

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**AA 92/08  
5079792**

BETWEEN MICHELLE DEBORAH HENRY  
Applicant

AND THE CHIEF EXECUTIVE OF THE  
MANUKAU INSTITUTE OF  
TECHNOLOGY  
Respondent

Member of Authority: Leon Robinson

Representatives: James Duckworth, Counsel for Applicant  
Rachel Steel, Counsel for Respondent

Investigation Meeting: 12 February 2008  
29 February 2008

Submissions Received: 7 March 2008  
10 March 2008

Determination: 17 March 2008

---

**DETERMINATION OF THE AUTHORITY**

---

**The problem**

[1] The applicant Ms Michelle Henry ("Ms Henry") claims her summary dismissal from her employment with the Chief Executive of the Manukau Institute of Technology ("the Chief Executive") is unjustifiable. Alternatively she claims her dismissal constitutes an unjustifiable disadvantage.

[2] Ms Henry was summarily dismissed following a meeting with her on 26 October 2006. The dismissal and the justification for it were formally communicated to Ms Henry by a letter dated 27 October 2006 from the Acting Chief Executive Dr Peter Coolbear ("Dr Coolbear"):-

*This is to confirm my decision at our meeting yesterday to dismiss you with immediate effect.*

*I have listened very carefully to the concerns presented and your explanations for them. I then sought clarification of some of the processes operating in the School of Hair and Beauty before I reached my decision.*

*I note the letters of support that you have provided. However these are not germane to the specific concerns we have raised.*

*As you pointed out at the meeting on 24 October 2006, present processes allow for risks around cash handling. Notwithstanding the fact that you did not develop the processes, you have a responsibility in your role to ensure that cash is handled as transparently and as accurately as possible. It is clear to me that you have been far less conscientious in this respect than we can reasonably expect.*

*In all there are nine discrepancies identified in August and September totalling \$220. Seven of these transactions are in Beauty Therapy, two in Hairdressing.*

*You asserted in our meeting on 24 October 2006 that Beauty Therapy students are not your responsibility, but it is clear from your job description that your cash balancing responsibilities relate to the whole school. You also gave some other specific explanations that I find unsatisfactory (e.g. that a specific client always pays by credit card).*

*My biggest concern, however, is that on two consecutive days cash monies from clients of the Hairdressing Salon were given to you and are not only unaccounted for, but reconciliations were made after a deletion of the entry at point of sale. In one case (on the 19 September) you admit that the money was put in the till and not recorded. You offered no explanation for the other incident (18 September). In both cases it is very clear that you should have recognised and reported the anomaly.*

*In my considered view, these are matters of serious misconduct. They amount to negligence and have irreversibly eroded trust in your employment relationship with Manukau Institute of Technology.*

*As advised yesterday we will provide you with an opportunity to clear any personal belongings from your desk; please contact Margie Jacobson to arrange a time to do this. You will be paid your final pay and any outstanding annual leave as soon as possible.*

*Yours sincerely  
Dr Peter Coolbear*

("the dismissal letter")

[3] Ms Henry claims resolution in the form of a finding that her dismissal is unjustifiable and by formal orders for reimbursement and compensation. Ms Henry abandoned her claim for reinstatement. The Chief Executive defends Ms Henry's claims and maintains the summary dismissal is justifiable.

[4] The parties were unable to resolve the problem between them by the use of mediation.

## The facts

[5] Ms Henry commenced employment with the Chief Executive in February 2002 as the receptionist at the School of Hair & Beauty ("the School"). The terms and conditions of the employment at the time of her dismissal were recorded in an individual employment agreement signed by the parties on 18 May 2006.

[6] It is accepted that Ms Henry's duties included ensuring cash was balanced daily and sent to the cashier's office as well as reconciling all cash to the correct accounts and entering onto a spreadsheet held on a shared drive to monitor running totals as requested by the Head of the School of Hair & Beauty.

[7] In the Dean's absence, the Head of the School of Hair & Beauty Ms Anne Harvey ("Ms Harvey") telephoned the Administration Manager ("Ms Jacobson") on 18 September 2006 to advise she was concerned that electronic till records on the school's reception computer did not record a particular cash payment. Ms Harvey and Ms Jacobson resolved to check the situation again the following day. A discrepancy was discovered again the following day.

[8] The situation was escalated to the Chief Executive's Senior HR Advisor Ms Sharon Peace ("Ms Peace"). It was decided that enquiries would need to be made of Ms Henry and that it would be prudent for further investigation into cash handling. It was further considered that Ms Henry be away from the workplace while such an investigation was carried out. As the Institute's policy required the Chief Executive's authority in cases of suspension, the matter was referred to his delegate the acting Chief Executive Dr Coolbear. After being apprised of the situation by Ms Peace, Dr Coolbear authorised a suspension.

