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Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Sharon Elizabeth Faloon (Applicant)
AND Chief Executive of the Department of Corrections (Respondent)
REPRESENTATIVES Miriam Davie, Counsel for Applicant
Antoinette Russell, and Katie Elkin, Counsel for Respondent
MEMBER OF AUTHORITY P R Stapp
INVESTIGATION MEETING Wellington, 5 June 2003
SUBMISSIONS 9 & 12 June 2003
DATE OF DETERMINATION 5 August 2003

DETERMINATION OF THE AUTHORITY

Employment relationship problem

1. Sharon Faloon's employment relationship problem lodged in the Authority relates to a number of complaints she made during her employment with the Department of Corrections (the department) and its decision to dismiss her and her subsequent resignation. The complaints related to alleged abuse in the workplace from a colleague, stress in her employment and work overload in her duties not covered by her job specification. She also had complaints involving her duties and associated health involving a visit to another workplace on her own with five inmates (what will later become the Taylor Preston matter) and an accident in her car at Rimutaka.
2. The department conceded the decision was made to dismiss Ms Faloon in regard to serious misconduct for not disclosing money she received during her employment and her conduct in regard to a Christmas card email that she dispatched following a meeting that was disputably in confidence. The department contended it conducted a fair investigation and disciplinary procedure.

3. The department has rejected any claims from Ms Faloon for a personal grievance.

Chronology of events

4. Sharon Faloon commenced her employment with the Department of Corrections on 24 September 2001. Rick Reeves the Wellington Site Manager of the Corrections Inmate Employment (CIE) Business Unit, Alfred Gilbert the Wellington Implementation Manager and another employee Steve Louis, were the panel members that interviewed Ms. Faloon. The position that Ms Faloon applied for was Site Co-ordinator. She was successful, and on 20 September 2001 acknowledged the receipt of the department's Code of Conduct, acknowledging that she understood that a breach of the Code could lead to disciplinary action including dismissal.
5. Ms Faloon says that at her appointment interview she was told that she would have no one on one interaction at all with any inmate. She also says that at no time was the Release to Work Programme (RTW) mentioned as part of her job role. She says that at the interview she would have mentioned that she had had a back problem and required the use of a wheelchair and referred to driving an automatic car. Mr Reeves and Mr Gilbert deny that Ms Faloon informed them of any "physical restrictions". This is a matter of dispute.
6. Ms Faloon reported to Richard Reeves. He reports to Russell Gratten the Regional Manager. Mr Gratten reports to Royden Motu the Manager of Central Corrections Inmate Employment (CIE) Business Unit. In turn Mr Motu reports to Richard Morris the Chief Financial Officer.
7. The aim of the Corrections' Inmate Employment Business Unit is to reduce re-offending by educating inmates in industries where they learn work habits and skills. CIE owns a number of businesses, including farms, concrete plants, forestry, horticulture, joinery, and engineering workshops. In addition, CIE operates all of the kitchens in the prisons around New Zealand.
8. Ms Faloon's role as a Site Co-ordinator in Wellington was a new role. The duties of the Site Co-ordinators include the placement of inmates into activities, overseeing inmate training, reporting, liaising with training organisations to facilitate the provision of training to inmates and to manage the instructors' ability to provide training to inmates through industry training organisations.

