

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Andreena Taogaga (Applicant)

AND The Onehunga Working Men's Club (a friendly society) (Respondent)

REPRESENTATIVES Gretchen Stone, for Applicant
Murray Broadbelt, for Respondent

MEMBER OF AUTHORITY Janet Scott

INVESTIGATION MEETING 26 April 2005
27 April 2005
12 May 2005
8 June 2005

DATE OF DETERMINATION 16 August 2005

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

The applicant submits that on 22 April 2004 she was unjustifiably suspended from her employment. She also submits she unjustifiably dismissed on 30 April 2004. To remedy her alleged grievance she seeks lost remuneration and compensation under s123(c) (i) of the Act.

The respondent denies the claim and submits the applicant was justifiably dismissed for serious misconduct.

Note: As I understand it the Club has laid an information with the Police against Ms Taogaga in relation to matters at the heart of this personal grievance claim. As of the date of the investigation meeting no charges had been laid against Ms Taogaga. As a matter of caution I raised with the parties the question of Ms Taogaga's right to silence in respect of the matters that might lead to criminal charges against her. After an adjournment to consider the matter counsel for Ms Taogaga submitted that Ms Taogaga wished to proceed with the investigation meeting.

The applicant being represented by legal counsel and having taken advice elected to continue with the investigation. I have therefore proceeded to hear and determine the matter.

Background

The Club is a Friendly Society registered under the Friendly Societies and Credit Unions Act 1982. The Club has a somewhat unusual management structure. An executive committee made up of persons elected by the Club members is responsible for day-to-day management of the Club's affairs. In addition there are three Trustees elected triennially. All property and funds of the Club are vested in the Trustees. It is the Trustees who are empowered to purchase or dispose of Club property and to borrow or hold mortgages over that property. As Trustees they are fiduciaries who assume a duty of loyalty and care in matters relating to the Club's property and funds. They are required to act in the interests of the Club

The Club employed Ms Taogaga in May 2000 as Club Secretary. She reported to the Club President. It was an important part of Ms Taogaga's job description to "*record and account for all such Club Finances and ensure such records are maintained an efficient and businesslike manner*" and in particular she was responsible for the following (among other things):

- Ensuring all monies received was banked daily.
- Ensuring all payments made were properly authorised and supported by documentation, which had been checked for accuracy.
- Ensuring Club floats were correct and personally checked not less than three times per week, maintaining a record of the checks.
- Administration of the wages system.
- Promptly reporting any discrepancies to the President.

The events that led to Ms Taogaga's dismissal flowed from the annual audit of the Club's accounts for the financial year ended 28 February 2003. The Club float was recorded at that point as being short by \$2,025.50. The auditor could not trace the shortfall and a pragmatic decision was made to draw a cheque on the Club's main account to restore the float to its rightful level of \$25,000.¹

So prior to the 2003 audited accounts being finalised and signed off for presentation to the AGM in May of 2003, Ms Taogaga was instructed to draw a cheque on the Club's main account for the sum in question (cheque no. 23932² for \$2,026) the proceeds of which were to be placed in the Club float to bring it to \$25,000 the level at which it was recorded in the Club's accounts.

However, when the auditors were conducting the six-monthly audit in August/September 2003 it was noted by them that the injection of cash (into the Club's float) had not brought the float into balance as expected. In fact the float records showed that just prior to the cheque being drawn to supplement the float (23 May 2003) its balance was \$22,192.11 – a shortage of \$2,869.89 and \$844.39 more than the 28 February 2003 shortfall. When the float was next checked on 27 May (the day after the cheque for \$2,026 was drawn to address the float shortfall) the balance of the float was \$22,718.15 – a shortfall of \$1,437.46 on the expected balance (taking into account the fact the float deficit had grown by \$844.39 between 28 February and 23 May 2003). The actual deficit on 27 May was \$2,281.85.

¹ This decision was taken because it would have cost much more than the \$2,025 shortfall to trace it – the figure of \$10,000 was mentioned in evidence.

² Throughout the investigation this cheque was referred to as cheque no. 23930. It came to light at the end of the investigation the correct no. is 23932 and it is referred to by its correct number in this determination.

