

31 August 2012

**[2012] NZERA Auckland 300 Paul Taki and Sylvia Taki and Spotless Services (NZ) Limited**

**The Employment Relations Authority has recalled the determination [2012] NZERA Auckland 248 and has replaced it with this determination.**

**The changes are to Paragraphs [66], [68] and [69].**

A handwritten signature in black ink, appearing to read 'D Downie', is positioned above the printed name.

**Deborah Downie  
Senior Support Officer**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**[2012] NZ ERA Auckland 300**  
5363820  
and  
5363824

BETWEEN                      PAUL TAKI and SYLVIA  
   TAKI  
   Applicants

A N D                              SPOTLESS FACILITY  
   SERVICES (NZ) LIMITED  
   Respondent

Member of Authority:        James Crichton

Representatives:              Warwick Reid, Advocate for Paul Taki  
   Rachel Rolston, Advocate for Sylvia Taki  
   Peter Jennings and Rachel Langton, Advocates for  
   Respondent

Investigation Meeting:        16 and 17 July 2012 at Tauranga

Date of Determination:        31 August 2012



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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicants (Mr and Mrs Taki) were employed by the respondent (Spotless) as cleaners at Tauranga. Each of them was suspended from duty pending further enquiries by Spotless. While there are some differences in the factual matrix pertaining to each of the applicants, it was helpfully agreed by the representatives that the matters could be investigated together. It is convenient for the Authority to produce a single determination dealing with both matters.

[2]     On 19 July 2011, Mr and Mrs Taki were asked to stop their work and attend a meeting at Spotless' Tauranga office. Although Mr and Mrs Taki frequently worked together on Spotless' cleaning sites, on this occasion, they were separately deployed. Both Mr and Mrs Taki were summoned to the meeting on 19 July 2011. They were

confronted by the Tauranga manager for Spotless, Mr Richard Vile who indicated that there had been a theft of money from the Downer's site where Mr and Mrs Taki had cleaned.

[3] Mr Vile produced closed circuit television footage from inside the Downer's premises, which showed Mr and Mrs Taki opening and closing a drawer in an office desk.

[4] Mrs Taki became distressed and left the office and sat out in the couple's car.

[5] Because of that, Mr Vile suggested that the meeting reconvene the following day. Mr Taki went out to the car to comfort his wife and Mr Vile indicated that the couple were suspended on pay "until it's resolved" to quote from Mr Taki's brief of evidence. Mr Vile also told Mr Taki that the video footage would be sent to police and to Spotless' Human Resources Division.

[6] Mr Vile indicated that Mr and Mrs Taki would need to return their access keys and cards in the meantime and arrangements were made for another meeting the following day.

[7] At the second meeting on 20 July 2011, only Mr Taki was present. Mr Taki told Mr Vile that they were closing the drawer and not doing anything improper. Mr Taki also indicated he wished to get a support person or a lawyer and Mr Vile encouraged that.

[8] Mr Taki also collected a form for his wife as she wanted to think about resigning.

[9] On 21 July 2011, Mr Taki rang Julia Heke, a supervisor at Spotless to "find out what was happening". Ms Heke told Mr Taki that she was not 100% sure but encouraged Mr Taki to ring back later and talk to Mr Vile who had not been in the office. Mr Taki's evidence is that he made that call to Mr Vile who was unsure about how long the Takis would be paid for. But Mr Vile is adamant that he received no such call from Mr Taki.

[10] On 25 July 2011, Mr Taki took in his wife's resignation form, picked up a like form for himself and subsequently resigned on 27 July 2011.



[11] Mr and Mrs Taki say that they resigned because they were not assured of continued payment while the investigation into the Downer's matter continued. Accordingly, the Takis allege that their resignation was involuntary and that they have suffered a constructive dismissal. Further, they allege that the suspension was not effected in accordance with the law and therefore they have suffered a disadvantage as a consequence of Spotless' unjustified action in suspending them.

