

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**AA 14/09
5052568**

BETWEEN ANNIE CUI
 Applicant

AND THE VICE-CHANCELLOR OF THE
 UNIVERSITY OF AUCKLAND
 Respondent

Member of Authority: Leon Robinson

Representatives: Andrea Halloran, Counsel for Applicant
 David France, Counsel for Respondent

Investigation Meeting: 11 August 2008
 12 August 2008

Submissions Received: 18 August 2008
 26 August 2008
 29 August 2008

Determination: 19 January 2009

DETERMINATION OF THE AUTHORITY

The problem

[1] The applicant Ms Annie Cui (“Ms Cui”) claims she was unjustifiably dismissed by the Vice-Chancellor of the University of Auckland (“the Vice-Chancellor”). The Vice-Chancellor says Ms Cui was dismissed for serious misconduct because she had been dishonest.

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

The facts

[3] The Vice-Chancellor advertised a vacancy for an Administrative Assistant-Finance in February 2006.

[4] Ms Cui submitted an online application for the advertised vacancy on 16 February 2006. That application comprised a template application form, a covering letter and Ms Cui's curriculum vitae.

[5] The covering letter stated:-

I fit your key requirements and person specification in the following ways:

Excellent computer, database, analysis skills with expert level of competence in Excel, Word, Access with some familiarity with SQL

Extremely organised with great attention to detail

Management of invoices and payments

...

Bachelor Computer Science, Diploma in English, and Certificate in Office Administration

[6] The curriculum vitae set out Ms Cui's education and qualifications:-

Education and Qualifications

- *Graduate Diploma in Computer Science*

The University of Auckland, New Zealand, 2002

- *Certificate in Office Administration*

UNITEC Institute of Technology, Auckland, New Zealand, November 1997

- *Diploma in English (Advanced level)*

UNITEC Institute of Technology, Auckland, New Zealand, June 1999

- *Bachelor of Science (BSc) in Computer Science*

The University of Tianjin, China, June 1990.

(The University of Tianjin is recognized with the University of Auckland)

- *Certificate in Life Comprehensive First Aid*

Northland Polytechnic, Auckland, New Zealand; Dec, 2003

- *Certificate in Treaty of Waitangi*

Manukau Institute of Technology, Auckland, New Zealand; Nov, 2005

[7] Ms Cui attended an interview at the University of Auckland on 7 March 2006 with the Vice-Chancellor's delegates Dr Geraint Phillips, clinic manager ("Dr Phillips"), Ms Catherine Hubert, HR adviser ("Ms Hubert"), Ms Janine Perkinson,

department manager ("Ms Perkinson") and Ms Georgina Thomson, financial administrator ("Ms Thomson").

[8] Ms Cui was subsequently offered and accepted two roles. The first was the advertised permanent Administrative Assistant role and the second was a three-month receptionist role.

[9] Ms Cui was employed under the terms and conditions of a General Staff Collective Agreement. She commenced employment on 27 March 2006.

[10] On 18 May 2006, Ms Cui attended a meeting with Dr Phillips, Ms Perkinson and Ms Thomson as a result of concerns about Ms Cui's performance. The Vice-Chancellor's delegates were concerned about errors with Ms Cui's work and the time it was taking her to complete her assigned tasks. The meeting was not formal or disciplinary.

[11] As a result of comments made by Ms Cui in the meeting held with her on 18 May 2006, the Vice-Chancellor's delegates had cause to question Ms Cui's stated qualifications. In the course of enquiries, the Vice-Chancellor's delegates became aware that Ms Cui had not been conferred any Graduate Diploma in Computer Science from the University of Auckland in 2002 as represented in Ms Cui's curriculum vitae.

[12] By letter dated 29 May 2006 Ms Hubert wrote to Ms Cui as follows:-

The Department of Optometry and Vision Science is concerned that some of the information you provided in your curriculum vitae is not accurate. In particular you stated that you had the following attributes, experience and qualifications:

- *Management of invoices and payments*
- *Graduate Diploma in Computer Science*
- *Excellent written and oral communication skills*
- *Excellent data entry skills*
- *Great attention to detail*
- *Expect level of competence in Excel and Word*

We are concerned about the accuracy of these statements in light of your performance and we would like to discuss the situation with you further. You

are requested to attend a disciplinary meeting on Wednesday 31st May at 1pm. The meeting will be held in the Resource Room which is located in the Department of Optometry and Vision Science. Present at the meeting will be Janine Perkinson, Geraint Phillips and myself. I strongly encourage you to bring a representative with you to the meeting.