It was also noted that the float deficit had grown to \$3,411.10 by 3 June 2003.

The audit also revealed the balance of the float as checked on 23 June 2003 was \$21,214.17 – a shortfall of \$3,785.83 on the appropriate balance of \$25,000. A cheque (24023 for \$3,500) was drawn in favour of the Club on 24 June 2003. The auditor noted that in the chequebook it had been categorised as general expenses and GST deducted³. The undisputed evidence was that it was originally explained on the cheque butt as “top up” or “float top up”.⁴ The float balance sheet for 25 June showed a cheque for \$3,500 was included in the balance that day. However, Mr Beeson (financial auditor) could find no documentation to explain the cheque and the float did not increase by \$3,500 to reflect the inclusion of the cheque recorded in the balance sheet. The float balance on 25 June was \$22,736.37 – a shortfall of \$2,263. If in fact the proceeds of cheque no. 24023 were deposited in the float on 25 June then \$1,977.80 of those proceeds was unaccounted for in the balance.

As I understand the evidence the auditors confirmed there was authority given in May 2003 to draw down \$2,026 to top up the float. The concern regarding that transaction was that the float did not rise by the sum approved once the transaction had been completed. In respect of the latter transaction involving the sum of \$3,500 the concern was that there appeared, on the face of it, to be no explanation for drawing the cheque \$3,500 and the float holdings did not increase as would be expected if the proceeds of the cheque had indeed been included in the float.

Mr Beeson sought an explanation from Ms Taogaga for this cheque. It was his evidence (disputed by Ms Taogaga) that, in response to his request, Ms Taogaga produced a purple slip of paper purporting that the cheque for \$3,500 had been requested by Mr Jackson (systems auditor) to top up the safe (float). Mr Beeson took this explanation at face value. However, he later made inquiries of Mr Jackson who advised there had been no instruction given by him to top up the safe by \$3,500.

When Mr Beeson could not obtain a satisfactory explanation for this cheque from Ms Taogaga or from Mr Cassidy (Club Manager) he wrote to the Trustees on 30 January 2004 advising them that the funds from both cheques were unaccounted for and the accounts to 31 August had not been signed off for this reason. He was aware that as Trustees they had a statutory duty to act in such situations.

Mr Schultz, Chairman of the Trustees gave evidence that the Trustees made inquiries to no avail. Mr Cassidy wrote to the Trustees on 29 March to say a thorough search of the office had been carried out and no paperwork to explain/warrant the drawing of the cheque 24023 for \$3,500 had been found. The matter was discussed at a Committee meeting and the Treasurer had advised categorising the cheque as “miscellaneous”. The Trustees would not, however, accept that suggestion – which meant sweeping the matter under the carpet.

In the event there was a judicial committee formed comprising the President, auditors and Trustees and Mr Nalder⁵ (non voting) to investigate these serious irregularities in the Club’s accounts. On 17 April 2004 the Trustees wrote to Mr Nalder advising him they were conducting a formal investigation into financial irregularities at the Club and advising him that under s.29 of the Trustees Act 1956 they were appointing him as their agent to conduct the inquiry. Among other things Mr Nalder was to inquire into the irregularities relating to the cheques in question and to conduct a forensic audit for a six-month period of the Club’s trading (period at Mr Nalder’s choice). He was to

³ It is noted that GST is not payable on transfers from one Club account to another.

⁴ This explanation was later twinked out by Ms Taogaga (her evidence) when she realised the cheque could not have been a safe top up.

⁵ Licensed private investigator.

consult regularly with the Trustees and to report his findings in writing. He was given the authority necessary to undertake his task.

On 21 April the Trustees wrote to the Club President to inform him and, through him, the Club committee of the steps taken by them and the authority vested in Mr Nalder to conduct inquiries on their behalf. Staff and elected officers were requested to cooperate with Mr Nalder.

Mr Nalder commenced his investigation on 21 April 2004. He advised Mr Cassidy that he would attend the Club on 22 April. He asked Mr Cassidy to advise Ms Taogaga that he wished to speak to her on the morning of 22 April.