[12] For their part, Spotless say that they had always made it clear the suspension would be on pay and that pay would continue while the investigation continued. Further, Spotless say the implementation of the suspension was done in accordance with the law.

### Issues

[13] It will be convenient if the Authority investigates the following questions:

- a. What are Spotless' obligations to verify the evidence against its staff?
- b. Did Spotless correctly implement the suspension?
- c. Did Spotless promise payment during the suspension?
- d. Can Spotless communicate with Mrs Taki through Mr Taki?
- e. Did the Takis contribute to any personal grievance by resigning precipitately?
- f. What payment was actually made to the Takis during suspension?

### *What are Spotless' obligations to verify the evidence against its staff?*

[14] The advocates for Mr and Mrs Taki argued strongly that Spotless had an obligation to verify the accuracy of any allegations against its staff and that it was not enough for Spotless to simply receive the allegation and then suspend staff on the basis of the allegation alone.

[15] Conversely, Spotless say that they have contractual obligations with their clients and if their clients express doubt about particular staff members, then Spotless' contractual obligation is to remove that staff member or members pending further enquiries.

[16] But according to the Takis, even if that position were to be accepted, it does not explain why Mr and Mrs Taki were removed from all duties at all sites while the investigation was proceeding. The only explanation for that, it is said, had to be that Spotless felt there was a case to answer.

[17] The evidence of Mr Vile is that he attended at Downer's premises on 18 July 2011 and was told by Downer that \$165 had been taken from petty cash which was kept in a drawer in a desk in one of the offices. Downer had responded by installing temporary CCTV cameras and the CCTV footage supplied to the Authority was for Sunday 17 July 2011.

[18] According to Mr Vile, he was told that the CCTV camera was focused on the petty cash drawer and there is no question that the footage shows Mr and Mrs Taki opening and closing the drawer.

[19] But it is important for the Authority to record that that is all the footage shows. Each of Mr and Mrs Taki are shown opening and closing the drawer. There is nothing in the footage to suggest that any money, or indeed anything else, was removed from the drawer.

[20] Mr Vile told the Authority in his evidence that Downer had indicated to him that the footage the Authority saw was the only relevant footage. The Authority must take it (as Mr Vile plainly did) that that observation meant that Downer were linking the theft to Mr and Mrs Taki.

[21] However, the problem with that link is twofold. The first is that there is no evidence from the CCTV footage that Mr and Mrs Taki took anything from the drawer, and second and more importantly, it came out in the evidence at the investigation meeting that the theft itself had not happened on or about the time that the footage recorded Mr and Mrs Taki opening the drawer, but in fact was potentially six to eight weeks before that.

[22] In those circumstances, the Authority is not persuaded that it is sufficient for Mr Vile to simply rely on the bare allegation raised by Downer. He must be put on notice by the matter being drawn to his attention by Downer, that there is an issue for investigation in respect to his staff, but no more than that.



[23] On the basis of the information provided by Downer to Mr Vile, there ought not to have been a presumption of guilt by Spotless, irrespective of their obligations to their customer Downer. The fact that guilt was presumed is inferred from Spotless' behaviour. First, and most important, Spotless withdrew Mr and Mrs Taki from all work sites pending the investigation into the Downer allegation. If Spotless had an open mind then, in the Authority's opinion, they ought to have allowed Mr and Mrs Taki to continue their work at other sites. That there was an issue to investigate in relation to Downer is undoubted but in the absence of more than Downer were able to provide Mr Vile with, a blanket prohibition on working goes too far. The second and less important reason for inferring that Spotless had identified guilt is their willingness to make good the Downer loss. The Authority heard that Mr Vile paid Downer the \$165 that had been taken.

[24] In the Authority's opinion then, an employer in the position of Spotless first has a contractual obligation to its client to remove them pending further enquiries. There can be no quarrel with that.

