

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Grant Woodhouse (Applicant)
AND Bond St 2004 Ltd t/a Bond Street Lodge (Respondent)
REPRESENTATIVES Ken Nicolson, Counsel for Applicant
Bryce Quarrie, Counsel for Respondent
MEMBER OF AUTHORITY Robin Arthur
INVESTIGATION MEETING 18 August 2005
DATE OF DETERMINATION 27 September 2005

DETERMINATION OF THE AUTHORITY

[1] Grant Woodhouse was employed from 1 April 2004 as general manager of the respondent's accommodation business in Kingsland. He was dismissed on 5 August 2004 and required to vacate the manager's flat by midday of the following day.

[2] On 24 May Mr Woodhouse's employers met with him to discuss issues regarding his performance. On the following day he was issued with a letter of written warning.

[3] Mr Woodhouse disputed the warning was deserved or properly discussed with him. He did so in an email to his employers on 6 June and in a meeting with one of them on the same day.

[4] In deciding to dismiss Mr Woodhouse, the respondent now says it relied on items listed in the written warning and additional or ongoing issues that arose in the performance of his work.

[5] Mr Woodhouse claims he was unjustifiably dismissed, without fair warning and without the opportunity to be represented or respond to all the respondent's reasons for dismissing him. He seeks remedies of lost wages, full contractual notice, compensation for hurt and humiliation, and his costs.

[6] Mediation of Mr Woodhouse's claim occurred on 13 January 2005 but was unsuccessful. It was not until mid-July 2005 that Mr Woodhouse asked for the matter to proceed to investigation and determination by the Authority. At a directions conference in early August counsel for the respondent advised that his clients were likely to leave to New Zealand to holiday in Europe and do business in Italy during the period of late August 2005 to early February 2006. To prevent unnecessary delay for either party, the Authority was able to schedule an investigation meeting on 18 August. The investigation meeting heard evidence from the applicant and two witnesses for the respondent. Further evidence was taken from one further witness on 29 August. Counsel for the respondent provided two further documents – one a letter from the Police, and one a letter from a

subsequent employee or consultant of the respondent. Both parties filed written closing submissions on 12 September.

[7] Particular issues for determination are:

- Whether the final written warning was an unjustified disadvantage?
- Whether the respondent's actions in dismissing the applicant were what a fair and reasonable employer would have done in all the circumstances at the time of the dismissal?

Background facts

[8] The respondent's business comprises a 57-room lodge and nearby block of 19 apartments providing rooms for rent to long-stay residents and shorter-stay overseas students and tourists.

[9] Julie Duffy is the sole shareholder and director of the respondent company, trading as Bond St Lodge. She operates the business with her personal partner, Mark Giordani. They took over the business in late March 2004.

[10] Mr Giordani says they employed Mr Woodhouse as general manager because he was the best candidate at interview, he promptly provided references, appeared quiet and clean, and, as a former Police officer, would be honest and used to dealing with people.

[11] Mr Woodhouse was employed under the terms of an individual employment agreement with a detailed job description. The agreement was a standard form provided by the Restaurant Association with a number of changes made and initialled after discussion between the parties. It provided for a 48 hour week and six weeks notice. The agreement does not say so but the parties agree the terms of employment included a rent-free manager's flat, with phone and electricity paid.

[12] Ms Duffy and Mr Giordani spent the first weeks of April working with Mr Woodhouse to clean the premises and set up systems for operating the business. Mr Woodhouse was also responsible for supervising a part-time office and accounts administrator, Carole Towle, and two part-time cleaners.

[13] Mr Woodhouse used the lounge of his flat as an office area and Ms Towle worked in a smaller office area elsewhere in the lodge.

Loss of money – 24 April 2004

[14] The parties agree that when Ms Duffy and Mr Giordani were away on holiday in late April, Mr Woodhouse lost a sum of money that he was supposed to deposit in the respondent's bank account on Saturday, 24 April. He says \$1259.15. The employers say \$1115.65.