However, when Mr Nalder attended the Club on the morning of 22 April he was advised by Mr Cassidy that Ms Taogaga had become upset at a Committee meeting on the night of 21 April and she had advised him she would not be returning to work until Monday 26 April.

Mr Nalder's evidence was that he initially focussed on the Club's float. He found significant irregularities in the float over a period of time and, with the odd exception, float balance sheets had not been signed off nor had any explanation been provided for substantial variances shown in the float balances. It was his evidence that the manner in which the float had been administrated was completely unacceptable.

Next, Mr Nalder focussed on the cheques in question. He confirmed the relevant float balances did not reflect the increases expected if the proceeds of these cheques had been placed in the floats at the respective times. He submitted that the Secretary had to have known there was a serious problem. Mr Nalder spoke to the President who advised Ms Taogaga had not brought any irregularities to his attention during his tenure as President. Mr Nalder also spoke to Mr Beeson who advised that the purple note that had been produced to him by Ms Taogaga as authority for the \$3500 cheque. Mr Beeson advised he had contacted Mr Jackson who had denied giving any authority for the cheque.

Mr Nalder met with the Trustees and advised them that his inquiries revealed:

- Proceeds of two cheques (\$5,525) were unaccounted for and the Secretary who drew the cheques was unable to explain what happened to the majority of the funds from the cheques. Ms Taogaga had initially misled Mr Beeson in his inquiries.
- There was prime facie evidence she was not cooperating with the inquiry (she had not come to work on 22 April despite having been requested to be available to speak with him that day).
- The float was still fluctuating up to 21 April with unexplained irregularities.

Mr Nalder was concerned that with the weekend coming up it provided opportunity it for Ms Taogaga to affect the Club float. He recommended that she be suspended from duty on full pay. This would allow him the time needed to establish the precise position relating to float irregularities whilst preventing any further irregularities occurring.

The Trustees agreed and by written notice delivered to her home Ms Taogaga was suspended.

Ms Taogaga was also advised:

- An investigation was being conducted into financial irregularities within the Club

- There were serious issues which might constitute serious misconduct on her part and which might affect her future employment.
- To attend a meeting on 29 April at 10 am to discuss the issue.
- That she had a right to representation.

Ms Taogaga took legal advice. Her evidence was that the lawyer she consulted felt the matter was not serious and that she did not need a lawyer to be present at the meeting. Ms Taogaga was advised to prepare a record of the meeting.

On 29 April Ms Taogaga attended the meeting with a former colleague Tania Neki as her support person. Also in attendance were Mr Nalder and Mr Banbury (Trustee delegated by other Trustees to be the decision maker).

There is some dispute between the parties as to the matters/exact nature of the discussions held between the parties at that meeting. However, it is not disputed that Mr Nalder:

- Explained the purpose of the meeting.
- Showed Ms Taogaga the float balance sheets in question (before and after the cheques under investigation were drawn).
- Asked Ms Taogaga what happened to the proceeds of the cheques or if she could offer any explanation for the missing funds.
- Put it to Ms Taogaga she should have known money was missing.
- Asked Ms Taogaga if she had told anyone about the deficiency in funds and if so whom did she tell.

Mr Nalder, who had conducted a wider investigation into the financial affairs of the Club, also advised Ms Taogaga that it was just as worrying (in respect of float management) when there were unexplained inflows into the Club float. (He had noted the float had had an increase in funds in April 2004). He also advised Ms Taogaga that his investigation into the operation of the Snooker and 8 balls tables showed there was up to \$4000 unaccounted for.

At this point Ms Taogaga began crying and said she was being accused of stealing. It is not disputed that she was assured she was not being accused of stealing but was being asked for an explanation for variances in the Club's float.

Ms Taogaga was asked about the purple slip. It was her position she had produced it to Mr Beeson to explain the cheque for \$2,026 and she had written the wrong cheque number on it.

Ms Taogaga was questioned regarding her employment agreement and her knowledge of her duties including the responsibility to promptly report discrepancies to the President. There is no dispute between the parties that Ms Taogaga advised in a short or defiant tone she was well aware of her duties as Secretary of the Club.