[25] But there is nothing which would entitle Spotless to deprive Mr and Mrs Taki of the right to continue working for other clients unless and until it was demonstrated on the balance of probabilities that there was evidence of dishonest behaviour.

[26] Spotless will say that it was enough that Mr and Mrs Taki were seen opening and shutting a drawer and that that in itself is a breach of company policy. That contention is accepted, as far as it goes. But there is a wealth of difference between the opening and shutting of a drawer on the one hand, and the stealing of the drawer's contents on the other. The first arguably is ordinary misconduct and might attract a warning while the second, if proved, would be grounds for dismissal.

[27] In any event, the Authority discerns that Mr Vile's behaviour with Mr and Mrs Taki suggested a conviction that dishonesty was involved rather than something of less seriousness. That conclusion is reached because of the removal of the Takis from all work and, less importantly, because of the payment of the lost sum by Spotless.

[28] So the Authority's conclusion in relation to this first question is that an employer in Spotless' position has an obligation to satisfy itself that the evidence against an employee is sufficient to justify an "across the board" suspension. Given



the facts here, where the CCTV footage discloses only the opening and shutting of a drawer and nothing more and the fact that the theft might have dated back some six to eight weeks, the Authority's view is that a fair and just employer could not be justified in concluding that an "across the board suspension" was a justified response to the very limited evidence against Mr and Mrs Taki.

[29] Of course, if there had been a thorough investigation and further evidence had come to light which supported the contention that Mr and Mrs Taki had been dishonest, then an across the board suspension could have been implemented at that point but in the absence of evidence on the balance of probabilities, the Authority considers that Spotless went too far.

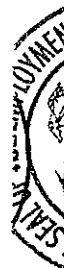
***Did Spotless correctly implement the suspension?***

[30] Having already established that the suspension went too far in terms of its justification, the Authority now wishes to consider whether Spotless correctly implemented the decision to suspend. In particular, this is about the process undertaken by Spotless and whether there was adequate consultation between the parties.

[31] Mr Vile told the Authority that Spotless' policy was to suspend in these circumstances and that his intention was to try to get the agreement of Mr and Mrs Taki to that taking place. That agreement proved difficult in the first meeting between the parties on 19 July 2011 because both Mr and Mrs Taki became agitated. Mr Vile suggested that there be a second and subsequent meeting the following day.

[32] On 20 July, as the Authority has already noted, only Paul Taki presented. Mr Vile's evidence is that he proposed suspension to Mr Taki and that Mr Taki responded with words to the effect "so we will be on paid leave while this is investigated?". Mr Vile then confirmed again that that was the intention and he says that Mr Taki then said something to the effect that he was happy to be off work provided that he was paid.

[33] Mr Taki's recollection of that conversation, not surprisingly, is different. He says that Mr Vile told him that he and his wife were to be suspended and that he "did not ask me to comment or even give me the opportunity to comment on suspension. ... I didn't know what to say".



[34] The Authority thinks it more likely than not that Mr Vile correctly sought Mr Taki's comments on his proposal to suspend and accordingly the Authority prefers Mr Vile's evidence on this point. The tipping point for the Authority was Mr Taki's comment at the end of the passage quoted from his evidence where he indicated that he did not know what to say. That rather suggests to the Authority that it was put to him on the basis that he had an opportunity to comment but felt unable to or was not sure what to say.

[35] But that is not the end of the matter because the Authority must also consider whether a fair and just employer, given particularly its decision to apply an "across the board" suspension, would not insist or at the very least encourage, an employee to obtain proper advice. The evidence before the Authority suggests that the initiative for seeking advice came from Mr Taki and not from Mr Vile. Indeed, Mr Taki says that the first discussion about suspension took place in the earlier meeting on 19 July 2011 and it was not until the day after that Mr Taki raised the question of getting some legal advice. Conversely, Mr Vile's evidence is that the suspension issue was not formally put to Mr Taki until the second meeting on 20 July 2011.