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9. On 8 August 2002 a meeting occurred between Ms Faloon and the National RTW Advisor¹ to go over the RTW processes. This meeting apparently did not go well. Ms Faloon says that she was yelled at. Ms Faloon reported this to Mr Reeves who told her to provide a written report so that it could be followed up. She was also told that she would need to lay a complaint giving her formal report of the actual facts that occurred. Ms. Faloon took none of those steps immediately.
10. On 20 September 2002 Mr. Gratten sent Ms Faloon an email where he expressed concern at the little progress towards achieving the RTW targets. Ms Faloon replied that the problem was with the Public Prison Service (PPS) rather than with her and her colleagues. In her reply she provided an update of the RTW scheme. At this point she also made various allegations that she had been bullied and abused, the national advisor's methods did not work and she was generally incompetent and provided no support. Ms Faloon claimed that she was not getting the support or information needed to do her job. She further outlined a situation where an instructor had made a complaint against her and had a run in with another manager. At this point Ms Faloon claimed to have enough backing documentation and witnesses to go to the Employment Relations Service or a lawyer with an employment complaint. She said the only reasons she had not done so was that she "*had such a good manager... I would not want to include him*". Although she continued to make complaints orally it was not until a meeting with Mr. Kendall and Mr. Reeves much later in December that she provided a formal report.
11. On 29 October 2002 Ms. Faloon was required to escort 5 prisoners to Taylor Preston meat works and remain with them there. She exacerbated a back injury while she was there.
12. On 31 October 2002 Ms Faloon had a serious car accident driving along a public road at Rimutaka where a tractor fell on to her car. This was accepted by ACC as a motor vehicle accident. Ms Faloon was in pain and on medication because of the accident. She was off work completely for two weeks and then returned to work for four hours per day. Ms Faloon raised her various problems with the department's Chief Executive directly. She referred to the allegation of abusive treatment of an employee and suggested that rather than take a case in the court, her salary should be increased. She suggested that disestablishing the national advisor's position could absorb increased cost. The Chief Executive forwarded her email to

¹ I have deleted the name and the name of another employee, both of whom have not been involved in this investigation and whom Ms. Faloon made allegations against during her employment. Nothing ultimately turns on the issues involving these two employees. For completeness their names are suppressed from publication under clause 10 (1) of Schedule 2 of the Employment Relations Act.

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Mr. Motu who subsequently contacted Mr Reeves about it. It was decided that the best course of action was to meet with Ms Faloon to discuss her complaints.

13. On 12 November 2002 Ms Faloon sent an email in which she stated that a document the national advisor was referring to in an email requesting comments on the national forms for RTW had actually be written by her and a colleague at Rimutaka Prison.
14. On 18 November 2002 Ms Faloon sent an email referring to two incidents where two CIE National Office staff had plagiarised her professional work and she claimed that she had legal grounds to take action against them. Ms Faloon also said that she had enough documentation to sue under contract given the alleged treatment she had been subjected to by the national advisor.
15. On 26 November 2002 Ms Faloon further complained about the national advisor's alleged treatment of her. At this point the Managers, Messrs Gratten and Motu forwarded the problem to Tim Kendall, Human Resources Manager. He suggested that EAP might assist.
16. On 27 November Ms Faloon went off work for two weeks. Although she was cleared to work for four hours per day, Mr Reeves considered that she was not up to it. She agreed that she was under some considerable stress and it was further recommended that she contact EAP, which she did not do. Upon Ms. Faloon's return to work a meeting with Tim Kendall and Mr. Reeves was organised. Mr Kendall and Mr Reeves say that this meeting was offered either as a formal meeting or in confidence. They say that it was agreed the meeting would be in confidence. The applicant says that this was not the case.
17. At the meeting they discussed the matter of the alleged plagiarism and the complaints about other staff and Ms. Faloon's health. The meeting discussed her allegations of plagiarism and Mr Kendall says he explained that information or documents developed within the department's time for the department were the property of the Department. Also any documents that were introduced to the department for the purposes of undertaking an employee's duties became the property of the department for its use. The issue of Ms Faloon's repeated statements regarding the national advisor were raised and Mr Kendall and Mr Reeves say that they gave her guidance to the effect that a formal complaint had to be made detailing all the facts and the allegations. Ms Faloon's health status was also raised as to whether she felt able to continue in the position given her injuries.
18. Shortly after the meeting above Ms Faloon sent a "*Merry Christmas*" card (document 20) out to other staff. It said that she had been told CIE actively encouraged plagiarism.

19. Ms. Faloon's card read as follows:

Hi everyone

Merry Christmas

Well I am back to 50% fitness, which is all I need to do this job. I met with Tim Kendal Human Resources Manager yesterday re the plagiarism by [] and [] and was told CIE actively encourages people to this and they have no problem with it at N.O So.