Ms Taogaga was asked why she did not report the discrepancies to the President. It was her evidence she said that she reported discrepancies to Mike Cassidy. She also advised she had told

no one else in authority because she believed the float would sort itself out. The Club witnesses deny Ms Taogaga said she advised Mike Cassidy of discrepancies in the float. She said only that she told no one because she thought the float would sort itself out.

Following the meeting the Trustees met to consider the meeting and Ms Taogaga's explanations. Mr Banbury advised he required the night to consider matters. The next morning he advised the Trustees and Mr Nalder of his decision that Ms Taogaga should be dismissed for serious misconduct. The Trustees wrote to Ms Taogaga informing her of her dismissal. Their reasoning follows:

"In these instances you have failed to record and account for the proceeds of the two cheques, or bank the money from the snooker tables. The circumstances surrounding the drawing of cheque no. 24023 does not appear to have properly authorised or supported by documentation. I also note the Club Float contained a number of irregularities which you were unable to explain. You failed to report any such discrepancies to the President.

Your performance as Secretary of the Onehunga Workingmen's Club, was below the required standard in respect to these matters. The Club has incurred a significant monetary loss. We have decided that your actions amount to serious misconduct.

After giving very careful consideration to what you had to say about these issues, and in view of the fact you were not able to provide a satisfactory explanation your employment with the Onehunga Workingmen's Club is terminated from the date of this letter".

Perspectives of the Parties - Summary

Applicant

It is Ms Taogaga's position that the large number of variable inputs into the float could explain variances in float balances. For instance, if gaming or bar floats did not balance then there would be difficulty in balancing the global float. It was her evidence that in practice she reported to the Club Manager (Mr Cassidy) and she always reported problems with balancing the float to him. He assisted her in balancing the float but if they were to investigate every time the float did not balance there would be little time for other work.

Ms Taogaga accepts she drew down the cheques in question. She said the paperwork explaining the cheque for \$3,500 had gone missing but it would have been available and sighted by the other two cheque signatories at the time the cheque was signed (Mr Schultz – Trustee and Mr Skelton - Vice President). In her oral evidence Ms Taogaga submitted she was not concerned when the proceeds of these cheques did not show in the float balances as long as the float balanced at the end of the year.

It was Ms Taogaga's evidence that she produced the purple slip to Mr Beeson to explain the cheque no. 23932 for \$2,026. She said she had recorded the wrong cheque number on that slip probably as a result of checking back to the chequebook at the time of processing the \$2,026 cheque and sighting another reference to a cheque drawn in favour of OWMC. As a result she selected the wrong cheque number (which coincidentally was the cheque number for the \$3,500 cheque).

Ms Taogaga submitted that the Committee had met on 29 March 2004 to consider the problem with the 6 monthly accounts. A system problem with the float was identified by the Committee who

agreed it needed addressing. There was no criticism or concern expressed with her performance at that meeting.

Ms Taogaga submitted she was not advised by Mr Cassidy that she was required to be available to talk to Mr Nalder on the morning of 22 April 2004 and that she was suspended without notice of the allegations against her. Neither did she have any opportunity to comment on the proposal to suspend her.

In respect of the meeting of 29 April 2004 she was not specifically advised of the allegations against her. In particular there was no notice of the allegation that she was responsible for \$4000 being missing from the proceeds of the snooker and 8 ball tables.

Ms Taogaga does not consider there was a genuine investigation into the allegations against her. She was given no opportunity to access information that could assist in her defence. She felt like she was being interrogated at the meeting on 29 April and she also considered the dismissal had been predetermined prior to her suspension.