[36] Whenever the discussion took place, the Authority is satisfied that a good and fair employer, seeking to impose a blanket suspension of the sort contemplated here, would have encouraged the affected employee (or employees) to seek advice and that the failure to do so in a timely fashion, calls into question the fairness and justice of the process.

***Did Spotless promise payment during the suspension?***

[37] This issue is central to the Taki's claim that they resigned because of some doubt about the question of whether they would be paid or not. For the avoidance of doubt, the Authority is satisfied that Spotless made it absolutely clear to Mr Taki that the Takis would be on full pay while the investigation continued.

[38] Indeed, although Mr and Mrs Taki appear to have somehow convinced themselves that they would not be paid, the evidence is that Mr Vile was very clear about this point. Even on Mr Taki's evidence he records that Mr Vile told him at each of the two meetings on 19 and 20 July 2011 respectively, that the Takis would be suspended "with pay until it resolved" (19 July 2011) or "suspended on pay pending an investigation" (20 July 2011).



[39] It is difficult to be more explicit. Mr Vile, on Mr Taki's evidence then, said that the Takis would remain on pay while the investigation continued. That of course is Mr Vile's own evidence and that evidence is confirmed by Ms Heke who took the notes of the meeting on 19 July 2011 and she was physically present at the meeting the following day. Her evidence confirms Mr Vile's evidence and is consistent with Mr Taki's evidence.

[40] But Mr Taki seems to place reliance on subsequent advices that he claims to have received. He rang Ms Heke on 21 July and according to Ms Heke asked about the progress of the investigation. Given that this is the day after the meeting between the parties, that enquiry might be seen as somewhat precipitate. In any event, Ms Heke said that she did not know what stage Human Resources were at but that on the subject of payment (which Mr Taki had also asked about) Ms Heke's evidence is that she confirmed what she had heard at the two meetings, namely that the Takis would remain on pay until the investigation was complete.

[41] Although Ms Heke does not remember this part of the conversation, Mr Taki is adamant that there was some discussion about her checking progress with the investigation and Mr Taki ringing back. Mr Taki's evidence is that he did ring back on 22 July 2011 and that he spoke then to Mr Vile who allegedly told Mr Taki that he (Mr Vile) "wasn't sure whether I would continue to be paid or not ... and that he would contact HR and get back to me". But Mr Vile denies that conversation ever took place and the Authority prefers his recollection of those events to Mr Taki's.

[42] Further, in the contest between Mr Taki's recollection of the conversation with Ms Heke and Ms Heke's own recollection, the Authority prefers Ms Heke's evidence. Indeed, of all the witnesses that the Authority heard in this matter, Ms Heke was far and away the most straightforward and impressive. Notwithstanding her continued employment with Spotless, she made it absolutely clear that she thought highly of Mr and Mrs Taki, thought they were excellent cleaners, was sorry to lose them, and would gladly continue to act as a referee for them. Given those very clear expressions of view in her evidence, the Authority doubts that Ms Heke has any negative axe to grind so far as Mr and Mrs Taki are concerned and has no reason to doubt her recollection of the events around the telephone discussion that she had with Mr Taki. That being the position, the Authority is satisfied that Mr Taki was told by Ms Heke in that telephone conversation, that he would remain on pay while the investigation



continued. The only thing she was unsure about was what stage the investigation was at and given that the matter had only been sent to Human Resources the day before, it would seem unlikely that they would have made any real progress in the matter.

[43] It follows from the foregoing analysis, that the Authority is absolutely satisfied that Mr Taki was told that he and his wife would remain on full pay while the investigation continued and that advice was never varied by Spotless.

***Can Spotless communicate with Mrs Taki through Mr Taki?***

[44] It will be remembered that Mrs Taki departed the initial meeting on 19 July 2011 and never engaged again with the employer. All of the information on which she made her decisions was conveyed to her by her husband. The Authority is not satisfied that Spotless can or ought to be able to rely upon the husband of an employee to convey to that employee, critical information pertaining to her continued employment.

