

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Jessica May Walker (Applicant)
AND Zita Cameron t/a White Swan Tavern (Respondent)
REPRESENTATIVES Mr Richard Mark, Counsel for Applicant
Mr Michael McFadden, Advocate for Respondent
MEMBER OF AUTHORITY Dzintra King
INVESTIGATION MEETING 11 July 2005
SUBMISSIONS RECEIVED 10 August 2005 from applicant
5 September 2005 from Respondent
DATE OF DETERMINATION 12 October 2005

DETERMINATION OF THE AUTHORITY

Ms Jessica Walker, the applicant, says she was unjustifiably dismissed by the respondent, Zita Cameron trading as the White Swan Tavern. Ms Walker worked as a part time bar manager at the White Swan. The respondent says she resigned.

Pokie Machine Discrepancies

Mr Barry Gulliver works as Ms Zita Cameron's personal assistant, helping manage three hotels in the Far North. Ms Cameron took over running the pub from her daughter, Ms MacCulloch. Mr Gulliver said the hotel had lost money previously so he and Ms Cameron were concerned to ensure they were very careful with procedures. The pub has a number of pokie machines and Mr Gulliver found that discrepancies were occurring. Pub Charities Ltd was contacted and a full audit was carried out. Technicians examined the machines and ascertained that they were all reading accurately. It then became Mr Gulliver's responsibility to investigate the discrepancies and ascertain how they were occurring. On looking at the records he found that a number of discrepancies appeared to be linked to Ms Walker.

Time Discrepancies

Leaving aside the pokie issue, Mr Gulliver also had concerns that Ms Walker's claimed hours of work were inaccurate and that she was shutting the pub early. On three occasions Mr Gulliver, together with Ms MacCulloch drove to the pub in the evening when Ms Walker was rostered on the late shift on her own and found it closed, with no sign of Ms Walker. Mr Gulliver subsequently checked the time records and found discrepancies.

On 13 January 2005 at 9.05pm the pub was closed, the log report from A1 Security showed the alarm had been set at 21.02.34 but Ms Walker had recorded that she had worked till 9.30pm. Furthermore, the till tapes showed that the bars had been shut down around 7pm. Ms Walker said the lounge bar had continued to operate. Ms Cameron said the lounge bar had not operated since she took over the tavern. Ms Walker then said she had meant that the pokie machines in the lounge bar area were operating and that the tills had been closed because the pokie users were elderly women who did not drink.

On 19 January the tavern was closed at 7.30pm, the alarm had been set at 19.21.55 and Ms Walker's timesheet indicated she had finished at 8pm.

On 20 January at 8.45pm the pub was closed, the alarm had been set at 20.38.28 and she had claimed that she had worked till 9.30pm.

When I asked about the discrepancies she said that she had walked around the pub picking up rubbish and checking that the windows were closed. Mr Gulliver said it would take less than five minutes to walk around the pub; it was small. She also said that sometimes she had worked extra hours and had not claimed for those so the hours on the timesheets were for hours actually worked, albeit on different days. She then said she did not really know why she had written down the times on her timesheet.

In relation to the pokie machines, Ms Walker said that the time written for one of the refills was incorrect. However, the video tape of the day on which she had signed that she had refilled a machine twice in the space of an hour does not show anyone filling that machine at that time.

Mr Gulliver's Actions

Mr Gulliver phoned a legal representative and asked what he should do in such circumstances. He was told to have two meetings, and that Ms Walker was to be told she could have a representative. At the first meeting she was to be told that a disciplinary meeting would be held and at the second meeting she was to be told what the concerns were and to be given an opportunity to give a response. Mr Gulliver was told that she could be suspended on pay at the second meeting until the outcome was determined.

On 11 March Mr Gulliver gave a letter to all staff saying that pokies' money had been down, that any further thefts would be reported to the police and anyone found to have been stealing would be dismissed immediately.

He then spoke to Ms Walker and told her he wanted to have a meeting about some concerns that he had. On 13 March he phoned her and asked her to come in to a meeting. At first she said she would be half an hour but then rang back and said she would come in in five minutes and get it over with.

The Meeting: 13 March

Ms Walker and Mr Gulliver disagree about many aspects of this meeting. What is agreed is that Mr Gulliver spoke to Ms Walker about the discrepancies in the timesheets and asked for an explanation. There also seems to have been some discussion about the pokie machine discrepancies. There is a videotape of this meeting but it does not have a sound recording. The meeting was very short. Ms Walker arrived at 9.15 and she left at 9.23. It is agreed that Mr Gulliver asked her to return her keys and that she left the office, got the keys and Mr Gulliver, says, threw them across the desk at him. He says that at that point Ms Walker said "Fuck you, stick the

job up your arse” and walked out. Ms Walker says he asked her for the keys and then told her he no longer needed her services. Mr Gulliver said he did not dismiss her because he hadn't even got to the stage of putting all the allegations to her.

Mr Gulliver's account of when he had asked for the keys varied but on watching the video it appears that it must have been close to the end of the meeting as Ms Walker can be seen leaving the office and on her return taking a key from a keyring and then throwing it down on the desk.

Mr Gulliver produced notes which he said he had made as the meeting progressed. The video does not bear this out and the chronology is not accurate so the notes must have been made after the meeting. The notes state “stormed out (no explanation)” but there is no reference to Ms Walker's alleged comments about the job.

Credibility

Credibility is central to this case. There were inconsistencies in the evidence of Mr Gulliver and Ms Cameron. Ms Cameron's written brief says that when Mr Gulliver phoned her after the meeting he told her what Ms Cameron had told him what to do with the job but when I asked her during the meeting she said she could not remember what he had said; and then said he had told her he hadn't been able to finish the discussion.

However, there were far more serious inconsistencies in Ms Walker's evidence. Her explanations for the time sheets cannot stand. Her evidence changed. When, for example, Ms Cameron said she had been approached by two staff members who were concerned that Ms Walker had tried to get them to walk out and leave Mr Gulliver to run the pub on his own, Ms Walker at first denied saying this but then said she might have said that.

I accept Mr Gulliver's evidence that he had not completed the discussion he wanted to have, that Ms Walker got her keys and threw them down and left. Ms Walker does not have a personal grievance.

Even if I had made a determination that Ms Walker had been unjustifiably dismissed her level of contribution in making false time sheet claims would have been such as to disqualify her from the award of any remedies.

Costs

If the parties are unable to resolve the issue leave is reserved for the respondent to file a memorandum within 28 days of the date of this determination. The applicant should then file a memorandum I reply within 14 days of receipt of the respondent's memorandum.

Dzintra King
Member of Employment Relations Authority