[15] The parties disagree on whether Mr Woodhouse properly reported this incident. The employers say that Ms Towle discovered the incident and reported to them. On meeting with Mr Woodhouse several days later he did not disclose the matter to them until asked. Mr Woodhouse's explanation in evidence was that he did not disclose the loss earlier because he was "embarrassed" rather than guilty, and that he was distracted by the recent death of his uncle.

[16] The employers say the loss of the money understandably made them doubt Mr Woodhouse's trustworthiness. They say this doubt was reinforced by what they understood to be his failure to report the loss, as the employers requested, to the Police. His account is that he had immediately

told Ms Towle (and that is how she was able to tell the employers) and that he had contacted the Auckland Central police station that day to enquire whether the money may have been handed in.

[17] This latter point appeared to be news to the respondent on the day of the investigation meeting. Mr Quarrie agreed to assist the Authority by making inquiries as to whether the Police had any note or recording of the call Mr Woodhouse says he made.

[18] Mr Quarrie subsequently provided a letter from the Auckland Central Police file management unit dated 23 August 2005. This advised that calls to the station are not routinely logged and no written record would have been kept of a query as to whether any money had been handed in. Calls to the communication centres are logged but there is no file for a call made by Mr Woodhouse alleging loss or theft of money.

[19] In late April 2004 Ms Duffy and Mr Giordani arranged for Mr Woodhouse to repay the lost money by instalments. He agreed to deductions from his wages at the rate of \$100 a week. I do not accept their evidence that he was erratic in making those payments and frequently arranged to pay a smaller amount. He says he paid the agreed amount each week except for the week of his father's funeral. The employers accept that the amount was repaid over 14 weeks and certainly repaid in full by the time of his dismissal. To repay around \$1200 over that period he must have made the agreed repayment amount on most weeks.

Written warning - unjustified disadvantage?

[20] Mr Woodhouse's employment agreement sets out a formal disciplinary procedure for dealing with substandard performance or substandard work performance. It sets three levels of disciplinary action – verbal warning, written warning and dismissal. It also provides for dismissal without notice for serious misconduct.

[21] Ms Duffy says that from early May she and Mr Giordani had a number of concerns about Mr Woodhouse's performance. She took advice from the Restaurant Association and arranged a meeting with Mr Woodhouse, offering him the opportunity to bring a support person or representative. The parties cannot agree whether this occurred on 17 May or 21 May or the extent of the discussion. Mr Woodhouse accepts that his employers spoke to him on 21 May about "administration and team building" and "some ways that profits could be improved". He denies he was given a verbal warning. I accept the employer's evidence that the discussion amounted to a verbal warning.

[22] On 24 May Ms Duffy arranged a further meeting with Mr Woodhouse. Mr Woodhouse says he was not told the purpose of the meeting but a note in his diary for that date records Ms Duffy saying: "*Mark [Giordani], you and I get together re those things we weren't happy about. It's a serious meeting so if you want to have a support person there you can.*"

[23] I accept that the employer had concerns about Mr Woodhouse's performance and that it advised him of a wish to meet to discuss those concerns, with a representative. The parties did meet and discuss those concerns and the employer set them out in the form of a final written warning in a letter dated 25 May 2004. Mr Woodhouse's own notes of the meeting (which I saw at the investigation meeting) confirm that the topics set out in the letter were topics discussed at the meeting. He disputes the details of the letter were as discussed at the meeting.

[24] The letter lists concerns with careless handling of money, poor financial control, poor liaison with the office administrator, lack of advertising or marketing of rooms, a poor standard of dress,

delays in producing registration forms and a guest registration system, poor rostering of housekeeping staff and delays in arranging maintenance.

[25] Mr Giordani accepted that Mr Woodhouse phoned him about the written warning and later emailed him on 6 June 2004.

[26] Mr Woodhouse says he then met with Mr Giordani later that day with a written list of items he wanted to discuss. He talked about some items but was interrupted by Mr Giordani who told him that the warning letter was "*a wake up call for you and us too*" and "*let's leave it as it is*". Mr Giordani accepts he used those words or similar words.