[45] Given that Mrs Taki's decision to resign her employment without waiting out the investigation, was based on information conveyed to her by her husband, there is the real risk of the message from Spotless being corrupted. In fact, Mrs Taki appears to have reached the same conclusion as her husband, that she was not going to be paid for the whole of the investigatory period, but she seems also to have been motivated by a desire to as it were bring the investigation to an artificial end. Ms Heke put the matter very well in her evidence when she told the Authority that she thought that Mrs Taki had resigned *because she assumed she would be fingered for the theft even although she hadn't done it, because she had a criminal record.*

[46] Despite that criminal record, which Ms Heke was aware of because of the need to conduct Ministry of Justice checks before engagement, Ms Heke stood by Mrs Taki, and continued to regard her as one of her best cleaners.

[47] It has to be possible that had Mrs Taki had her own independent information about the employer's position, she would have reached a different conclusion from the conclusion that her husband reached, namely that payment would not continue for the length of the investigation. Mrs Taki also seems to have wanted to try to protect her husband (who had no criminal record) and may perhaps have thought by her resignation, her husband would be able to carry on.

[48] Whatever the motivation, the Authority is satisfied that Mrs Taki ought not to have had to rely on information from her husband and ought to have been engaged with by the employer directly. At the very least, what Spotless ought to have done was to have refused her resignation until there had been an opportunity for the parties to sit down and discuss the matter in a measured way.

[49] Furthermore, given that each of the Taki's were employees, the employer ought not to have treated them as *a job lot* and had an absolute obligation, to engage with each of them separately.

[50] By relying on Mr Taki to convey information to Mrs Taki, Spotless were not behaving as a fair and just employer would and given that the Authority's finding is that Mr Taki had, to put it colloquially, got the wrong end of the stick about the payment of wages during the suspension, by failing to engage separately with Mrs Taki, Spotless thereby confirmed that she also was mis-advised.

***Did the Taki's contribution to any personal grievance by resigning precipitately?***

[51] The Authority is satisfied that, in so far as criticism can be directed at aspects of Spotless's performance in this matter, set off against that must be aspects of contribution from the Taki's in their decision to resign their employment precipitately. Of course, it is easy for an outsider to say that the Taki's should have remained in the employment and let the investigation proceed. Mr Taki seems to have had as his dominant motive the desire to ensure that he had income coming in in order to meet his obligations and somehow, he has satisfied himself that Spotless were not going to keep him on the payroll. Conversely, Mrs Taki's view seems to have been dominated by a conviction that she was likely to be blamed for the theft even if there was no evidence, simply because she had a lengthy criminal record.

[52] The short point is that by resigning, the Taki's brought the investigation to an end so that there is now no prospect of identifying whether they had a case to answer or not. Certainly, by resigning when they did, they prevented the employer from completing its inquiries.

[53] This is particularly so given the Authority's earlier finding that the Taki's had no reason to have formed the view that they would not be paid during the investigation; the Authority is satisfied that Mr Vile made that matter quite clear and,

as has already been noted earlier in this determination, even on Mr Taki's evidence, he was told the correct position both on 19 July 2011 and on 20 July 2011.

**What payment was actually made during suspension?**

[54] Mr and Mrs Taki rely on the payment that was actually made during the suspension as evidence for their view that the employer was not going to pay the whole period of the suspension.

[55] But the Authority does not accept that contention at all. Again, the Authority prefers to rely on the evidence of Ms Heke who on this point also, gave coherent and credible testimony. She says that when she was presented with the two resignation forms she erroneously completed the documentation for each of them by marking the final day as the last day that each of them was working on the site. The effect of each of these errors was to instruct payroll to cease paying Mr and Mrs Taki on that date so identified on the form by Ms Heke. That was not her intention and the Authority accepts that without reservation. Attempts by the Taki's advocates to impugn Ms Heke's motives are, in the Authority's view, mistaken.