[9] On the afternoon of 21 September 2006, Ms Henry was called to a meeting with Ms Peace, Ms Jacobson and Ms Harvey. Ms Henry was advised by Ms Peace that discrepancies had been discovered in respect of two cash transactions and that Ms Henry would be suspended while a full investigation was undertaken. Ms Henry advised that she was concerned about what others were going to think about her. Ms Peace suggested that other staff and students would be told Ms Henry had gone on

holiday. The suspension period coincided with a period of leave Ms Henry was taking. Ms Henry was advised she was suspended immediately.

[10] Dr Coolbear wrote to Ms Henry by letter dated 22 September 2006 in these terms:-

*This letter is to confirm discussion at yesterday's meeting.  
 You have been suspended from work from Wednesday 20 September 2006 until Monday 9 October 2006 when we will meet with you again.  
 The reason for your suspension is to allow a full investigation into irregularities that have been discovered in the Beauty and Hairdressing Salon administration bookings and accounts, for which you are responsible. These irregularities involve Institute property and are of a serious nature so an investigation is required to assess the extent of the situation. We plan to meet with you again and it is possible, depending on the outcome of the investigation, that this may extend to a disciplinary situation. If this is not the case we will write to you separately about this.  
 Please note that you have not been dismissed and the suspension itself is not a disciplinary act; you will receive normal pay during the above suspension period. Please also note that you are entitled to seek independent advice.  
 Yours sincerely  
 Peter Coolbear*

[11] The computer used by Ms Henry was isolated and data was extracted from it. This exercise disclosed an additional seven discrepancies.

[12] By letter dated 2 October 2006 Ms Jacobson wrote to Ms Henry as follows and particularly giving notice of a meeting on 6 October 2006:-

*Dear Michelle  
 Further to the letter of 21 September 2006 from Dr Coolbear; we have investigated some of the irregularities discovered in the Hairdressing and Beauty Salon administration bookings and accounts for which you are responsible. The irregularities identified thus far involve Institute property and are of a serious nature. And as a result we have some concerns relating to your work. We therefore wish you to attend a disciplinary meeting in the Chief Executive's office in NA Block at 10.15am on Friday 6 October 2006. Please advise if this is inconvenient for you and it can be rescheduled.*

*The concerns are:*

*1. That on two separate occasions cash monies collected from Hairdressing clients and paid to yourself are unaccounted for. The records relating to these clients' appointments and the transactions have been deleted from the Hairdressing computer system. Therefore, it appears that there has*

*been a failure on your part to keep accurate records, which is a fundamental responsibility of your position.*

2. *As per the attached summary of evidence, on four separate days there are several instances of the records on the accounting system differing from the transaction records of the Beauty clinic sales. This is despite the Beauty Tutor's verification of these transactions and total monies collected. The discrepancies exist between monies collected and the transactions recorded on the accounting computer system. In some instances the records show a reduced amount compared to the verified amount that was transferred to you. In other instances records have been deleted completely resulting in the computer system showing no record of the monies.*

*Original evidence will be available at the meeting. If you wish to see it beforehand, please contact me and I will make suitable arrangements.*

3. *that none of these discrepancies were reported to your line manager, to the Head of School of Hairdressing or to anyone else in authority.*

*The fundamental issue is that because of these discrepancies, I **have** lost trust and confidence in your ability to keep accurate records relating to Institute property and monies, this being a fundamental responsibility of your role. Furthermore, given the above instances it is possible that further discrepancies could be discovered if we investigate further days' transactions, which we have not as yet.*

*This matter is very serious as it involves not only the question of your competency in the job, but also a potential financial loss to the Institute, and therefore the meeting could have very significant consequences for you. Indeed it is possible that a result of this meeting is that it will be decided that your performance is unacceptable, and consequently your dismissal is a possible outcome.*

*You are strongly advised to bring a representative to the meeting who has an adequate understanding of disciplinary procedures to provide you with sound advice.*

*Yours sincerely  
Margaret Jacobson*

(emphasis added)

[13] The emphasised phrasing of the letter is unfortunate because it suggests predetermination but the Authority is satisfied that there was no actual predetermination. It should not have been phrased in an absolute way. The Chief Executive's agent acknowledges the situation. Enclosed with that letter was some 86 pages comprising a comprehensive bundle of documents gathered by the investigation evidencing each discrepancy. Each separate discrepancy was divided with a covering title page summarising the essence of it. Ms Henry very candidly conceded before the

Authority she did not examine these documents. She said “*I commented without looking at what they supplied. I probably should have. I realise now*”.