[27] I do not accept the inference that Mr Woodhouse invites me to take from that exchange that Mr Giordani was resiling from the warning or its standing. I accept Mr Giordani's evidence that he was encouraging Mr Woodhouse to focus on meeting the expected standards of work.

[28] I do not accept the submission of Mr Nicolson that Mr Woodhouse could reasonably expect not to have work performance issues formally raised with him before a review date of 25 November stated in the 25 May letter. The letter states that if there is no improvement following that written warning, Mr Woodhouse's employment could be terminated. Practically, if on-going or new performance issues occurred, the employer would be entitled to address these earlier than a review scheduled for some six months ahead.

[29] I accept the evidence of Ms Duffy that she and Mr Giordani had identified concerns regarding Mr Woodhouse's performance, gave him sufficient notice and opportunity to prepare to discuss these concerns, did discuss them, and set out the concerns and required improvements in the warning letter of 24 May 2004. Her evidence on those points was consistent with Mr Woodhouse's own notes. That Mr Woodhouse opted not to have a representative or subsequently disputed the elements of the warning does not make the employer's actions unfair in those circumstances. It did not amount to an unjustified disadvantage.

Ongoing concerns

[30] Ms Duffy and Mr Giordani continued to be concerned about how Mr Woodhouse performed his work after 24 May. These concerns arose from their own observations, from visits to the premises on most days, and from reports provided by Ms Towle.

[31] Relations between Ms Towle and Mr Woodhouse were strained. Ms Duffy and Mr Giordani say that Ms Towle did not trust Mr Woodhouse and told them she suspected him of stealing from the business.

[32] She complained that a cash box to which they both had access did not balance. Mr Giordani's evidence was that, once arrangements were made for Mr Woodhouse and Ms Towle to have separate cash boxes, there was no further problems with the boxes balancing.

[33] She reported that two young Brazilian women had complained to her that Mr Woodhouse was "hassling" them.

[34] She contacted her employers late one evening when they were holidaying in the central North Island to report that Mr Woodhouse had left the lodge unattended. Ms Duffy and Mr Giordani drove back to Auckland that night to find Mr Woodhouse was not at the lodge.

[35] She reported that a number of men, and only men, were arriving and leaving from a room rented by a woman to run a massage service. Ms Duffy and Mr Giordani formed the impression that Mr Woodhouse was a previous acquaintance of the woman, that the woman was a prostitute using the rented room to provide sexual services, and that Mr Woodhouse used her services.

[36] Mr Woodhouse had complained to his employers about Ms Towle refusing to provide him with financial information about the business or attend meetings he scheduled with her. In early July 2004 he suggested reviewing her position and giving her a written warning.

[37] By this stage it is clear that Ms Duffy and Mr Giordani preferred Ms Towle's account of events at the business. They took no steps to respond to Mr Woodhouse's complaints.

[38] They say they regularly discussed expected work standards with Mr Woodhouse but had no further formal meetings to discuss his performance. Rather, at some time during June or July, Ms Duffy and Mr Giordani appear to have resolved to dismiss Mr Woodhouse.

[39] Mr Woodhouse suggests this was as early as 5 June 2004. On that date the respondents advertised in the *New Zealand Herald* situations vacant column a position for a "hotel/motel manager" in a 'live-in post'. Mr Giordani says that Mr Woodhouse was told about plans to hire an additional manager to provide cover for the business and reduce the workload for Mr Woodhouse.

Dismissal plans

[40] By mid to late July the employers had resolved to dismiss Mr Woodhouse and told others of their plan. I come to this view largely because of the evidence of Karen Harris, a cleaner at the business at the time. She now works elsewhere.

[41] Mr Nicolson had provided a brief of evidence in the name of Ms Harris but she did not attend the investigation meeting. Both parties urged me to arrange to speak to her later. I did so and took evidence from her on 29 August 2005. Both counsel attended the interview – Mr Nicolson in person, and Mr Quarrie by telephone. Both had the opportunity to ask her additional questions.

[42] Ms Harris told me she had got on well with Mr Giordani and Ms Duffy who had treated her well but denied that she had complained to them about Mr Woodhouse. She left the business after the manager who succeed Mr Woodhouse reduced her hours and spoke to her brusquely.