[56] Because payroll act on those forms, the effect was that Spotless paid one of the Taki's for two extra days and the other for one. Of course, both of them should have been paid for their notice period and had that happened, their ability to argue that Ms Heke's mistake was evidence of Spotless's intention in the matter, would have evaporated.

**Determination**

[57] On the evidence the Authority heard, it is not satisfied that Mr and Mrs Taki have suffered a constructive dismissal. This is because their decisions to resign were each of them activated by a mistaken belief as to Spotless's position and that mistaken belief was an unreasonable one in all the circumstances, Spotless having been as clear as could be that both Mr and Mrs Taki would continue to be paid during the investigation.

[58] However, that is not an end of the matter because the Authority has found that Spotless failed absolutely in its obligations by accepting uncritically the contention advanced by Downer that Mr and Mrs Taki had *prima facie* stolen Downer's petty cash. The Authority is not satisfied that in the circumstances that Spotless was in at



the time that it received that claim by Downer, it could have concluded that a total suspension from duty was appropriate. Spotless conducted no inquiry at all to reach that conclusion and simply relied on information from Downer which itself was sketchy indeed. There was the fact of a theft and Downer's contention that Mr and Mrs Taki were effectively the only people who could have been responsible for it, notwithstanding that there was no evidence that they were.

[59] In the Authority's opinion, the hidden camera footage is not evidence of theft (although it is clearly evidence of less serious misconduct) and the fact that the theft could apparently have taken place up to 6-8 weeks before the camera footage, really gives the lie to any viable evidentiary chain tying Mr and Mrs Taki to the theft. A good and fair employer, acting in conformity with the good faith principle, would not have accepted those aspects as evidence of theft and if Spotless were not concerned about the prospect of serious misconduct, they would not have suspended Mr and Mrs Taki from other sites. Spotless knew that Mrs Taki had a criminal history but were perfectly prepared to have her work in a variety of sites including banks prior to this allegation, yet as soon as the allegation is made, Mrs Taki and Mr Taki (who has no criminal history at all) were immediately removed from all work pending further inquiries.

[60] In the Authority's opinion, by suspending Mr and Mrs Taki from all duties based on the sketchiest of evidence from Downer, Spotless were committing an unjustified action which by depriving Mr and Mrs Taki of the enjoyment and satisfaction of their work, and caused them considerable anxiety because of the allegation. There was in consequence a disadvantage to Mr and Mrs Taki because of Spotless's unjustified action. Section 103A of the Employment Relations Act 2000 (the Act) requires the Authority to decide whether what the employer did was what a fair and reasonable employer could have done in all the circumstances of the case. It is clear law that that formulation of the test contemplates a range of possible responses by the employer: *Angus v. Ports of Auckland* [2011] NZEmpC160 applied. Even allowing for that latitude, the Authority is satisfied that a fair and reasonable employer could not have concluded that it was proper to deprive the Takis of their enjoyment of, and pride in their work, because a fair and reasonable employer would only have removed the Takis from the Downer's site and not from all work.

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[61] What is more, the Authority is satisfied that there was no investigation of the circumstances grounding the Spotless decision by the employer although one was in prospect. But it cannot be enough to investigate after the employer's action ( in this case the blanket suspension ). While the Authority found there had been contact between the parties, wherein the employer's concerns were raised, and Mr Taki had had an opportunity to be heard on the proposed suspension, the complete failure of the employer to consider the evidence of wrongdoing itself before the blanket suspension puts the case outside the terms of s. 103A(3). Nor could the defects be called minor or result in the employee being treated fairly: s. 103A(5) considered.