Respondent

It was the respondent's position that it carried out a fair and thorough investigation which revealed that it was Ms Taogaga's responsibility to record and account for the Club's finances in an efficient and business-like manner and in doing so to ensure all monies received were banked daily, that payments were properly authorised and supported by documentation and that floats were correct and personally checked three times a week and records maintained. Ms Taogaga was required to promptly report any discrepancies to the President. Despite this:

- Ms Taogaga could not explain what happened to the proceeds of the two cheques in question. Nor was she able to offer any suggestion that might assist in explaining what happened. The Trustees concluded that Ms Taogaga had failed to account for the proceeds of the two cheques.
- The purple slip purporting to be authority to draw cheque no. 24023 was in Ms Taogaga's hand and produced to Mr Beeson when he requested information to explain that cheque. It was taken at face value until enquiries of Mr Jackson revealed that he had not authorised the drawing down of a cheque for \$3,500 to top up the safe. This was deliberately misleading.
- The float revealed a number of discrepancies which Ms Taogaga was unable to explain.
- Ms Taogaga failed to report these discrepancies to the President or any other person in authority within the Club despite her responsibility to do so.
- The Club suffered financial loss.

The Trustees formed the view that the performance of the Club Secretary was seriously below the standard required and that in particular the failure to report discrepancies where there was a clear requirement on her to do so amounted to serious misconduct. Mr Banbury considered the situation overnight and decided to dismiss Ms Taogaga for serious misconduct.

Issues to be decided

In determining this matter I have had to keep in mind the following legal principles (*W & H Newspapers Ltd v Oram* [2002] 2 ERNZ 448).

Was the decision to dismiss Ms Taogaga one, which a reasonable and fair employer could have taken?

For me to be able to answer this question in the affirmative the respondent must satisfy me, not that it can prove serious misconduct on Ms Taogaga's part, but that it has conducted a full and fair investigation that disclosed conduct capable of being regarded as serious misconduct.

However, the employer's conduct of the disciplinary process is not to be put under a microscope or subjected to pedantic scrutiny, nor are unreasonably stringent procedural requirements to be imposed.

"Slight or immaterial deviations from the ideal are not to be visited with consequences for the employer wholly out of proportion to the gravity, viewed in real terms, of the departure from procedural perfection. What is looked at is substantial fairness and substantial reasonableness according to the standards of a fair-minded but not over-indulgent person" (*New Zealand (with exceptions) Food Processing Etc IUOW Unilever NZ Ltd* [1990] 1NZILR 35).

I have also had regard to the principle espoused in *Honda NZ Ltd v NZ (with exceptions) Shipwrights etc Unions* [1990] 3 NZ I L R 23 that where the allegations are serious the evidence in support need to be as convincing in nature as the charge is grave.

However, this needs to be balanced against the principle that an employer considering allegations of serious misconduct is not required to conduct a criminal or civil trial or to employ a judicial process (*The Warehouse Ltd v Cooper* [2000] 2 ERNZ 351). Nor does the employer have to show beyond reasonable doubt that serious misconduct occurred. As noted, it must show that following a thorough and substantially fair investigation it has reason to believe and did believe there has been serious misconduct on the part of the worker.

The issues to be decided in relation to this matter are set out below.

1. Was Ms Taogaga's suspension justified?
2. Did the Club carry out a thorough and fair investigation?
3. Was the decision that serious misconduct had occurred a reasonable decision open to the employer on the basis of the investigation undertaken?

Credibility

Findings on credibility are essential to arriving at a determination in this matter.

It is apparent on the evidence that this is a Club where the membership of the Club is divided over a range of issues. Some witnesses in this matter had axes to grind and/or gave evidence in light of where they saw their current interests lying.

Ms Taogaga's evidence was notable for its obfuscation. It was contradictory and discursive and in particular I do not accept her explanation for the 'purple slip' as to the circumstances and timing of

its production. Nor, do I accept her evidence that she recorded the wrong cheque number on this slip of paper.

Neither did I find Mr Cassidy to be a credible witness. His evidence was evasive on important matters and on a critical matter (relating to the \$3,500 cheque under investigation) he contradicted Ms Taogaga's evidence and indeed in relation to this cheque he contradicted a formal written statement he himself gave to the Trustees in respect of that cheque. (Last sentence paragraph 8 of his witness statement / document BB dated 29 March 2004).

The evidence of the auditors, Mr Nalder and the Clubs Trustees was on the other hand coherent, consistent and probable. As a result, where the evidence of the respondent's witnesses differs from that of the applicant and her witnesses it is the evidence of the Club's witnesses that I prefer.