[14] Following her return from holiday, Ms Henry phoned Ms Jacobson and advised that she was taking legal advice. The legal advisor had suggested Ms Henry obtain documents in relation to the cash handling and disciplinary procedures. She also asked that the meeting scheduled for 6 October 2006 be postponed to permit her time to consult with her lawyer once the documents had been received.

[15] Ms Jacobson wrote to Ms Henry by letter dated 11 October 2006 materially as follows:-

*Further to our telephone conversation, I have enclosed the extra information you have requested. This includes the Discipline and Procedural Fairness Policy, both of the cash handling procedures, as well as a copy of the original End of Day Balance Sheet and the Transaction Breakdown for 18th August. These are the only copies we can find of the end of day balance sheet and the transaction breakdown, both of which were taken from the folders in the reception area. The disciplinary meeting has been confirmed with Dr Coolbear from 11.15am on Tuesday 24th October 2006 in NA129, the Chief Executive's office on North Campus. Parking is available outside the NA building if you enter through Gate 12.*

[16] Ms Henry attended a disciplinary meeting with her lawyer on the afternoon of 24 October 2006. Present for the Chief Executive were Dr Coolbear the acting Chief Executive, Ms Peace, Ms Jacobson and Ms Harvey. There were notes taken of this meeting. I accept those notes as accurate in terms of the substance of Ms Henry's responses. I accept the weight of evidence and the credibility of the Chief Executive's witnesses in this regard. Ms Henry's recall was less certain than the other witnesses.

[17] The meeting was adjourned for discussion. Dr Coolbear was not moved to take action after hearing from Ms Henry. He directed that further investigation be carried out of matters raised by Ms Henry's responses.

[18] The meeting was reconvened later that afternoon. Dr Coolbear advised Ms Henry that he would not be giving his decision at that point as he required further investigation. Ms Henry was not pleased there was no resolution.

[19] Ms Peace and Ms Jacobson interviewed beauty tutors about cash handling procedure that same afternoon. They did not disclose the purpose of their enquiries to the tutors.

[20] On 26 October 2006 Ms Peace and Ms Jacobson interviewed a random group of beauty students about cash handling procedure. Ms Peace also spoke with Ms Hugill the principal lecturer for hairdressing at the time.

[21] Ms Peace and Ms Jacobson reported back to Dr Coolbear both verbally and in writing in the form of notes of the interviews they had conducted. Dr Coolbear was satisfied that Ms Henry could respond to the findings of the further enquiries in a subsequent meeting with her before he made his final decision.

[22] A final meeting was held with Ms Henry on Thursday 26 October 2006. Mr Coolbear informed Ms Henry of the further information gathered following the last meeting and explained how that information contradicted what Ms Henry had earlier said. He informed Ms Henry that his initial view was that she should be dismissed. He asked whether Ms Henry had anything further to add or whether there were any mitigating circumstances he should take into account. Ms Henry denied doing anything wrong. There was then an adjournment for about thirty minutes.

[23] When the meeting reconvened Dr Coolbear advised Ms Henry that his decision was to dismiss her with immediate effect. The next day Dr Coolbear prepared the dismissal letter.

### **The merits**

[24] It is important to note that Ms Henry was not dismissed for theft. The dismissal records that the Acting Chief Executive considered that Ms Henry had not been sufficiently conscientious in terms of handling cash as transparently and accurately as possible. The stated “biggest concern” was two consecutive days where cash monies were unaccounted for and reconciliations made after deletion of entries at the point of sale. These matters were in the Acting Chief Executive’s considered view, matters of

serious misconduct amounting to negligence and irreversibly eroding trust in the employment relationship. Dr Coolbear's evidence to the Authority is that he had lost trust and confidence in Ms Henry "*as a result of what appeared to be a clear act of dishonesty*".

[25] The task for the Authority is to review the Chief Executive's decision to dismiss, by assessing whether it meets the test of justification prescribed by section 103A of the *Employment Relations Act 2000*. That section is as follows:-

*103A. Test of justification*

*For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred*

[26] Ms Henry did herself no favours choosing not to examine the documents provided to her. It is very regrettable that she did not. I was optimistic that my questioning of her would be elucidating. It was not. She was inconsistent and frequently unfocused. Overall she appeared to me to adopt an obfuscatory stance.