[43] She believed that Ms Towle complaints to her employers about Mr Woodhouse were unfounded. She gave one example from her direct experience. Ms Towle told her that Mr Woodhouse had wrongly removed \$10 from the cashbox. Ms Harris told her this was not true as she had asked Mr Woodhouse to get \$10 in coins to operate washing machines on the premises.

[44] Ms Harris' recounted conversations she had with Mr Giordani, Ms Towle and Ms Duffy between 20 July and 4 August. Mr Giordani told her that Mr Woodhouse was "burnt out" and would be leaving. Ms Duffy told her that a new person would be starting in place of Mr Woodhouse. Ms Towle told her Mr Woodhouse would be leaving and a new manager would take over.

[45] Ms Harris told me that early on the morning of his dismissal she told Mr Woodhouse about those conversations and that he would be leaving that day.

The dismissal – 5 August 2005

[46] On 4 August Mr Giordani told Mr Woodhouse that he would visit him at his flat the following morning. He did not say why. Mr Giordani's evidence confirmed that he travelled there on the morning of 5 August with the intention of dismissing Mr Woodhouse.

[47] He told me that he remembered thinking as he was driving there that he had not thought about what the proper procedure was for dismissing Mr Woodhouse but had simply thought "*this has got to end*".

[48] He went to the flat and asked Mr Woodhouse to sit down. He then said to Mr Woodhouse: "*Sorry, you're going to have to go.*" Mr Woodhouse asked for the reasons but Mr Giordani's evidence was that he was reluctant to give any: "*I know you are supposed to go in and go over all this again. Grant asked for reasons. I said I don't want to talk about it anymore. I didn't refer to any of the issues again. I had referred to them on a daily basis before.*"

[49] Mr Woodhouse secretly taped the meeting. The tape, and a transcript made of it by Mr Woodhouse, was not filed with the witness statements. It was referred to by counsel for the applicant during discussion of preliminary issues at the investigation meeting, before the employers' evidence was heard. Mr Nicolson sought to introduce the tape and transcript after Mr Giordani had given his account of the meeting of 5 August. During an adjournment I arranged for counsel for both parties to listen to the tape and compare its contents to the offered transcript. Mr Quarrie then confirmed to me that the respondents accepted the transcript was broadly accurate. Mr Giordani told me he was not concerned about the tape and it should be allowed in evidence as the respondent had "*nothing to hide*". Counsel told me the respondent was aware of the existence of the tape from earlier discussions between the parties.

[50] Despite my reservations at the failure of the applicant's counsel to properly arrange for its production in advance of the meeting, the respondent accepted the tape was genuine. I take the transcript as the best available evidence.

[51] It has affected my view of Mr Giordani's evidence. He had told me that on 5 August he had not insisted that Mr Woodhouse leave the next day, and rather it had been mutually agreed that a removal truck would be needed the next day, and that Mr Woodhouse could stay in other rooms on the premises until he could find alternative accommodation. The transcript contradicts that evidence on both points.

[52] More importantly, the tape shows that Mr Woodhouse was dismissed abruptly, without being informed of the reasons, and without the opportunity to be represented, or to comment on the reasons for his dismissal.

[53] There is no dispute in the evidence of the two men that Mr Woodhouse asked for reasons for his dismissal and Mr Giordani did not give them. In fact he went to some lengths to eschew any reasons.

[54] This is clear from these extracts from the transcript:

[Mr Giordani]: *I'll put it all in writing ... I don't want to have too, I asked Julie [Duffy] not to come over, I did [not] want her saying you did this and you didn't do that ... I know you are not a quitter and all that stuff I see by the books and stuff you have got around and I know you weren't when you came here, and so I don't want you to feel bad about it but it's just not the position for you, it's no good. I'll take over the building*

from now, you just relax um oh, we have a removal truck coming in tomorrow, we'll pay for all the removals and bits and pieces and we don't have to, but we will, I insisted on that, some money as well, we'll give you a couple of weeks pay as well, to keep you going.

