about contribution, in the sum of \$12,000.00.

Contribution

[59] I am required under section 124 of the Employment Relations Act 2000 to consider the extent to which Ms Sullivan's actions contributed toward the situation that gave rise to the personal grievance. If I consider that there is contribution then I must reduce remedies that may otherwise have been awarded. Mr Flexman submits that if I got to consider contribution then the contribution is such that I should reduce the remedies by 100%. Mr Wilson submits that no reduction in remedies is merited.

[60] Ms Sullivan was in a very responsible position as branch manager. It was necessary for the respondent to have confidence in her. She was expected in her role, as set out in her position description, to communicate regularly with Mr Bowman and discuss with him any challenges in her work. Ms Sullivan understood that credit would not be extended to the Trust for the travel of the sponsored veterans. She made that clear to X. She further understood from X and emailed the financial manager on 1 May that X had promised \$50,000 early the following week and the balance within 2 weeks. Ms Sullivan said that she was too busy organising the trip to communicate with Mr Bowman during this period.

[61] On 13 May 2005 when payment of the tickets was authorised Ms Sullivan says she did not check to make sure payment had been received as promised. If she had she would have ascertained that \$18,183.50 had been paid by the Trust on 9 May 2005 and \$21,481.15 had been paid on 13 May 2005. That was not the amount that had been promised. Given Ms Sullivan's knowledge that credit was not to be extended and that X was a slow payer it was most unwise of her not to check the financial situation before authorising payment. It was also unwise of her not to talk to Mr Bowman on 13 May 2005 before authorising payment of the tickets. Ms Sullivan put Mr Bowman in a situation on 17 May 2005 where he was placed under considerable pressure to extend credit to the Trust a few days from departure. That was the very situation that he had wanted to avoid. Ms Sullivan did not exercise the type of care in accordance with her duties that one would expect from someone in her position.

[62] If Ms Sullivan had talked to Mr Bowman before authorising payment of the tickets then a calm discussion could have taken place as to whether the tickets were refundable or not and what the funding situation was. Mr Bowman would not have been under the pressure that he was on 17 May 2005 as a result of the tickets having been purchased. There were emails from Ms Sullivan shortly before departure to Italy accepting some responsibility for the situation and indicating in my view knowledge that there would be a consequence.

[63] The misconduct in my view was in the nature of negligence/recklessness that Ms Sullivan was not prudent in protecting TQ3 Navigant from exposure to a level of debt. She believed X that payments would be made. She was unwise to simply accept his word without checking and communicating with Mr Bowman. Even if she believed that the arrangements for the Trieste trip had progressed beyond the point of no return she was reckless in simply authorising payment for the international airline tickets without checking or talking first to Mr Bowman. Although technically not a breach of the credit policy her actions gave TQ3 Navigant no real choice but to extend credit. Regardless of the nature of the tour Ms Sullivan's fundamental obligations and duties were to TQ3 Navigant. There is in my view conduct by Ms Sullivan that did contribute to the personal grievance.

[64] The difficulty in this case is determining the seriousness of the misconduct and the inevitability of dismissal when there were unfair conclusions reached and taken into account about Ms Sullivan deliberately misleading of Mr Bowman.

[65] Ms Sullivan's conduct would have had to have been assessed against her exemplary record over the period of her employment and the nature of the tour putting any misleading conduct to one side. Ms Sullivan was clearly under stress with organising the tour for the veterans and there was considerable media interest. There was a large group of approximately 150 touring. Most of the veterans were in their eighties. It was a significant undertaking for which Ms Sullivan had worked day and night. There were extremely positive comments from the veterans who had attended the tour. There is no doubt that Ms Sullivan worked extremely hard to make the Trieste trip a reality and a wonderful experience for the veterans. There are many positive letters to that effect.

[66] If Ms Sullivan's conduct is considered as negligent or reckless rather than deliberately misleading then I am not satisfied that TQ3 Navigant would have necessarily concluded that her conduct was serious misconduct that went right to the heart of the relationship in terms of trust and confidence and justified dismissal.

[67] I have also considered the issue of the shares. Ms Sullivan should have clearly disclosed them as a matter of good practice and in accordance with policy when she was given them in 2004. Her evidence was that she thought she had made it well known that she was given them and her understanding, which was incorrect in terms of the policy, was that she could retain gifts given outside the office. TQ3 Navigant said this finding of shares gifted further supports that Ms Sullivan's loyalties were divided. I am not satisfied that the gift of shares and non disclosure in 2004 was so egregious that I should take it into account in terms of reduction of remedies.

[68] Ms Sullivan's conduct did not contribute to the conclusion that she deliberately misled Mr Bowman and the failure to properly put that allegation. She had been an exemplary employee and there had never been any reason in the past to question her honesty. Nevertheless I am of the view that the level of Ms Sullivan's contribution was significant with respect to the exposure of TQ3 Navigant to a risk of financial loss which, as at the date of the investigation meeting, was quantified as \$53,392.00. This exposure could have been avoided or managed if there had been some communication earlier with Mr Bowman. I assess contribution at 60%.

Lost Wages

[69] I now apply the contribution assessed to the award I have found in terms of lost wages of \$38,234.41.

[70] I order Navigant New Zealand Limited Trading as TQ3 Navigant to pay to Ruth Sullivan the sum of \$15,293.76 gross being reimbursement of lost wages under section 123 (1)(b) of the Employment Relations Act 2000.

Compensation

[71] I now apply the contribution assessed to the figure I have found should be awarded for compensation.

[72] I order Navigant New Zealand Limited Trading as TQ3 Navigant to pay to Ruth Sullivan the sum of \$4,800.00 being compensation for humiliation, loss of dignity and injury to feelings under section 123 (c) (i) of the Employment Relations Act 2000.

Costs

[73] I reserve the issue of costs.

Further Comment

[74] I want to record that Mr Bowman kept a cool head in very difficult circumstances when advised of the situation on 16 May 2005 that there was no funding for the balance of the trip for the 32 sponsored veterans who were due to leave New Zealand on 22 May 2005. There can be no criticism levelled at him during this period in terms of the decisions that he made and the actions that he took. He was realistic and sensible. He was also supportive. In essence it was TQ3 Navigant by the extension of credit to the Trust which enabled 32 sponsored veterans to travel to Italy for what was by all accounts a wonderful experience.

Summary of orders and findings.

- I have found that Ms Sullivan was unjustifiably dismissed.
- I have assessed her contribution to the personal grievance at 60%.
- I have ordered TQ3 Navigant to pay to Ms Sullivan, taking contribution into account, lost wages in the sum of \$15,293.76 gross.
- I have ordered TQ3 Navigant to pay to Ms Sullivan, taking contribution into account, the sum of \$4,800.00 without deduction for compensation.
- I have reserved the issue of costs.

Helen Doyle
Member of Employment Relations Authority