They are not going to do anything about []'s abusive behaviour at all so it looks like I will have to take it to Court. Not my first choice but the woman is a menace.... (Document 20) [I have deleted the names].

20. Mr Kendall and Mr Reeves say what she was actually told was that the department owns documents prepared by employees when they are working for the department. They deny any plagiarism.
21. In late December Ms Faloon received a payment from Bruce Findlay, a Director of ILP Education and Training Limited (ILP). The payment was in the sum of \$250.00. Mr Findlay approached Ms Faloon as a qualified professional for some input into an application in regard to funding of courses in 2003. He says that he became aware that Ms Faloon was the victim of an unfortunate accident. This caused him and his wife considerable consternation. As it was approaching Christmas they thought that for the help that she had given the company and to bring some joy into her life they would give her a Christmas card with a cheque for \$250.00 with the general message for a happy festive season. Mr Findlay delivered the card and the cheque personally to her at work.
22. At this stage Ms Faloon had not disclosed, except to a local colleague, that she had received any gift, as she was required to do so under the Code of Conduct.
23. On 19 December 2002 Ms Faloon emailed Mr Reeves that she was still considering whether to "take court action against Kathleen or should I say CIE for abuse" (document 16). She requested Mr Reeves raise her issue with national advisor's supervisor.
24. On 20 December 2002 Ms Faloon clarified by email that her major issue with the national advisor and another staff member was the impact of their behaviour on other staff (document 17).
25. On 22 December 2002 Ms Faloon emailed Mr Reeves asking for action to be taken against the national advisor. She stated that this was not a personal grievance, but just an attempt to protect herself and other site co-ordinators (document 28).

26. In the meantime Ms Faloon provided a formal complaint alleging that the actions of the national advisor were damaging her employment. Mr Reeves referred Ms Faloon's documentation to Tim Kendall and the national advisor's manager on 6 January 2003 (document 24).
27. Ms. Faloon referred to emails between her and other CIE site co-ordinators regarding RTW and emails between her and another staff member and Mr Reeves regarding a Unit Standard 497 and attached sections of employment law printed out by Ms Faloon. On 11 January 2003 Ms Faloon sent another email to Mr Kendall and Mr Reeves (document 24). This email contained reference to taking action in the Employment Court again. Ms Faloon claims specifically that the national advisor should not retain her position.
28. On 13 January 2003 Mr Gratten sent Ms Faloon a letter that read as follows:

"In December you sent mail to the other site inmate employment co-ordinators. This mail contained a number of statements that appeared to breach the Department's Code of Conduct. The allegations you make about the Department within the Department into disrepute and they are dishonest.

I need to hear your explanation regarding this matter and consider whether any steps are appropriate. For this purpose I have scheduled a preliminary interview that gives us an opportunity to discuss the issues and consider your views. No further action will be taken until your explanation has been taken into account. If your explanation satisfactorily explains events then that will be the end of this matter.

Please note that this is not a disciplinary interview. However, if your explanation does not resolve this issue, then the next step would be to conduct a full and fair investigation. It is only after such an investigation is completed that disciplinary action may be considered.

You may wish, and you certainly have the right to bring a representative to this meeting. Tim Kendall, HR Manager will be present with me at the meeting, which I have scheduled for 17 January, at 11:00 a.m. in an office at the Staff College."

29. Mr Reeves upon finding out about the cheque rang Bruce Findlay to ask him about it. Mr Findlay informed Mr Reeves that Ms Faloon had done a paper for him based around the department's requirements for funding for inmate employment and training. Mr Reeves says that at no time did Mr Findlay indicate that the money he gave to Ms Faloon was a Christmas present.
30. On 16 January 2003 Mr Reeves sent a memo to Russell Gratten about the cheque and the phone call with Bruce Findlay, saying that Ms. Faloon had received a cheque for

approximately \$200 from a service provider (ILP Education and Training Limited). He told Mr. Gratten that Mr Findlay had confirmed that he had given a cheque to Ms Faloon and explained that Ms Faloon had done some work for him to clarify the department's position that enabled ILP to apply for funding to provide inmate training. The payment was in recognition of Ms Faloon providing a service and that she "*possibly incurred some cost in doing so*". Ms Faloon had not declared receiving the amount in question. Mr Gratten decided to raise this matter with Ms Faloon at the meeting scheduled for 17 January.

