



Temperance Bar's failure to attend or be represented, I would act as fully in this investigation as if it had attended or been duly represented.

[3] At the investigation meeting evidence was given by Mr Harper. He was also directly questioned by me. I put to him the views of Temperance Bar, as disclosed in correspondence from its lawyers, and was satisfied (particularly in the absence of any evidence to the contrary) that his responses were truthful. I have therefore made, on the balance of probabilities, the following findings of fact.

[4] Mr Harper worked at the Temperance Bar as a barperson (even though he had a manager's licence) on a part-time basis between July and October 2008. Although he started off working an average of 30 hours per week, by the time he left his average hours had reduced to about 10-14 per week.

[5] In the course of his duties on 25 October, Mr Harper was called aside, by the duty manager and the owner of the company, to a public area by the lifts. There he was confronted with an allegation that he had been seen undercharging for an order of drinks.

[6] Mr Harper explained that he did not place an Eft-Pos receipt in the till at the time of the transaction, but instead not until after he had served another customer and received payment from them. He said that the duty manager had wrongly assumed that he was undercharging because the receipt put in the till did not match the transaction nearest to the time, but that had been paid for by cash. Mr Harper's explanation, therefore, was that the concerns of the duty manager were unwarranted because the receipt she considered to be evidence of undercharging related to an earlier unrelated transaction.

[7] This explanation was not accepted by the owner and the duty manager, even though they did not check the till or Eft-Pos records to clarify matters. Instead, Mr Harper was told that he was to be escorted off site and that he would be rung the following day to arrange a meeting, where he could formally explain himself. There was no discussion of suspension or dismissal, but Mr Harper assumed that he had been dismissed.

[8] Mr Harper went straight to another bar in town and secured employment there, with an immediate start. In fact that job has worked out better for Mr Harper in that he works as a duty manager and has more regular work available for longer hours.

[9] Mr Harper received no further contact from the Temperance Bar, contrary to what he had been told the previous week, so he decided to find out what had happened with respect to the allegations. On Wednesday 29 October he went into the Temperance Bar. He was told that he had been suspended, but was rostered to work the next weekend, which surprised him, as he thought he had already been dismissed. Mr Harper's intention was to clear his name and he wanted a meeting to that effect, even although he had found other employment. I accept Mr Harper's evidence that that was what he wanted and that he did not indicate at that time that he had resigned and taken up a new job.

[10] There were number of attempts between the parties to hold such a meeting, but for various reasons, almost all of them being the responsibility of the Temperance Bar, a meeting did not go ahead.

[11] On Mr Harper's behalf, Ms Beacham claimed compensation of \$10-15,000 for an unjustified action to his disadvantage, namely for the suspension and its aftermath, plus a contribution to Mr Harper's legal costs of \$2,700.

[12] I accept that Mr Harper's feelings were injured and that he was humiliated by the way in which he was suspended, and the subsequent lack of an opportunity to clear his name. A fair and reasonable employer would not have escorted Mr Harper off the premises, that very evening, especially without informing him that he was suspended. Furthermore, Mr Harper had no opportunity to make representations on whether or not he should have been suspended. In the circumstances, it was reasonable for him to believe that he had been dismissed.

[13] Mr Harper then had no opportunity to clear his name. He had an explanation, which he gave at the time, but it appears that the matter was never investigated further by the Temperance Bar, as it should have been. These are also not the actions of a fair and reasonable employer. Clearly, this also impacted negatively on Mr Harper.

[14] Mr Harper is entitled to compensation, but that compensation can not extend to the loss of his job as he resigned. Mr Harper is also keen to clear his name, which is the effect of this determination. That too is a factor to be taken into consideration in assessing compensation. The short nature of the suspension (and indeed his employment with the Temperance Bar) together with his success in finding alternative

employment almost immediately, are all factors that call for moderation in the assessment of compensation.

[15] I therefore determine that compensation of \$3,000 is appropriate in all the circumstances.

[16] Mr Harper knew almost from the beginning that the Temperance Bar would not be defending this claim. Therefore the need for preparation was less than usual. The investigation took less than an hour. In all these circumstances, an appropriate award of costs is \$1,500.

[17] I therefore order the respondent, Blair Street Sports Bar Limited, to pay to the applicant, Mr Benjamin Harper, the sums of \$3,000 compensation under s.123(1)(c)(i) and \$1,500 as a contribution to his costs.

**G J Wood**  
**Member of the Employment Relations Authority**