[27] I find that at the disciplinary meeting held on 24 October 2006, each separate allegation was individually and methodically presented to Ms Henry by reference to the documents provided to her previously, for her response. I find that Ms Henry had not examined those documents.

[28] One of the two principal discrepancies related to a client I shall refer to by first name only one "Sandy". Ms Harvey had verified Sandy had paid cash for her services but her notes of the telephone conversation she had with Sandy were omitted from the documents provided to Ms Henry. Sandy had attended the 2nd year students' hair salon and received foils on the afternoon of Monday 18 September 2006. Just before 4.00pm, Ms Henry entered the salon and took cash from Sandy. Ms Harvey and Ms Hugel were both present and witnessed the receipt of cash by Ms Henry. Ms Harvey asked Ms Hugel to verify that Ms Henry had correctly recorded the payment on the computer system. Ms Hugel ascertained that there was no record of Sandy's payment

or appointment on the computer system.

[29] Ms Henry was provided the documentation in relation to this discrepancy. The investigation carried out by the Chief Executive's agents established that Sandy did have an appointment for 1.00pm that day. This is verified by an appointment sheet printed at 8.46am of the morning of 18 September 2006. However, the salon log verifies that this appointment was deleted at 11.00am on 19 September 2006. As well, the *End of Day Till balance* report for 18 September 2006 had no record of Sandy's payment of \$40.00. The salon log for the day contained a logged event "*sandy [ ] was Removed from the Point of Sale*". That entry indicated a sale to Sandy had been deleted. The allegation for Ms Henry to answer was that \$40.00 observed as received by her was not accounted for.

[30] At the disciplinary meeting held on 24 October 2006, I find that Ms Henry's response to the matter was simply that she did not recall the person Sandy, she said she could not remember who Sandy was. She further said she had tried to contact Sandy but Sandy was away on holiday. Ms Henry said she found it strange that the amount in question was the same as another discrepancy. She asked rhetorically why would she suddenly start doing "this". She asked why she was not notified when "this started happening".

[31] The second principal discrepancy concerned a client named Sharon. Ms Harvey had verified Sharon had paid cash for her service and the notes of the telephone conversation between them was included in the bundle of documents provided to Ms Henry. On Tuesday 19 September 2006 Sharon had attended the 2<sup>nd</sup> year students' hair salon and received foils and a haircut. There was an appointment sheet printed at 8.57am that same day showing Sharon's appointment at 9.30am. The salon log for 19 September 2006 showed Sharon's appointment for foils-short hair was deleted at 9.30am, and her appointment for haircut deleted at 11.30am. Significantly, the same log showed Sharon was removed from the point of sale. A further copy of the appointment sheet printed at 2.01pm showed no record at all of Sharon's appointments. The end of day transaction summary report did not show any transaction involving Sharon. The allegation for Ms Henry to answer was that \$40.00

observed as received by her was not accounted for.

[32] At the disciplinary meeting on 24 October 2006, I find that Ms Henry said she had clarified with Sharon that the sale was \$40.00 and not \$50.00. I find further that Ms Henry did not dispute that the money was missing but she said she had simply put the money in the till and then went off to lunch without entering it on to the system. I find she said she took the money from Sharon but did not cash her in, she said she admitted this.

[33] In response to the deletion at point of sale, she said anyone could do this as there is access to the computers at reception and the computer does not have a login. She maintained that at the end of the day the form and till matched. She said that students replaced her when she was at lunch and that anyone could open the till and anyone could delete records.

[34] It is not disputed that “point of sale” deletions could only be made from Ms Henry’s computer at reception. Ms Henry continued to maintain that students were capable of making such entries. The further enquiries made by Ms Peace and Ms Jacobson of the principal lecturer, two beauty tutors and the beauty students disclosed that such an action required a level of proficiency tutors and students did not possess. The beauty students also confirmed that Ms Henry supervised them as Beauty salon transactions were entered into the computer system. This further information was advised to Dr Coolbear.

