

[4] Ms Sue Cox, a director of the respondent, became concerned in May 2009 that stock appeared to be going missing. She arranged for an additional covert camera to be installed. She engaged Mr Gary Swan to help her conduct an investigation into Ms Bailey's activities. Mr Swan is a private investigator.

[5] Ms Cox said all the staff had accounts so they could purchase items on credit. This was the only system available for credit. Ms Bailey alleged there was a "tick" system but I am satisfied there was not. It makes no sense for staff to have accounts and to operate another system at the same time.

[6] From 27 March 2009 to 5 May 2009 Ms Cox carried out a physical check of cigarettes, Red Bull, V cans, Nippy's iced chocolate, V8 Vegie Juice and Fresh Breath filters on a regular basis. She carried out a stocktake on cigarettes and other items after the night shift and after the morning shift to try and identify on which shifts stock was going missing. It was only on shifts worked by Ms Bailey that items were missing.

[7] Ms Cox checked each of the staff's accounts and made a list of what each purchase regularly purchased. She also checked her stock records by checking the purchase figures and the sales figures against the stock levels for those items. She found big discrepancies in some items. As only staff had access to the area cigarettes were kept a staff member had to be responsible.

[8] On 26 April Translegal installed a covert camera in the office area. There was already a permanent camera in the shop area which staff were aware of. On 3 May she checked both the shop and office tapes for the previous week.

[9] The shop tape for 27 April showed Ms Bailey taking cigarettes and Red Bull and passing them to her husband. Ms Bailey then rang up a sale but it was only for the Red Bull.

[10] The office tape for 28 April shows Ms Bailey taking money from the till drawer and putting notes in her bag. She then took cigarettes and placed them in her bag. The till for Monday 27 April, which included the float for 28 April, was down by \$60.

[11] On 3 May footage shows her passing something to her son, who is then seen eating from a small green bag of chips. No chips were rung up on her shift. Ms Bailey was seen drinking from a can of Red Bull which had also not been rung up.

[12] On Tuesday 5 May Mr Swan told Ms Bailey he believed she had taken \$20 notes and cigarettes without authorisation on 28 April.

[13] Ms Bailey went away and came back with a piece of paper on which was written IOU \$20. She said she had written the note when she took the \$20 from the till and she had put the note in her handbag. She also produced receipts for several items.

[14] Mr Swan told Ms Bailey she was to attend a disciplinary meeting to view the evidence and explain her behaviour.

[15] Ms Bailey left and came back with a resignation letter. Mr Swan said Ms Cox would consider the resignation. The letter reads:

I am resigning from my position at Kaurilands Service Station as of 5/5/09 a [sic] require that of my full and final pay you deduct what is owing on my account and further more I will attend the meeting scheduled for Thursday 8th May 2009 at 2pm.

[16] Later that afternoon Ms Bailey returned and paid for four packets of cigarettes which she said she had previously taken.

[17] A meeting was held on 8 May. Ms Bailey said she had been wrongly accused so a former employee could be re-employed on a full time basis. Ms Bailey was shown the video. Ms Cox said she decided that Ms Bailey had taken money and cigarettes without authorisation and should be dismissed. The police were contacted and interviewed Ms Bailey.

DISMISSAL

[18] Ms Bailey was not dismissed. She resigned. Ms Cox said she held the disciplinary meeting because she believed she had to give her the opportunity to provide an explanation before accepting a resignation.

[19] Ms Bailey did not attempt to withdraw her resignation.

[20] If it had been necessary to make a finding about the justifiability of a dismissal I would have found that the dismissal was justifiable as Ms Bailey had taken money and cigarettes without authorisation.

COUNTER CLAIM

[21] Apart from a sheet showing and itemising missing stock for the period 27 March to 5 May and the names of the people on whose shifts the items went missing I have no evidence that links missing stock with Ms Bailey. The evidence does not show the price of items and I have not been given a breakdown of the sum claimed so I am not in a position to make an award regarding the counterclaim.

COSTS

[22] If the parties are unable to resolve the matter of costs the respondent should file a memorandum within 28 days of the date of this determination. The applicant is to file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King

Member of the Employment Relations Authority