31. A meeting was held between Tim Kendall, Mr Reeves and Ms Faloon on 17 January 2003.
32. The meeting was held at Rimutaka Prison and another person present took the notes. Initially Ms Faloon denied receiving the letter sent to her on 13 January, but decided to proceed with the meeting. She was advised of the allegations, but told that she did not need to respond to them until she had taken advice from a representative. This was apparently reiterated several times during the meeting. Mr Gratten and Mr Kendall's recollection of Ms Faloon's responses were that:
 - (a) The intent of her memorandum had been mis-read;
 - (b) She had been medically cleared to work at the time she sent the memorandum;
 - (c) She had received advice and that she had been in a position of diminished responsibility due to the high levels of medication she had been taking;
 - (d) With regard to the cheque from ILP Ms Faloon initially denied receiving the payment, then recalled receiving something, but not as much as \$200.00, and said she would need to check her bank records, and had not reported receiving the cheque to Mr Reeves. She confirmed that she knew Bruce Findlay because he provided training to inmates.
33. During a brief recess Mr Gratten decided that Ms Faloon's explanations were not satisfactory and the decision was made that a disciplinary meeting would be required. This was scheduled for the afternoon of 22 January 2003. Mr Gratten gave Ms Faloon the name of the local PSA delegate and suggested she seek advice before the next meeting. She was suspended and placed on paid special leave until the next meeting.
34. Mr Gratten wrote to Ms Faloon on 17 January 2003 in a letter outlining the allegations against her informing her that a scheduled formal disciplinary interview was to be held on 22 January 2003. He outlined the allegations in his letter as follows:
 - "*Unethical behaviour in reporting to a number of uninvolved staff a meeting that had been agreed as being confidential and making unsubstantiated allegations about other staff members (names deleted) in a manner that may damage their reputations but gives them no opportunity to reply;*

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- *Bringing your employer into disrepute. Alleging that the Department not only commits a crime (plagiarism) but also actively encourages employees to commit that crime;*
- *Dishonesty in the workplace. Writing to others that the Department was not going to do anything about other employees' behaviour, when that was not what you had been told. Your statements about plagiarism were also dishonest;*
- *Using your position in the Department for personal gain by accepting a gift of money from a supplier”.*

35. The letter was posted and emailed on 20 January 2003 (document 30).
36. Ms Faloon replied to the email on 20 January 2003. She denied admitting the allegation in the meeting on 17 January. Her reply can be summarised as:
- (a) She did not remember the letter she was charged with emailing;
 - (b) Other people had access to her log on and email at the same time she is alleged to have sent this email;
 - (c) That the money from Mr Findlay was subsequently returned to him and that he was not a provider for the Department;
 - (d) That at no time did she consider she was being provided with a back-hander, but was very uncomfortable receiving a gift;
 - (e) The amount of the gift was irrelevant as she is used to earning \$100,000.00 per annum;
 - (f) She would be unable to meet on Wednesday due to family illness; and
 - (g) That she would be presenting a case to the Employment Relations Service outlining four employment problems that CIE had either alleged or not addressed.
37. In a second email on 20 January 2003 Ms Faloon informed Mr Gratten that it had come to her attention that an employee of CIE had been paid by ILP for services rendered. She had spoken to Bruce Findlay who assured her that he was in no way attached to the department at all and the gift was a Christmas gift. Ms Faloon was asked to supply the name of the person she alleged was being paid by ILP. This was a new issue and needed to be addressed. Ms Faloon replied the same day saying that Mr. Reeves had the name and this was followed up with Mr Reeves where upon it was determined that Ms Faloon's claim about the person had no foundation.
38. Ms Faloon arranged for the PSA to represent her. Ms. Faloon authorised an organiser with the PSA to represent her in the disciplinary setting. The organiser advised Mr Gratten that Ms

Faloon had to go to Napier as her mother was ill and therefore would be unable to attend the meeting on Wednesday, 22 January 2003.