Findings and Conclusions

1. I find there were a large number of irregularities in the management of the float which were ongoing and that variances were unexplained.
2. I find Ms Taogaga did not report the numerous discrepancies in the float to the President as she was required to do under her employment agreement – a requirement that I find was known to her.
3. I find that Ms Taogaga drew down the cheques in question and that the proceeds of these cheques were and remain unaccounted for.
4. I find that there is no documentation to support the drawing of cheque no. 24023 for \$3,500. I also find that subsequent to Ms Taogaga being asked by Mr Beeson to provide an explanation for this cheque Ms Taogaga produced to Mr Beeson a purple slip of paper with words in her handwriting "Safe top per L Jackson request" The words "Entered", "Paid" and "Cheque no." were stamped on the slip and the number 24023 entered in Ms Taogaga's hand. In making this finding I am rejecting Ms Taogaga's evidence that this slip of paper related to cheque no. 23932 for \$2,026 and that she mistakenly put the cheque number relating to the \$3,500 cheque on it. Her account of the production of the purple slip was highly improbable and it does not explain why slip of paper supporting the \$2,026 cheque would be produced to Mr Beeson in response to a request by him for an explanation for the \$3,500 cheque. I note in this regard that Mr Beeson has never required an explanation for the \$2,026 cheque. It was at his request that cheque was drawn down to restore the float to the balance it showed on the books as of 28 February 2003. Ms Taogaga's actions in producing this slip of paper which purported that Lindsay Jackson had authorised the cheque for \$3,500 amounted to misrepresentation on her part.
5. I find that Mr Nalder requested Mr Cassidy to advise Ms Taogaga that he wished to talk to her on the morning of 22 April and that Mr Cassidy passed on this message to Ms Taogaga. I also find that Mr Cassidy advised Mr Nalder on the morning of 22 April that Ms Taogaga had informed him she would not be returning to work until Monday 26 April.
6. I find Ms Taogaga was well aware that the "*serious issues*" the respondent wished to discuss with her on 29 April included the whereabouts of the proceeds of cheque nos. 23932 and 24023. Ms Taogaga was informed these serious issues could affect her ongoing

employment. She was invited to a meeting to discuss these serious and she was advised of her right to representation.

7. I find that at the meeting of 29 April the explanations given by Ms Taogaga were:

- That she had no idea where the proceeds of the two cheques went and she could offer no other explanation that would assist to trace the whereabouts of the proceeds of those cheques.
- The purple slip was authorisation for the \$2,026 cheque and she had written the wrong cheque number on it.
- That she had not reported discrepancies to the President of the Club or anyone else in authority – despite understanding the duties inherent in her job description – because she thought the float would sort itself out over time.

In concluding this matter I rely on my findings above. I also address the bulk of the submissions raised for Ms Taogaga. For the sake of clarity submissions raised by and on behalf of Ms Taogaga that I have not addressed are dismissed.

The Suspension

Mr Nalder was authorised by the Trustees of the Club to carry out an investigation into financial irregularities within the Club including the concerns raised by the auditor in relation to cheque nos. 23932 and 20023. He had the authority to question Ms Taogaga in relation to these matters. I have found that on 21 April Mr Nalder requested the Manager of the Club, Mr Cassidy, to advise Ms Taogaga that he wished to see her on the morning of 22 April. I have also found that Mr Cassidy relayed this request to Ms Taogaga. Ms Taogaga did not comply with the request.

On the morning of 22 April Mr Nalder conducted an examination of the Club float and in particular the float movements around the time the two cheques in question were drawn. He noted unacceptable variances which were not explained. He checked with Mr Cassidy and satisfied himself that Ms Taogaga had been advised of his request to speak with her that day. He considered Ms Taogaga's failure to attend work and to meet with him as evidence of her not cooperating with the investigation and he was concerned that with the weekend approaching (when he would not be there) there would be opportunity for her to interfere with the float.

I accept he had a genuine concern in that regard given the unexplained variances in the float and the fact that he was charged the responsibility to carry out a full forensic inquiry into the financial dealings of the Club.