[Mr Woodhouse]: *So, I don't, you're not even, I don't get the six weeks notice.*

...

[Mr Woodhouse]: *Well, I was, well apart from the issues I have with Carole [Towle] I was quite happy here really ... I don't believe that I've been able to do the things I've wanted to do because of her inability to communicate ...*

...

[Mr Giordani]: *Just forget it, forget it ... I'm going to take over for a little while, we got someone coming in on Monday just to help out for a couple of weeks ... It's not a bad thing, it's a good thing, I honestly believe, look Julie and I like you, I know you are a really nice guy, I know all that stuff, honestly, honestly, ... It's better for us of course ... that we can [get] somebody that's more into ah marketing, motel experience and stuff like that and I think for you it's for you, you're going to kill yourself in this place, when you started here you were in a lot better health, you looked better even though your dad was very sick and that ... I can see you going downhill; it's too many hours ...*

...

[Mr Giordani]: *It's a big job, you're here all the time, you can't, look the time that I was working on the Tuesdays and stuff, I was stuffed, running around all day, getting information out of Carole [Towle], it's hard, all the lies the tenants are telling you and all the bits and pieces, it's just, it's too much and then you have to come back and sleep here as well on top of all that.*

[55] The reality is the employer's true suspicions and concerns were never put to Mr Woodhouse. The evidence of Mr Giordani and Ms Duffy establishes that they had an extensive list of reasons for their decision to dismiss the applicant. These included their belief that:

- “*more money*” had gone missing. This was “*\$20 bucks here, \$50 buck there*” but the problem stopped once Ms Towle and Mr Woodhouse got separate cash tins.
- Mr Woodhouse was drinking alcohol during working hours.
- Mr Woodhouse had “*let a prostitute into the building and was sleeping with her during the day. As soon as he was paid he was there.*”
- Mr Woodhouse had “*abandoned*” the building on some evenings. The occasion identified in the investigation meeting was around the time that Mr Woodhouse's father was fatally ill and subsequently died but Mr Woodhouse had not made arrangements for a night manager to be present.
- Mr Woodhouse was “*annoying females*” and “*two Brazilian girls complained to Carole [Towle] that he was coming on too strong to them*”.
- Ms Harris had told them she would leave because of mismanagement.
- Ms Towle had told them she would leave if Mr Woodhouse did not go.

[56] In response to questions from the Authority, Mr Giordani and Ms Duffy accepted that these issues were not put to Mr Woodhouse for any comment or response before or on 5 August.

[57] Mr Woodhouse commented on each issue at the investigation meeting. He denied drinking alcohol during working hours or taking money. He claimed he had a medical condition which did not allow him to drink more than “*the odd beer*”. While Ms Duffy has seen empty beer bottles in

his flat, that was in his personal accommodation where it was reasonable for him to have a drink outside working hours.

[58] He denied that he had known “*the massage lady*” before she rented a room at the lodge or that there was any basis for alleging she was a prostitute. The employers’ accusation was partly based on, according to their own evidence, having looked through the doorway of the woman’s rented room and having seen a massage table and candles. Mr Giordani had agreed to the woman renting the room.

[59] Mr Woodhouse denied abandoning the building. Instead he asserted that he stayed on site at the business even when he was scheduled to have days off. He claims he was absent on only two nights when his ill father died.

[60] He claimed that concerns raised by Ms Towle, including allegations regarding interactions with female tenants, were not put to him for comment by his employers.

[61] Mr Woodhouse characterised these concerns as part of a campaign of criticism by Ms Towle who would not accept his authority or any direction from him. One example of her criticising him to his employers was over his handling of the eviction of a pregnant tenant believed to be a drug user. Mr Woodhouse said he found the tenant semi-conscious with a hypodermic needle in her arm. He was later physically threatened by the woman’s boyfriend.

[62] Mr Woodhouse asserted that this demonstrated that his employers did not respond to his requests to address his problems with Ms Towle, because, as events turned out, they preferred her suspicions of him to any of his concerns regarding her work.