39. A meeting was arranged for Friday, 24 January 2003. Mr Gratten was not able to attend the meeting and instead Mr. Motu took over. Mr Motu in his role in the chain of management was aware of the allegations of abuse from 14 November 2002 (document 7). Mr Motu and Mr Kendall say that the meeting on 24 January was a meeting that enabled Ms Faloon and her representative to mitigate the admission of the receipt of the sum of money from Mr Findlay and the sending of the Christmas card. Mr. Gratten and Mr Reeves had taken exception to the Christmas Card and how Ms Faloon was representing the situation amongst the staff arising from what they considered a confidential meeting. The mitigation raised was that Ms Faloon was suffering the effects of work-related stress and the accident on 29 and 31 October and the resultant medication had impacted on her and that she had not been properly inducted.
40. Following an adjournment in the meeting Mr Motu decided that the matters were all serious breaches of the Code of Conduct and he could see no course other than dismissal. The key issues were:
- (a) Ms. Faloon's behaviour towards her work colleagues. Mr Motu's concern was that Ms Faloon's communication to other staff members was made in a way that the other staff being complained about could defend themselves;
 - (b) Ms. Faloon mis-represented her meeting with Russell Gratten and Tim Kendall where she claimed that CIE actively encouraged employees to plagiarise work and said that the department would not take action against staff for misconduct;
 - (c) The information received by Russell Gratten and Tim Kendall that Ms. Faloon had accepted a payment of \$200.00 from ILP. She did not provide any satisfactory explanation that this sum was a gift as opposed to information that she had assisted ILP in its bid to provide training to the department.
 - (d) That the meeting with Tim Kendall and Russell Gratten was a confidential one and that Ms. Faloon chose to have the confidential meeting rather than on the record. She then communicated openly to other staff and disclosed, and misrepresented the content of that meeting to the staff.

41. Mr Kendall's involvement was to confirm the situation arising from the meeting on 24 of January 2003. He says that after Mr Motu had considered what had been said he told Ms Faloon that he was dismissing her for serious misconduct.
42. Ms. Faloon's representative asked for some time alone with Ms Faloon. When the meeting re-convened the representative told Mr Motu that Ms. Faloon would like to offer her resignation. This was considered having regard to the implications of a dismissal on Ms. Faloon and her future employment prospects. The decision was taken to allow Ms Faloon to resign provided that her file would show that she not be re-employed by the department in the future. Ms Faloon wrote out her resignation by hand and it was handed to Mr Motu (document 46). She also wrote an apology (document 47).

Comment

43. There are two angles to this problem. The applicant has based her claim on causes of action relating to the workplace and her dismissal. The department conceded that the initiative for the termination of the applicant's employment for serious misconduct came from the department when Mr. Motu decided to dismiss her. In my opinion the department did not have to make that concession for reasons that will become apparent later. The applicant resigned and in that regard I will also scrutinise whether or not it was a voluntary resignation.
44. At the outset nothing turns on the work related matters raised by Ms. Faloon. Difficulties appear to have arisen in Ms Faloon's role with the RTW. This is highlighted by a number of complaints that Ms Faloon made in regard to vehicle use, contact with inmates, and training and Ms Faloon's complaints about the increase in her workload and having access to a cell phone. These were all matters raised by her in the context of allegations about being abused, her work circumstances and the two accidents. The department not unreasonably continually sought from Ms. Faloon details of her complaints and gave guidance to her in December to put any complaints in a formal report. I am not satisfied that Ms. Faloon's complaints relating to her work place in regard to her duties, hours and the cello phone and use of vehicles were any more that internal issues rather than claims of personal grievances. These events were overtaken, by the Christmas card incident and the Findlay money she received and did not disclose. Finally, the matters to do with the accidents were dealt with.
45. This is a case where Ms. Faloon had previously raised what she considered were issues between her and the national advisor involving a number of allegations about the national advisor's behaviour. I am supported in this conclusion by the applicant's statement that on 22

December 2002 when she said that this was not a personal grievance, but just an attempt to protect herself and other site co-ordinators (document 28). She was requested to put her allegations in writing with sufficient detail for the department to investigate the matter. She did not do this except to reiterate her allegations. Even so she took no steps to pursue the matter due to the consideration she held for her manager such as saying she "*had such a good manager... I would not want to include him*". The applicant however, persisted with complaining about plagiarism in regard to national forms for RTW while still complaining about being abused by the national advisor.