[62] Having just identified that Mr and Mrs Taki have a personal grievance by reason of having suffered a disadvantage because of Spotless's unjustified action in suspending them, the Authority must now consider whether in respect of Mrs Taki alone, Spotless have disadvantaged her by unjustified actions in failing to communicate directly with her and communicating exclusively through her husband Mr Taki. The Authority is satisfied that a good and fair employer could not form the view that it was appropriate to engage with an employee per medium of her husband. A good and fair employer would engage directly with an employee particularly in respect to matters going to the heart of the employment relationship concerning the potential breakdown of trust and confidence. The failure of Spotless to so engage cannot be excused by a lack of resource and the complete failure of any of the process contemplated by s. 103A(3) puts the matter outside the ambit of how a good and just employer would behave. Nor could Spotless's behaviour be said to have been minor or to have not resulted in Mrs Taki being treated unfairly: s. 103A(5) applied.

[63] On this footing then Mrs Taki has a second personal grievance by reason of Spotless failing to engage directly with her at critical points in the employment relationship or in the alternative, refusing to accept her proffered resignation without giving her the opportunity to be heard and to have her hear the employer's representative directly.

[64] The Authority has identified that Mr Taki has one personal grievance and Mrs Taki has two personal grievances against Spotless. The next question is whether either Mr or Mrs Taki has contributed in any way to the circumstances giving rise to their personal grievance. The Authority is satisfied that neither Mr nor Mrs Taki has contributed to the circumstances giving rise to the grievances that the Authority has

found proved. The position would be otherwise of course if the Authority were persuaded that Mr and Mrs Taki had proved their constructive dismissal claims. Had they successfully proved those claims, the Authority would have to have considered a contribution because of their early resignations, but because the Authority was not satisfied on the evidence that Mr and Mrs Taki had each of them a constructive dismissal argument, the question did not arise.

[65] On the facts, the Authority was satisfied that Mr and Mrs Taki resigned precipitately because on a mistaken belief that they would not be paid during their suspension. In order for a constructive dismissal to have been proved, it would have been necessary for the Authority to be satisfied that Spotless had failed in its obligation to be clear with Mr and Mrs Taki that they would get paid during the period of suspension. As noted earlier, the Authority was not satisfied about that and concluded that Spotless were absolutely explicit that the suspension would be paid. That Mr and Mrs Taki misunderstood that clear advice cannot be visited on Spotless

[66] The evidence the Authority heard disclosed the reality of the hurt suffered by Mr and Mrs Taki.

[67] Considering contribution, the Authority can readily conclude that neither Mr nor Mrs Taki contributed in any way to the circumstances giving rise to their grievance in being unlawfully suspended nor can Mrs Taki be seen to have contributed in any way to her grievance in not being directly communicated with by the employer. But did they lose their jobs because of the personal grievances or because of their early resignations? The Authority's considered view is that but for the grievances, they would not have resigned and thus contribution cannot be a factor in their entitlement to compensation. Put another way, if Spotless had suspended them only from the Downer site pending further enquiry, it seems more likely than not that the applicants would have continued in the employment and not resigned early.

[68] Accordingly, in order to remedy Mr Taki's personal grievance, the Authority directs that Spotless is to pay him the following sums:

- (a) Compensation under s.123(1)(c)(i) of the Employment Relations Act 2000 in the sum of \$5,000;
- (b) The Authority's filing fee of \$71.56.

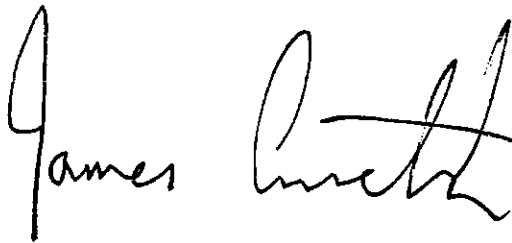


[69] In relation to Mrs Taki, the Authority directs that Spotless is to pay to her to remedy her personal grievances the following sums:

- (a) Compensation under s.123(1)(c)(i) of the Employment Relations Act 2000 in the sum of \$7,000;
- (b) Reimbursement of the Authority's filing fee in the sum of \$71.56.

**Costs**

[70] Costs are reserved.



James Crichton  
Member of the Employment Relations Authority

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