[35] In relation to the discrepancy concerning the client Sandy, Ms Henry did not address the specifics of the discrepancy because she told her employer she could not recall Sandy. That response was not sufficient to rebut the evidence gathered by the Chief Executive. He had evidence that a sale had been processed at point of sale, because and significantly, that same sale had been deleted as evidenced from the salon log. In addition to that deletion, there was a further deletion of the appointment itself, the following day at 11.00am. He concluded that Ms Henry was likely the only person proficient to delete the point of sale entry and I consider this finding a reasonable inference on the evidence gathered. The deleted appointment could have

been made by another person. But at 11.00am Ms Henry would not have been at lunch. In my view it is suspicious indeed that not one but two deletions of entries were made and that situation is unlikely to have been mere coincidence. Next, in my view it is inherently unlikely that the entries would have been deleted fortuitously and further, that both deletions would have been made independently of missing funds. I say missing funds because the deletions if made independently, would have put the till in surplus funds by \$40.00 and did not. The inference that Ms Henry was responsible was a reasonable one to draw. There are too many coincidences in this scenario and the situation inherently unlikely to be innocent. So I think it reasonable for there to have been an inference drawn that the deletions were made with nefarious intent. Considering matters this way, I conclude Dr Coolbear's findings on this discrepancy and his ultimate conclusion sound and reasonable.

[36] In relation to the discrepancy concerning the client Sharon, Ms Henry said she was in a hurry rushing off to lunch and so she put the money in the till without processing the transaction. This admitted failure justified a disciplinary response and amounted to an admission by Ms Henry that she had failed to account for funds. But if Ms Henry had examined the documentation provided to her, she would have realised herself that the sale was in fact processed. It was processed because the documents evidenced a point of sale removal. I cannot say from the documents what time the client was removed from the point of sale. The time of appointment deletions does not have Ms Henry at lunch. The 2.00pm appointment itself was deleted before it took place. That is curious. So it is not just one entry that was deleted, but three. I do not think it unreasonable to regard that situation as more than mere coincidence. And it is inherently unlikely that those deletions were all fortuitous and more than that, made independently of the surplus cash situation which would have arisen if all the deletions were innocent. So again, I think it reasonable for there to have been an inference drawn that the deletions were made with nefarious intent. Considering matters this way, I conclude Dr Coolbear's findings on this discrepancy and his ultimate conclusion sound and reasonable.

[37] Dr Coolbear tells the Authority that he weighed all the information provided to him on all the discrepancies presented to Ms Henry for her to answer. He concluded

that Ms Henry was likely to be the only person who had the ability to delete point of sale of transactions appeared to reveal dishonest activity going on. He concluded that either Ms Henry had appropriated the money or she was covering up her lack of care in monitoring the money in the first place by changing the records to provide reconciliation. In either case, there appeared to Dr Coolbear to be a serious erosion of trust. Bearing in mind it was Ms Henry's responsibility to ensure there were no discrepancies, and that she had not reported any herself, he tells the Authority it was certainly to his mind clear that Ms Henry had changed the records so that reconciliation could be made which to him was not just negligence, but rather, involved a high degree of dishonesty. His ultimate conclusion was that he had lost trust and confidence in Ms Henry as a result of what appeared to be a clear act of dishonesty.

[38] At the disciplinary meeting held on 26 October 2006, I am satisfied Ms Henry was advised that the Acting Chief Executive had concluded she was the only person in a position to delete point of sale entries. She offered no challenge or any further comment on that conclusion.

[39] I agree with Dr Coolbear's description of the hairdressing client discrepancies as the biggest concern. I too regard those allegations as the most critical. I have reviewed the evidence gathered by the Chief Executive's agents/delegates. I consider the investigation he and his delegates carried out was full and fair. I find it was a reasonable conclusion on the evidence gathered for the Chief Executive to conclude that Ms Henry had failed to account for funds and further, that she had deleted computer entries dishonestly.

[40] Considering matters objectively, I find the conclusions the Acting Chief Executive reached that Ms Henry's conduct constituted serious misconduct were what a fair and reasonable employer would have determined. Having regard to the nature of Ms Henry's position, the Acting Chief Executive's conclusions as to Ms Henry's serious misconduct went to the very heart of the contract of service between her and the Chief Executive. I find that the decision he reached to summarily terminate her employment was available to him in respect of the hairdressing discrepancies and such

an action was that which a fair and reasonable employer would have taken.

[41] As a result of my findings above in relation to the hairdressing client discrepancies, it is unnecessary for me to review the Acting Chief Executive's actions and decisions in respect of the remaining allegations.

### The determination

[42] **On an objective basis, I therefore determine that the dismissal is justifiable. Ms Henry does not have a personal grievance and there is no case for resolution by formal orders. There will be no formal orders.**

### Costs

[43] In the event that costs are sought, I invite the parties to resolve the matter between them, but failing agreement, Ms Steel is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Mr Duckworth is to lodge and serve a memorandum in reply thereafter but within 28 days of the date of this Determination. I will not consider any application outside that timeframe without leave.

Leon Robinson  
**Member of Employment Relations Authority**