However, suspension is a serious step *Birss v Secretary of Justice* [1984] 1 NZLR 513. Prior to deciding to suspend Ms Taogaga Mr Nalder or a delegated Trustee should have attempted to contact her with a view to advising her that her failure to attend and to assist with the investigation was viewed seriously and that suspension was being contemplated and to allow her the opportunity to comment on the proposal. I find that Ms Taogaga's suspension was unjustified in the circumstances and it amounts to an unjustified disadvantage.

Having said that I find that Ms Taogaga's deliberately absented herself from the workplace that day in knowledge of the fact she had been requested to meet with Mr Nalder to assist in his enquiries. She can have no expectation of remedies in these circumstances.

Did the Club carry out a thorough and fair investigation?

It was submitted by and for Ms Taogaga that the letter of suspension which invited her to a meeting on 29 April to discuss her employer's concerns advised only that *financial irregularities* were to be discussed. She submitted that when she went to the meeting on 29 April she did not know what was to be discussed. She said she thought she would be asked how she went about her tasks.

I reject Ms Taogaga's evidence on this point (as far as the inquiry into the two cheques goes) I also reject Ms Taogaga's evidence that had she known what was to be discussed she would have researched the Club's records and been able to provide a satisfactory explanation for the cheques in question. Prior to Ms Taogaga's suspension and the disciplinary investigation which followed it the auditors and Trustees had, for months, been requesting Ms Taogaga and other office staff to search the premises for information/documentation and to respond to their queries in relation to these cheques. No satisfactory documentation/explanations had been provided by Ms Taogaga and it was that fact that led the Trustees to initiate the formal investigation into financial irregularities within the Club. For this reason I have found that Ms Taogaga was well aware (going into the meeting of 29 April) of the Club's concern's relating to cheques 23932 and 24023. In summary on this point I note, too, that in her oral evidence Ms Taogaga said that she explained to the lawyer (whom she consulted prior to the meeting) that two cheques were the issue under inquiry. It is for the same reason that I reject the evidence and submissions made for Ms Taogaga that if she had been properly informed of the specific allegations and had access to the Club's records she could have provided satisfactory explanations. Ms Taogaga had had months to provide documentation and explanations for the two cheques and had not done so.

On one issue Ms Taogaga is justified in submitting she was not properly informed of the allegations to be raised with her at the meeting of 29 April i.e. the explanation sought from Ms Taogaga relating to the \$4,000 deficiency in takings from the snooker and 8 ball tables. I accept that Mr Nalder raised this issue to illustrate that it was also a serious concern when monies came into the float without an explanation (as had recently been the case). It was permissible to raise it in the general context of the discussions between the parties but it was not fair and reasonable to rely on this issue (as the Club did) as grounds for dismissing Ms Taogaga because she had not been put on notice that there was an allegation against her that she had failed to bank the \$4,000 proceeds from the snooker and 8 ball tables.

It was also submitted that it was unreasonable to expect that Ms Taogaga to provide explanations in respect of cheque no 24023 which had been drawn almost a year ago, particularly when neither Mr Schultz or Mr Skelton (the other signatories to the cheque) could recall what the payment was for. I reject there was any unfairness in this. Certainly Ms Taogaga could not be expected to provide information of the top off her head in respect to one or two of hundreds of cheques that this Club would issue in a year. However, Ms Taogaga was responsible for ensuring that payments were properly authorised and supported by documentation that was checked for accuracy. Had she done this she would have been in a position, when asked, to check her records and provide the documentation/explanations sought. She could not do so because the standard of her record keeping was abysmal. The Club lost funds and Ms Taogaga could not provide any explanation for the losses.

The other significant challenge to the process followed by the employer related to the conduct of the meeting. It was submitted by and for Ms Taogaga that she was interrogated at the meeting. I reject this submission. The subject under investigation was serious. The questions put to Ms Taogaga

were focussed and I accept it would have been an uncomfortable situation for her. However, the questions asked of Ms Taogaga (in relation to the two cheques) went to the heart of the respondent's concerns and had to be put to her. There was nothing on the evidence that suggests the questioning was conducted in an oppressive manner. I note in this regard Ms Taogaga was specifically advised she was not being accused of stealing. Of course in situations such as this where the proceeds of cheques are unaccounted for it begs the questions – where are the funds, how have they gone missing and who is responsible? Those involved (including Ms Taogaga) canvassed – both silently and aloud - the possible answers to these questions. However, nothing on the evidence before me suggests Ms Taogaga was being accused of theft and, if charges are laid against Ms Taogaga, it is for another jurisdiction to determine the matter under a more stringent burden of proof.