[63] Following his dismissal on 5 August Mr Woodhouse packed his belongings which were removed by the truck organised by Mr Giordani on 6 August.

Replacement

[64] The respondents had arranged a replacement for Mr Woodhouse some time before dismissing him. He was Glen Ramsey. Mr Giordani told me Mr Ramsey was engaged as a consultant and remained with the business for around three months. The business is presently managed by two managers on rotating shifts.

[65] Mr Ramsey and his wife moved into the manager’s flat on 8 August. He began work in the business on 9 August.

[66] Ms Duffy and Mr Giordani urged me to consider a report prepared for them about the business by Mr Ramsey in September 2004. At the close of the investigation meeting on 18 August I allowed 14 days for them to locate his report and file it with an affidavit of authenticity from him.

[67] The respondents had difficulty locating a copy of his report from their own records or Mr Ramsey, who I was later told by counsel now works in Ngaruawahia. A handwritten letter said to be from Mr Ramsey and dated 20 September 2004 was filed after the allocated deadline. Nevertheless I have reviewed the document. It does not help me or the respondent. Mr Ramsey worked in the business from 9 August 2004. His report was not available to the employers when they made the decision to dismiss Mr Woodhouse. It was not available to be put to Mr Woodhouse for comment at that time.

[68] And while Mr Ramsey's report – if the copy provided to me is the same as the original – is critical of the state of the business, he was not in a position to properly allocate responsibility for its state between the owners, Ms Towle and Mr Woodhouse. For the same reason I would not have been assisted by interviewing Mr Ramsey as suggested by the respondents.

Determination

[69] I do not need to evaluate the explanations or comments given by Mr Woodhouse at the investigation meeting in response to the real reasons that he was dismissed. That is not the role of the Authority after the event. That evaluation was properly the duty of the employers at and before the time of the dismissal. They clearly did not do so.

[70] This is not a matter of minute or pedantic scrutiny of the employers' procedure. Mr Giordani's evidence on his state of mind going to meet Mr Woodhouse on 5 August and the comments he made show that the employer had abandoned the well-established and well-known measures required by law.

[71] Tentative conclusions on the employer's concerns were not put to Mr Woodhouse with an opportunity to explain or refute those conclusions. He was not listened to on 5 August with an open mind. Not all possible remedial steps were explored and exhausted. On the overall question of whether Mr Woodhouse was treated fairly in all the circumstances, the answer is 'no'.

[72] For these reasons I find that the respondent's actions in dismissing the applicant were not what a fair and reasonable employer would have done in all the circumstances at the time of the dismissal. Mr Woodhouse has a personal grievance for unjustified dismissal.

Remedies

[73] He is entitled to certain remedies. They are not, in my determination, as extensive as he seeks.

[74] I am not satisfied Mr Woodhouse did enough to properly mitigate his losses. His evidence was that he could not get another job for 14 weeks. From then he took a part-time labouring job paying \$423 a week less than his Bond St Lodge job. He gave evidence of applying for at least three jobs but did not put his resume, job applications or any replies in evidence.

[75] Mr Woodhouse appeared as a well-presented, well-spoken and methodical person. He is a former police officer. He told me that for five years prior to October 2003 he owned a bar in Devonport. He had interviewed well for the Bond Street position. He had been able to provide satisfactory references promptly.

[76] Even allowing for the 'knock' of his abrupt dismissal, I do not accept that, barring any impediment he did not disclose in evidence, he could not find a better job in the present employment market.

[77] In making my assessment I have taken into account that any award of compensation is discretionary and must allow for the contingencies of life, as discussed by the Court of Appeal in *Telecom NZ Ltd v Nutter* [2004] 1 ERNZ 315 at para [73] and [81]. This includes the possibility, without any attempt to weigh the probability, that Mr Woodhouse might otherwise have been justifiably dismissed had proper procedure been followed. His employment was also terminated after 18 weeks, not an extended period of service. How long he might otherwise have remained in the position, given the discord with Ms Towle and his employers, is probably limited.