The purpose of the meeting is to discuss our serious concerns on the matter above with you. We will be seeking your explanation on this matter prior to forming any view on what action may be appropriate. Due to the seriousness of this matter if we do not accept your explanation your employment at The University of Auckland may be terminated.

I have attached the University's disciplinary policy for your reference. Please contact me on the number below if you have any questions regarding the contents of this letter or the disciplinary policy.

[13] The disciplinary meeting was held on 1 June 2006. Ms Cui was assisted by two union representatives. In relation to the Graduate Diploma in Computer Science, Ms Cui said she must have made a mistake on her CV about the qualification. She explained that she had completed only two papers and thought she had explained this at interview. Ms Cui produced another version of her CV which added the words "to be completed" to the Graduate Diploma in Computer Science. She explained she must have accidentally deleted those words in the CV she submitted with her application. There was then discussion of Ms Cui's performance. Ms Hubert advised she would meet Ms Cui the following day at 2.00pm.

[14] Ms Hubert met with Ms Cui at 2.00pm on 2 June 2006. She advised Ms Cui her employment was terminated and gave her a letter confirming the dismissal. The letter stated:-

After the meeting we remain concerned about the accuracy of your cover letter and curriculum vitae. While you were able to explain some inconsistencies we were not satisfied with the majority of your responses. The University regards dishonesty as serious misconduct and as a result of the meeting the University has lost trust and confidence in you. After carefully considering your explanations and completing an investigation it has been decided to terminate your employment effective immediately.

The merits

[15] The test of justification is prescribed at Section 103A of the *Employment Relations Act 2000* ("the Act"). That section provides:-

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.

[16] I find that when she was interviewed on 7 March 2006 Ms Cui did not inform the Vice-Chancellor through his delegates that she did not have a Graduate Diploma in Computer Science from the University of Auckland. I prefer the evidence of the Vice-Chancellor's witnesses in making that finding.

[17] I find that when she was asked in the meeting held on 1 June 2006 Ms Cui said she did not have a diploma in computer science from the University and that this was a mistake on her curriculum vitae. In her prepared evidence Ms Cui says she advised she had accidentally deleted two words "not complete" from her curriculum vitae. I prefer the Vice-Chancellor's evidence that Ms Cui said the words "to be completed" had been omitted. I find Ms Cui said she had been applying for a lot of jobs at the time and must have made a mistake. She produced another version of her curriculum vitae with the further endorsement "to be completed". She also said she was sure she had informed the University of the situation.

[18] Ms Hubert and Dr Phillips considered Ms Cui's responses. They considered they were unable to accept Ms Cui's explanation that she had submitted an incorrect version of her CV. They did not consider the explanation plausible. They concluded that Ms Cui's actions were misleading and dishonest and that they had lost all trust and confidence in her.

[19] Dr Phillips and Ms Hubert had been present when Ms Cui was interviewed for the employment. They were aware that Ms Cui had not made any correction to her curriculum vitae at that interview. Accordingly, they were entitled to reject what Ms Cui said that she had done so. Because they were entitled to reject that explanation, they were entitled to form the view that Ms Cui had not in error submitted an incorrect version of her curriculum vitae. In doing so, they were entitled to conclude

Ms Cui had acted dishonestly in representing she had attained a qualification she had not.

[20] I find that the Vice-Chancellor through his delegates was reasonably entitled to take the view Ms Cui had been dishonest. The Vice-Chancellor was further entitled to conclude Ms Cui had committed serious misconduct. That misconduct went to the heart of the contract. It matters not that the particular qualification was not required for the position. The Vice-Chancellor was entitled to expect Ms Cui's faithful service and dishonestly going to the heart of the contract was wholly inconsistent with that underlying faithfulness.

The determination

[21] I find that on an objective basis, the Vice-Chancellor's actions, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred. **I decline to resolve this employment relationship problem in the manner sought by Ms Cui. There will be no formal orders.**

Costs

[22] In the event that costs are sought, I invite the parties to resolve the matter between them, but failing agreement, Mr France is to lodge and serve a memorandum as to costs within 14 days of the date of this Determination. Ms Halloran 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