In all I find that (aside from the noted exceptions) Ms Taogaga was treated fairly.

On the question of the quality of the employer's investigation, I find it was thorough. The fact that cheque no. 23932 was referred to by an incorrect number and the correct cheque number was identified only late in the investigation was immaterial to the matter under investigation and the outcome.

There was criticism that Ms Aoake was not interviewed. There was no failure in this respect. Ms Aoake was not responsible for balancing the main float and it was the proceeds of two cheques drawn by Ms Taogaga and the fact this float did not reflect the injection of funds from these cheques that was the issue.

I reject too the submission that the Club did not consider the systems problems acknowledged by the Committee at the meeting of 29 March as a possible explanation for problems with the float not balancing. This reference to a systems problem with the float is a red herring cottoned onto by Ms Taogaga in circumstances where the elected officers of the Club (with the exception of – I believe- Mr Schultz) were, on the face of it, looking for any reason to avoid facing up to the concerns raised by the auditors in relation to the proceeds of the two cheques. There is (or was at that time) a problem in that the gaming float was not kept separate as is required by the Club's gaming license. That does not explain the ongoing and unexplainable variances in the Club's float. I note in this regard that the float consistently balanced after 21 April 2004.

I find that taken overall (exceptions noted) the employer carried out a thorough and fair investigation.

Was the decision that serious misconduct had occurred a reasonable decision open to the employer on the basis of the investigation undertaken?

I find Ms Taogaga was dismissed for the reasons set out in the dismissal letter and I reject the submission she was dismissed solely because she failed to report discrepancies to the President. Specifically, I find, the reasons for Ms Taogaga's dismissal were the failure on her part to account for the proceeds of the cheques; the absence of supporting documentation to explain cheque no. 24023; the failure to bank the money from the snooker tables and irregularities in the float - all of which showed a standard of performance which was below the level of performance required. Ms Taogaga had failed to report the discrepancies to the President. The Club had lost money. These actions amounted to serious misconduct.

After hearing Ms Taogaga the Club decided to dismiss her.

With the exception of its reliance on Ms Taogaga's failure to bank the proceeds of the snooker/8 ball tables the Club has shown the dismissal was justified for the reasons given and the failure on Ms Taogaga's part to report discrepancies was an important factor in the employer's decision that the performance failings amounted to serious misconduct. That is why the respondent emphasised, during the investigation meeting, its concern that Ms Taogaga did not report the ongoing discrepancies in the float balances in general and the specific failure of the float to balance after the injection of funds from the two cheques. I note, too, the employer also weighed in its the decision Ms Taogaga's misrepresentation in respect to the cheque for \$3,500.

In conclusion, I find the investigation, taken overall, was thorough and fair and disclosed conduct by Ms Taogaga that was capable of being seen as serious misconduct. Having reasonably arrived at this conclusion the employer was entitled to conclude that Mr Taogaga was in breach of her duty to Club and that the trust and confidence essential to the relationship had been destroyed - a state of affairs that allowed it to exercise the option of dismissing Ms Taogaga. The fact that I have found that the Club could not rely on one of the reasons given for the dismissal does not vitiate the dismissal where the Club has demonstrated dismissal was justified for the other reasons given. *Auckland Local Authorities Officer IUOW v Northcote Borough Council* [1989] 2 NZ ILR 67.

Determination

The suspension of Ms Taogaga was unjustified. No remedies are awarded.

The respondent has demonstrated that dismissal was an option open to it following a thorough and substantially fair investigation. I must therefore decline Ms Taogaga's application and she is not entitled to the remedies she seeks.

Costs

Costs are reserved. The parties are directed to attempt to resolve the question of costs between them. If they cannot do so they are to file and serve submissions on the subject and the matter will be determined.

Janet Scott
Member of Employment Relations Authority