[78] Mr Woodhouse is entitled under s123(b) and s128 of the Employment Relations Act 2000 to three months ordinary time remuneration in reimbursement of lost wages. I order payment by the employer to Mr Woodhouse of \$8,750.00 (less tax). His claim for “shortfall in wages after the 3 month period” is declined.

[79] He was paid two weeks notice. His contract entitled him to six weeks notice. He is entitled to a further four week paid notice. I order accordingly payment by the employer to Mr Woodhouse of a further \$2692.30 (less tax).

[80] Mr Woodhouse also gave evidence of paying board of \$100 a week and furniture storage costs of \$110 a week until he found a new job with accommodation. He claims those costs as other money lost as a result of the grievance.

[81] His flat at Bond St Lodge was a service tenancy. Under the Residential Tenancies Act 1986 s53, 14 days notice is required of termination of such a tenancy unless the premises are required for a replacement employee within 14 days and no suitable accommodation is available for the replacement worker, or there are reasonable grounds to suspect that the departing employee will cause substantial damage if allowed to remain for 14 days. There is no reliable evidence for either ground.

[82] Mr Giordani suggested that the flat was required because it had an EFTPOS facility in the lounge that Mr Woodhouse had used as an office. I consider the real reason was that arrangements had already been made for Mr Ramsey and his wife to move into the flat on 8 August. The Ramseys could have moved into rooms elsewhere in the premises while Mr Woodhouse was given longer to move. While this Authority does not determine rights under the Residential Tenancies Act, the eviction of Mr Woodhouse occurred in the context of the employment relationship. His right to 14 days notice to leave the flat appears to have been breached. For that reason I consider he is entitled to recover his board and storage costs for those two weeks. I order payment of a further \$420 (without deduction) by the respondent to Mr Woodhouse under s123(b) of the Employment Relations Act.

[83] Mr Woodhouse is also entitled to compensation for hurt and humiliation resulting from his abrupt dismissal without the opportunity to comment on all the reasons. He was required to pack and move from his flat within 24 hours. He went without meaningful work for 14 weeks. His employer was aware that his father had recently died and he was vulnerable. His own evidence was that the dismissal destroyed his confidence and self-esteem. There was no supporting evidence provided by friends, health professionals or family. However, on the applicant’s limited evidence, I accept the circumstances of dismissal and eviction were humiliating and hurtful. Accordingly, I order the respondent to pay Mr Woodhouse compensation of \$9000 under s123(c)(i) of the Employment Relations Act.

[84] I do not consider further remedies need be awarded in respect of Mr Woodhouse’s claims for a penalty for breach of his employment agreement or reimbursement for the removal of a chair he valued at \$80.

Contribution

[85] The Act requires the Authority consider the extent to which the actions of the employee contributed to the situation that gave rise to a personal grievance. If those actions require, the Authority must reduce the remedies accordingly.

[86] I do consider that Mr Woodhouse contributed to the situation that gave rise to his personal grievance by one particular act. He failed to advise his employers as soon as possible of his loss of money on 24 April. The blameworthy aspect is not the actual loss of the money. The fault was that he had to be prompted to disclose it. That inevitably aroused either suspicion about his motives or concern about his judgment. He was employed as a manager in a position of trust. His responsibility was to be more forthcoming.

[87] Although this occurred more than three months before his dismissal, it was clearly still in the front of his employer's minds. He must bear some responsibility for having placed it there, however intemperate his employer's eventual actions were. Accordingly I consider that Mr Woodhouse's remedies should be reduced by 10 percent.

Summary of orders

[88] After reducing the remedies ordered for the applicant's contribution, the respondent is ordered to pay the following amounts to the applicant:

- reimbursement of lost wages of \$7875.00 (less tax)
- \$2423.07 (less tax) for a further four weeks of notice
- \$378 (without deduction) for accommodation and storage costs
- compensation of \$8100 (without deduction) under s123(c)(i) of the Employment Relations Act

Costs

[89] Costs are reserved. The parties are invited to agree on the appropriate sum between themselves. If they seek a determination on costs by the Authority, they may file and serve memoranda on the matter.

Robin Arthur
Member of Employment Relations Authority