46. In the meantime Mr. Reeves took up the problem with her with Tim Kendall. Ms. Faloon agreed with Mr. Reeves to take leave because she was unwell and because of the accident at Rimutaka. This was accepted as a motor vehicle accident under ACC. Nothing can turn on it. Nothing appears to have happened in regard to the Taylor Preston visit where Ms. Faloon acerbated her back injury but that she subsequently took time off work to recover after the Rimutaka accident.
47. There is a dispute about the nature of the meeting held between Mr. Reeves and Mr. Kendall and Ms. Faloon that was held in late December 2002 and whether it was confidential or not. At the meeting the department put to Ms. Faloon its position on the ownership of property in regard to plagairism and informed her that she needed to provide details of her complaints against the other staff members. She provided a formal complaint on 6 January but prior to this did not raise any personal grievance, although she threatened but withheld taking action in Court. I conclude that the matters being raised by Ms. Faloon were all matters relating to her employment that she wanted addressed or investigated but were delayed and then overtaken by concerns important to the department about her conduct.
48. Ms. Faloon accepted that she sent the Christmas Card. This card caused concern to the managers, who wanted an explanation. This was a reasonable reaction. However at the same time the department became aware of the Findlay payment. It decided to pursue it. This was reasonably open to the department considering issues that it had had with Mr. Findlay previously and the existence of the department's code. The department's account of Ms. Faloon's reaction and the information it had from Mr. Findlay to the matter was enough that a fair and reasonable employer could decide to hold a disciplinary meeting.
49. Ms. Faloon was put on notice of the decision to hold a disciplinary meeting and her right to have a representative. She was assisted in getting a representative. The issues were properly put to her. They related to the department's belief that Ms. Faloon had acted dishonestly by

accepting a payment for personal gain that she initially denied and then accepted that she had received the payment. She was seen as dishonest for writing to others in regard to matters the department viewed as confidential involving unsubstantiated allegations about staff who had no opportunity to reply and bringing the department into disrepute.

50. I conclude that all the other matters that were raised by Ms. Faloon in regard to her work that she was complaining about (in the 6 January formal complaint) went into abeyance. They were overtaken by the seriousness in which the department viewed her receiving the sum from Mr. Findlay and the Christmas Card sent to other staff purporting that the department actively encouraged plagiarism.
51. The department decided to dismiss Ms. Faloon. Mr. Motu was the decision-maker. He decided that her behaviour towards other staff was unacceptable, reaching a conclusion that they were beyond reproach. He could not explain how he could reach this conclusion when Ms. Faloon's complaint about the national advisor was in abeyance and still required further action, especially given the complaint made in writing on 6 January. There has been no evidence that any of the complaints were taken up in an investigation. However he was rightly concerned about Ms. Faloon's public and open communication in regard to plagiarism and what Ms. Faloon was conveying about the department in the Christmas card message.
52. Mr. Motu concluded that the Reeves/Kendal and Faloon December meeting was confidential and that Ms. Faloon had misrepresented the discussion. He has not explained how he could conclude that Ms. Faloon consciously attempted to defame CIE as an organisation other than the reliance on the Christmas card being sent to other staff. He clearly has not accepted that Ms. Faloon did not consider it a confidential meeting but does not say how he decided it was unless he has elected to believe Mr. Reeves and Mr. Kendall over the applicant. He does not say how he could have believed them and not Ms. Faloon.
53. I hold that relying upon the Christmas card was enough that a fair and reasonable employer could conclude that she was putting the department into disrepute. Mr. Motu's conclusion was that she breached the confidence of her manager and could not be trusted because of the content of the card. At this point the matter became one of confidence and trust for Mr. Motu. Underpinned by what he considered was unethical behaviour (the Christmas card) and bringing the department into disrepute and mis-reporting the meeting. He also decided that Ms. Faloon had used her position for personal gain in receiving the money from Mr. Findlay. He had the evidence of her at first denying receiving anything then admitting she did receive a sum. The evidence has also been that it was considered that Ms Faloon provided a service and



that she "*possibly incurred some cost in doing so*". There has been no explanation of this from the department witnesses. It appears to have been raised in the evidence for the first time without explanation. Mr. Motu also concluded that Ms. Faloon had defamed individuals. There was no evidence about how he could conclude this given there had been no investigation on the complaint of 6 January. I have decided nothing will turn on these, however.

54. It was acknowledged that Ms Faloon had received the Code of Conduct but the representative said that Ms Faloon had not been properly inducted into the department thereby contributed to a lack of understanding, particularly in regard to the receipt of any money. Nothing will ultimately turn on this because Ms. Faloon had received the code and admitted she received the money. Ms. Faloon and her representative attempted to mitigate the penalty Mr. Motu decided to apply in dismissing her and then letting her resign.
55. I conclude that a fair and reasonable employer could conclude that Ms. Faloon had acted unethically. There was evidence for the employer to conclude that Ms. Faloon mis-reported the meeting and made allegations about the department's involvement in plagiarism. There is evidence that was open to the employer to conclude that she used her position for personal gain when it had been found out she had been given some money and not properly disclosed it to her manager. There was conflicting information about the money and card from Mr. Findlay in the reports the department had received from them. I have given greater weight to this than the evidence put to me that Ms. Faloon had defamed other people and that the department considered Ms Faloon "*possibly incurred some cost in doing so*" that was never properly explained by the department's witnesses.
56. Furthermore Mr. Motu had in front of him information regarding Ms. Faloon's explanation. She did not add anything to her explanation to make a difference. She did not produce any evidence supporting her claim of diminished responsibility considering she had been partially cleared for work. There is no doubt that she had been ill and stressed given the serious accident at Rimutaka. There was also the combination of various factors in her work and outside work that probably contributed to her stress but not to the extent that I can hold her employer responsible for considering her claims and the explanations from her managers. Even if I am wrong the fact that she took the sum and later returned it, whether or not it was a gift, she did not properly disclose it and left her open to criticism. Further she very foolishly wrote the Christmas card that her managers could not, as she says, misread given all their reaction to it.

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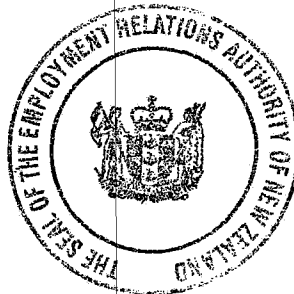


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57. I conclude that a fair and reasonable employer could conclude that there had been a loss of trust and confidence in such circumstances to warrant a dismissal. These two incidents as put by the managers are obvious enough to suggest that all the other matters raised did not cause the decision to be influenced by irrelevant considerations, which relate to all the other matters raised by Ms. Faloon in these proceedings. This is a case of a loss of trust and confidence in regard to two matters involving a disparaging Christmas Card and the alleged involvement of the department in plagiarism and Ms. Faloon receiving a sum that was not properly disclosed without an adequate explanation.
58. There appears to be no question that until recently Ms. Faloon has relied upon any of the other work-related problems and complaints to resign over. Also they do not appear to have been raised at the time to be pursued as grievances and with sufficient independent evidence for the employer to take a different view of Ms. Faloon's circumstances.
59. The fact that Ms. Faloon resigned supports my conclusion because she was represented at the time, although the initiative for the resignation came about because of Mr. Motu's decision to dismiss her. Alternatively Ms. Faloon resigned in circumstances where she was represented and that was her choice upon her own and her representative's initiative.
60. Costs are reserved for memoranda unless the parties can settle.



P R Stapp
Member of Employment Relations Authority



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